

Ordinance No. 3046

An Ordinance Amending Anacortes Municipal Code Chapter 18.04,
State Environmental Policy Act

Whereas, the City is currently in the process of comprehensively updating its development regulations and zoning establishing a variety of housing types; and

Whereas, the City Council desires to clarify that SEPA Categorical exemptions, Wac 197-11-800, do not apply to minor new construction when the project is undertaken wholly or partly on lands covered by water and their buffers; and

Whereas, on June 13, 2019, the City requested expedited review under RCW 36.70A.106(3)(b) from the Washington State Department of Commerce; no comments were received from state agencies; and

Whereas, on June 10, 2019, the Planning Commission held a public hearing on the proposal recommending approval to City Council; and

Whereas, on June 22, 2019, the City Council deliberated on the proposal; and

Now, therefore, the City Council of the City of Anacortes does ordain as follows:

Section 1. The Anacortes Municipal Code is amended as shown in Attachment A.

Section 2. This ordinance takes effect five days after publication.

PASSED and APPROVED this 22nd day of July, 2019.

CITY OF ANACORTES:


Laurie Gere, Mayor

Attest:


Steve Heglund, City Clerk-Treasurer

Approved as to Form:


Darcy Swetnam, City Attorney

**Chapter 18.04
STATE ENVIRONMENTAL POLICY ACT**

Sections:

Article I. Authority

- 18.04.010 Authority.**
- 18.04.020 Policies, authority and adoption by reference.**
- 18.04.030 SEPA rules—Adoption by reference.**

Article II. General Requirements

- 18.04.040 Purpose of this article and adoption by reference.**
- 18.04.050 Additional definitions.**
- 18.04.060 Designation of responsible official.**
- 18.04.070 Lead agency determination and responsibilities.**
- 18.04.080 Transfer of lead agency status to a state agency.**
- 18.04.090 Additional considerations in time limits applicable to the SEPA process.**
- 18.04.100 Additional timing considerations.**

Article III. Categorical Exemptions and Threshold Determinations

- 18.04.110 Purpose of this article and adoption by reference.**
- 18.04.115 Environmentally sensitive area designated.**
- 18.04.120 Flexible thresholds for categorical exemptions.**
- 18.04.130 Use of exemptions.**
- 18.04.140 Environmental checklist.**
- 18.04.150 Mitigated DNS.**

Article IV. Environmental Impact Statement (EIS)

- 18.04.160 Purpose of this article and adoption by reference.**
- 18.04.170 Preparation of EIS—Additional considerations.**
- 18.04.180 Additional elements to be covered in an EIS.**

Article V. Commenting

- 18.04.190 Adoption by reference.**
- 18.04.200 Public notice.**

18.04.210 **Designation of official to perform consulted agency responsibilities for the city.**

Article VI. Using Existing Environmental Documents

18.04.220 **Purpose of this article and adoption by reference.**

Article VII. SEPA and Agency Decisions

18.04.230 **Purpose of this article and adoption by reference.**

18.04.240 **Substantive authority.**

18.04.250 **Appeals.**

18.04.260 **Notice/statute of limitations.**

Article VIII. Definitions

18.04.270 **Purpose of this article and adoption by reference.**

Article IX. Categorical Exemptions

18.04.280 **Adoption by reference.**

Article X. Agency Compliance

18.04.290 **Purpose of this article and adoption by reference.**

18.04.300 **Critical areas.**

18.04.310 **Fees.**

18.04.320 **Effective date.**

18.04.330 **Severability.**

Article XI. Forms

18.04.340 **Adoption by reference.**

Article I. Authority

18.04.010 **Authority.**

The city adopts the ordinance codified in this chapter under the State Environmental Policy Act (SEPA), RCW [43.21C.120](#), and the SEPA rules, WAC [197-11-904](#).

This ordinance contains this city’s SEPA procedures and policies.

The SEPA rules, Chapter 197-11-WAC, must be used in conjunction with this chapter.

18.04.020 Policies, authority and adoption by reference.

A. The city adopts by reference the policies of the State Environmental Policy Act as expressed in RCW [43.21C.020](#).

B. The city possesses the authority and the basic policy discretion to deny or condition actions so as to mitigate or prevent adverse environmental impacts. This authority applies to all city activities including actions as defined in this chapter, as well as activities which are categorically exempt or excluded from the definition of action, whether or not such activities are considered to be ministerial in nature.

18.04.030 SEPA rules—Adoption by reference.

That certain document, a copy of which is on file in the office of the city clerk-treasurer, being designated “SEPA Rules” adopted by the Washington State Department of Ecology, is adopted by this reference.

Article II. General Requirements

18.04.040 Purpose of this article and adoption by reference.

This article contains the basic requirements that apply to the SEPA process. The city of Anacortes (“city”) adopts the following sections of Chapter [197-11](#) of the Washington Administrative Code by reference:

WAC

[197-11-040](#) Definitions

[197-11-050](#) Lead agency

- [197-11-060](#) Content of environmental review
- [197-11-070](#) Limitations on actions during SEPA process
- [197-11-080](#) Incomplete or unavailable information
- [197-11-090](#) Supporting documents
- [197-11-100](#) Information required of applicants
- [197-11-158](#) GMA project review—Reliance on existing plans, laws, and regulations
- [197-11-210](#) SEPA/GMA integration
- [197-11-220](#) SEPA/GMA definitions
- [197-11-228](#) Overall SEPA/GMA integration procedures
- [197-11-230](#) Timing of an integrated GMA/SEPA process
- [197-11-232](#) SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping
- [197-11-235](#) Documents
- [197-11-238](#) Monitoring
- [197-11-250](#) SEPA/Model Toxics Control Act Integration
- [197-11-253](#) SEPA lead agency for MTCA actions
- [197-11-256](#) Preliminary evaluation
- [197-11-259](#) Determination of nonsignificance for MTCA remedial actions
- [197-11-262](#) Determination of significance and EIS
- [197-11-265](#) Early scoping for MTCA remedial actions
- [197-11-268](#) MTCA interim actions

18.04.050 Additional definitions.

In addition to those definitions contained within WAC [197-11-700](#) through [197-11-799](#) and [197-11-220](#), when used in this chapter, the following terms have the following meanings, unless the context indicates otherwise:

- A. “Department” means any division, subdivision or organizational unit of the city/county established by ordinance, rule, or order.
- B. “SEPA rules” means Chapter [197-11](#) WAC adopted by the Department of Ecology.
- C. “Ordinance” means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.
- D. “Early notice” means the city’s response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant’s proposal (Mitigated Determination of Nonsignificance (MDNS) procedures).

18.04.060 Designation of responsible official.

- A. For those proposals for which the city is the lead agency, the responsible official **will** be the city director of planning and community development.
- B. For all proposals for which the city is the lead agency, the responsible official **must** make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the “lead agency” or “responsible official” by those sections of the SEPA rules that were adopted by reference in WAC [173-806-020](#).
- C. The city **must** retain all documents required by the SEPA rules (Chapter [197-11](#) WAC) and make them available in accordance with Chapter [42.17](#) RCW.

18.04.070 Lead agency determination and responsibilities.

- A. The department within the city receiving an application for or initiating a proposal that involves a nonexempt action **must** determine the lead agency for that proposal under WAC

[197-11-050](#), [197-11-253](#), and [197-11-922](#) through [197-11-940](#); unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.

B. When the city is the lead agency for a proposal, the department receiving the application **must** determine the responsible official who **must** supervise compliance with the threshold determination requirements, and if an EIS is necessary, **must** supervise preparation of the EIS.

C. When the city is not the lead agency for a proposal, all departments of the city **must** use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city department **will** prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC [197-11-600](#). In some cases, the city may conduct supplemental environmental review under WAC [197-11-600](#).

D. If the city or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC [197-11-253](#) or [197-11-922](#) through [197-11-940](#), it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC [197-11-946](#) within the fifteen-day time period. Any such petition on behalf of the city may be initiated by the responsible official.

E. Departments of the city are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC [197-11-942](#) and [197-11-944](#): Provided, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.

F. Any department making a lead agency determination for a private project **must** require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (That is: Which agencies require nonexempt licenses?).

G. When the city is lead agency for a MTCA remedial action, the department of ecology **must** be provided an opportunity under WAC [197-11-253\(5\)](#) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC [197-11-253\(6\)](#), the city **must** decide jointly with ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

18.04.080 Transfer of lead agency status to a state agency.

For any proposal for a private project where the city would be the lead agency and for which one or more state agencies have jurisdiction, the responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC [197-11-936](#) **must** be the lead agency and the city **will** be an agency with jurisdiction. To transfer lead agency duties, the city's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the city **must** also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

18.04.090 Additional considerations in time limits applicable to the SEPA process.

The following time limits (expressed calendar days) **must** apply when the city processes licenses for all private projects and those governmental proposals submitted to the city by other agencies:

A. *Categorical Exemptions.* The city **must** identify whether an action is categorically exempt within seven days of receiving a completed application.

B. *Threshold Determination.*

1. The city should complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within fifteen days of the date an applicant's adequate application and completed checklist are submitted.
2. When the responsible official requires further information from the applicant or consultation with other agencies with jurisdiction.
 - a. The city should request such further information within fifteen days of receiving an adequate application and completed environmental checklist.
 - b. The city **must wait** no longer than thirty days for a consulted agency to respond.
 - c. The responsible official should complete the threshold determination within fifteen days of receiving the requested information from the applicant or the consulted agency.
3. When the city **must** initiate further studies, including field investigations, to obtain the information to make the threshold determination, the city should complete the studies within thirty days of receiving an adequate application and a completed checklist.

4. The city **must** complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impact(s) described in the application, within fifteen days of receiving an adequate application and completed checklist.

18.04.100 Additional timing considerations.

For nonexempt proposals, the DNS or final for the proposal **must** accompany the city’s staff recommendation to any appropriate advisory body, such as the planning commission. ¶

Article III. Categorical Exemptions and Threshold Determinations

18.04.110 Purpose of this article and adoption by reference.

This article contains the rules for deciding whether a proposal has a “probable significant, adverse environmental impact” requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections by reference, as supplemented in this article:

WAC

[197-11-300](#) Purpose of this part

[197-11-305](#) Categorical exemptions

[197-11-310](#) Threshold determination required

[197-11-315](#) Environmental checklist

[197-11-330](#) Threshold determination process

[197-11-335](#) Additional information

[197-11-340](#) Determination of nonsignificance (DNS)

[197-11-350](#) Mitigated DNS

[197-11-355](#) Optional DNS process

[197-11-360](#) Determination of significance (DS)/initiation of scoping

[197-11-390](#) Effect of threshold determination

[197-11- 908 Critical Areas](#)

18.04.115 Environmentally sensitive area designated.

- A. The city hereby designates the area outside of the city but within the city jurisdiction for water system decisions as an environmentally sensitive area pursuant to WAC [197-11-906](#) and WAC [197-11-908](#).
- B. This environmentally sensitive area, mapped on Attached A to the ordinance codified in this section, is hereby adopted by reference pursuant to WAC [197-11-906](#) and WAC [197-11-908](#).
- C. Within this environmentally sensitive area the water line exemptions of WAC [197-11-800\(3\)\(24\)\(b\)](#) do not apply.
- D. Within this environmentally sensitive area the city exempts from SEPA review only its decisions relating to water lines of four inches or less in diameter.

18.04.120 Flexible thresholds for categorical exemptions.

- A. The city establishes the following exempt levels for minor new construction under WAC [197-11-800\(1\)\(b\)](#) based on local conditions:
 - 1. For residential dwelling units in WAC [197-11-800\(1\)\(b\)\(i\)](#): Up to twenty dwelling units.
 - 2. For agricultural structures in WAC [197-11-800\(1\)\(b\)\(iii\)](#) : Up to ten thousand square feet.
 - 3. For office, school, commercial, recreational, service or storage buildings in WAC [197-11-800\(1\)\(b\)\(v\)](#): Up to twelve thousand square feet and up to forty parking spaces.
 - 4. For parking lots in WAC [197-11-800\(1\)\(b\)\(iv\)](#): Up to forty parking spaces.
 - 5. For landfills and excavations in WAC [197-11-800\(1\)\(b\)\(v\)](#): Up to five hundred cubic yards.

B. Whenever the city establishes new exempt levels under this section, it **must** send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504 under WAC [197-11-800\(1\)\(c\)](#).

C. WAC 197-11-800 Categorical exemptions do not apply to minor new construction (WAC 197-11-800 (1-a-b)(6-a) in the R1 Use Zone when the project is undertaken wholly or partly on lands covered by water (wetlands and streams) and their buffers.

18.04.130 Use of exemptions.

A. Each department within the city that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, **must** determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt **must** be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this ordinance apply to the proposal. The city **must** not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the department **must** make certain the proposal is properly defined and **must** identify the governmental licenses required (WAC [197-11-060](#)). If a proposal includes both exempt and nonexempt actions, the department **must** determine the lead agency, even if the license application that triggers the department's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city **must** not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of alternatives.

2. A department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

3. A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

18.04.140 Environmental checklist.

A. A completed environmental checklist (or a copy), in the form provided in WAC [197-11-960](#), **must** be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. This city **must** use the environmental checklist to determine the lead agency and, if the city is the lead agency, for determining the responsible official for making the threshold determination.

B. For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal **must** complete the environmental checklist for that proposal.

C. The city may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

1. The city has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

18.04.150 Mitigated DNS.

A. As provided in this section and in WAC [197-11-350](#), the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC [197-11-350](#). The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency, and
 2. Precede the city's actual threshold determination for the proposal.
- C. The responsible official should respond to the request for early notice within ten working days. The response **must**:
1. Be written;
 2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city to consider a DS; and
 3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.
- D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- E. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city **must** base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal:
1. If the city indicated specific mitigation measures in its response to the request for early notice, the applicant changed or clarified the proposal to include those specific mitigation measure, the city **must** issue and circulate a DNS under WAC [197-11-340\(2\)](#).
 2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city **must** make the threshold determination, issuing a DNS or DS as appropriate.
 3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposal to "muffle machinery to X decibel" or "construct two hundred foot stormwater retention pond at Y location" are adequate.
 4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

F. A mitigated DNS is issued under either WAC [197-11-340\(2\)](#), requiring a fourteen-day comment period and public notice, or WAC [197-11-355](#), which may require no additional comment period beyond the comment period on the notice of application.

G. Mitigation measures incorporated in the mitigated DNS **must** be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city.

H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC [197-11-340\(3\)\(a\)](#) (withdrawal of DNS).

I. The city's written response under subsection [\(B\)](#) of this section **must** not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, **must** not bind the city to consider the clarifications or changes in its threshold determination.

Article IV. Environmental Impact Statement (EIS)

18.04.160 Purpose of this article and adoption by reference.

This article contains the rules for preparing environmental impact statements. The city adopts the following sections by reference, as supplemented by this article.

WAC

[197-11-400](#) Purpose of EIS

[197-11-402](#) General requirements

[197-11-405](#) EIS types

[197-11-406](#) EIS timing

[197-11-408](#) Scoping

[197-11-410](#) Expanded scoping (Optional)

[197-11-420](#) EIS preparation

[197-11-425](#) Style and size

[197-11-430](#) Format

[197-11-435](#) Cover letter or memo

[197-11-440](#) EIS comments

[197-11-442](#) Contents of EIS on nonproject proposal

[197-11-443](#) EIS contents when prior nonproject EIS

[197-11-444](#) Elements of the environment

[197-11-448](#) Relationship of EIS to other considerations

[197-11-450](#) Cost-benefit analysis

[197-11-455](#) Issuance of DEIS

[197-11-460](#) Issuance of FEIS

18.04.170 Preparation of EIS—Additional considerations.

A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the responsible official. Before the city issues an EIS, the responsible official **must** be satisfied that it complies with this chapter and Chapter [197-11](#) WAC.

B. The DEIS and FEIS or draft and final SEIS **must** be prepared by city staff or by a consultant selected by the city and the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official **must** notify the applicant immediately after completion of the threshold determination. The responsible official **must** also notify the applicant of the city's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute.)

18.04.180 Additional elements to be covered in an EIS.

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter:

- A. Economy;
- B. Social policy analysis;
- C. Cost-benefit analysis;
- D. Cultural factors;
- E. Sociological factors.

Article V. Commenting

18.04.190 Adoption by reference.

This article contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city adopts the following sections by reference, as supplemented in this article:

WAC

[197-11-500](#) Purpose of this part.

[197-11-502](#) Inviting comment.

[197-11-504](#) Availability and cost of environmental documents.

[197-11-508](#) SEPA register.

[197-11-510](#) Public notice.

[197-11-535](#) Public hearings and meetings.

[197-11-545](#) Effect of no comment.

[197-11-550](#) Specificity of comments.

[197-11-560](#) FEIS response to comments.

[197-11-570](#) Consulted agency costs to assist lead agency.

18.04.200 Public notice.

A. Whenever possible, the city **must** integrate the public notice required under this section with existing notice procedures for the city nonexempt permit(s) or approval(s) required for the proposal.

B. Whenever the city issues a DNS under WAC [197-11-340\(2\)](#) or a DS under WAC [197-11-360\(3\)](#) the city **must** give public notice as follows:

1. If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application provided for the particular permit(s) will suffice to meet the SEPA public notice requirements in WAC [197-11-510\(1\)](#);
2. If no public notice is otherwise specified, or if not issued concurrently with the notice of application, the city **must** give notice of the DNS or DS by:
 - a. Posting the property, for site-specific proposals,
 - b. Publishing notice in a newspaper of general circulation in the city where the proposal is located, and
 - c. Posting the notice at City Hall and Post Office.
3. Whenever the city issues a DS under WAC [197-11-360\(3\)](#), the city **must** state the scoping procedure for the proposal in the DS as required in WAC [197-11-408](#) and in the public notice.

C. If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application required for the particular permit(s) (or if no such procedures are specified, then as provided in subsection [\(B\)\(2\)](#) of this section as supplemented by the requirements in WAC [197-11-355](#), will suffice to meet the SEPA public notice requirements.

D. Whenever the city issues a DEIS under WAC [197-11-455\(5\)](#) or a SEIS under WAC [197-11-620](#), notice of the availability of those documents **must** be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt license;

2. Posting the property, for site-specific proposals;
3. Publishing notice in a newspaper of general circulation in the city where the proposal is located; and
4. Posting the notice at City Hall and Post Office. (Ord. 2706 § 2, 2005:

18.04.210 Designation of official to perform consulted agency responsibilities for the city.

A. The city director of planning and community development **must** be responsible for preparation of written comments for the city in response to a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.

B. This person **must** be responsible for the city's compliance with WAC [197-11-550](#) whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.

Article VI. Using Existing Environmental Documents

18.04.220 Purpose of this article and adoption by reference.

This article contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's own environmental compliance. The city adopts the following sections by reference:

WAC

[197-11-164](#) Planned actions—Definition and criteria.

[197-11-168](#) Ordinances or resolutions designating planned actions—Procedures for adoption.

[197-11-172](#) Planned actions—Project review.

[197-11-600](#) When to use existing environmental documents.

[197-11-610](#) Use of NEPA documents.

[197-11-620](#) Supplemental environmental impact statement—Procedures.

[197-11-625](#) Addenda—Procedures.

[197-11-630](#) Adoption—Procedures.

[197-11-635](#) Incorporation by reference—Procedures.

[197-11-640](#) Combining documents.

Article VII. SEPA and Agency Decisions

18.04.230 Purpose of this article and adoption by reference.

This article contains rules (and policies) for SEPA’s substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The city adopts the following sections by reference:

WAC

[197-11-650](#) Purpose of this part.

[197-11-655](#) Implementation.

[197-11-660](#) Substantive authority and mitigation.

[197-11-680](#) Appeals.

18.04.240 Substantive authority.

A. The policies and goals set forth in this chapter are supplementary to those in the existing ordinances of the city.

- B. The city may attach conditions to a permit or approval for a proposal so long as:
1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter;
 2. Such conditions are in writing;
 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished;
 4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 5. Such conditions are based on one or more policies in subsection [D](#) of this section and cited in the license or other decision document.
- C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:
1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter;
 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
 3. The denial is based on one or more policies identified in subsection [D](#) of this section and identified in writing in the decision document.
- D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:
1. The city **must** use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations,
 - b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings,
 - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences,

- d. Preserve important historic, cultural, and natural aspects of our national heritage,
 - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice,
 - f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities, and
 - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources;
2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment;
3. The city adopts by reference the policies in the following city ordinances: city comprehensive plan and development regulations (zoning, subdivision, and critical areas regulations as codified at Chapter [17.70](#) of the Anacortes Municipal Code). (Ord. 2702 § 4, 2005.

18.04.250 Appeals.

- A. Appeals of SEPA threshold determinations are processed per AMC Title [19](#).
- B. The city **must** give official notice under WAC [197-11-680\(5\)](#) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. (Ord. 2992 § 1 (Att. A), 2016.

18.04.260 Notice/statute of limitations.

- A. The city applicant for, or proponent of an action may publish a notice of action pursuant to RCW [43.21C.080](#) for any action.
- B. The form of the notice **must** be substantially in the form provided in WAC [197-11-990](#). The notice **must** be published by the city clerk, applicant or proponent pursuant to RCW [43.21C.080](#).

Article VIII. Definitions

18.04.270 Purpose of this article and adoption by reference.

This article contains uniform usage and definitions of terms under SEPA. The city adopts the following sections by reference .

WAC

[197-11-700](#) Definitions.

[197-11-702](#) Act.

[197-11-704](#) Action.

[197-11-706](#) Addendum.

[197-11-708](#) Adoption.

[197-11-710](#) Affected tribe.

[197-11-712](#) Affecting.

[197-11-714](#) Agency.

[197-11-716](#) Applicant.

[197-11-718](#) Built environment.

[197-11-720](#) Categorical exemption.

[197-11-721](#) Closed record appeal.

[197-11-722](#) Consolidated appeal.

[197-11-724](#) Consulted agency.

[197-11-726](#) Cost-benefit analysis.

[197-11-728](#) County/city.

[197-11-730](#) Decision maker.

[197-11-732](#) Department.

[197-11-734](#) Determination of nonsignificance (DNS).

[197-11-736](#) Determination of significance (DS).

[197-11-738](#) EIS.

[197-11-740](#) Environment.

[197-11-742](#) Environmental checklist.

[197-11-744](#) Environmental document.

[197-11-746](#) Environmental review.

[197-11-750](#) Expanded scoping.

[197-11-752](#) Impacts.

[197-11-754](#) Incorporation by reference.

[197-11-756](#) Lands covered by water.

[197-11-758](#) Lead agency.

[197-11-760](#) License.

[197-11-762](#) Local agency.

[197-11-764](#) Major action.

[197-11-766](#) Mitigated DNS.

[197-11-768](#) Mitigation.

[197-11-770](#) Natural environment.

[197-11-772](#) NEPA.

[197-11-774](#) Nonproject.

[197-11-775](#) Open record hearing.

[197-11-776](#) Phased review.

[197-11-778](#) Preparation.

[197-11-780](#) Private project.

[197-11-782](#) Probable.

[197-11-784](#) Proposal.

[197-11-786](#) Reasonable alternative.

[197-11-788](#) Responsible official.

[197-11-790](#) SEPA.

[197-11-792](#) Scope.

[197-11-793](#) Scoping.

[197-11-794](#) Significant.

[197-11-796](#) State agency.

[197-11-797](#) Threshold determination.

[197-11-799](#) Underlying governmental action.

Article IX. Categorical Exemptions

18.04.280 Adoption by reference.

The city adopts by reference the following rules for categorical exemptions, as supplemented in this chapter.

WAC

[197-11-800](#) Categorical exemptions.

[197-11-880](#) Emergencies.

[197-11-890](#) Petitioning DOE to change exemptions.

Article X. Agency Compliance

18.04.290 Purpose of this article and adoption by reference.

This article contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city adopts the following sections by reference:

WAC

[197-11-900](#) Purpose of this part.

[197-11-902](#) Agency SEPA policies.

[197-11-916](#) Application to ongoing actions.

[197-11-920](#) Agencies with environmental expertise.

[197-11-922](#) Lead agency rules.

[197-11-924](#) Determining the lead agency.

[197-11-926](#) Lead agency for governmental proposals.

[197-11-928](#) Lead agency for public and private proposals.

[197-11-930](#) Lead agency for private projects with one agency with jurisdiction.

[197-11-932](#) Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.

[197-11-934](#) Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.

[197-11-936](#) Lead agency for private projects requiring licenses from more than one state agency.

[197-11-938](#) Lead agencies for specific proposals.

[197-11-940](#) Transfer of lead agency status to a state agency.

[197-11-942](#) Agreements on lead agency status.

[197-11-944](#) Agreements on division of lead agency duties.

[197-11-946](#) DOE resolution of lead agency disputes.

[197-11-948](#) Assumption of lead agency status.

18.04.300 Critical areas.

A. Outside the city limits the water line exemptions of WAC [197-11-800\(3\)\(24\)\(b\)](#) do not apply.

B. Outside the city limits the city exempts from SEPA review its decisions relating to water lines of four inches or less in diameter.

18.04.310 Fees.

The city **must** require the following fees for its activities in accordance with the provisions of this chapter:

A. *Threshold Determination.* For every environmental checklist the city will review when it is lead agency, the city **must** collect a fee of four hundred dollars from the proponent of the proposal prior to undertaking the threshold determination. This amount is to cover two hours of staff time and publication and distribution costs. The time periods provided by this chapter for making a threshold determination **must** not begin to run until payment of the fee. Additionally, when the city completes its environmental review, the city may charge and collect a reasonable fee from any applicant to cover costs incurred by the city in preparing the threshold determination. The city **must** charge fees for the coordination and supervision of the threshold determination preparation in the sum equal to staff time expended on the project (at fifty dollars per hour plus one hundred percent of that amount to compensate for support staff time and expenses) as supported by time sheets. The responsible official **must** advise the applicant(s) of the projected costs for the threshold determination prior to actual preparation; the applicant **must** post bond or otherwise ensure payment of such costs.

B. *Environmental Impact Statement.*

1. When the city is lead agency for a proposal requiring an EIS and the responsible official determines that the EIS **must** be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred by the city in preparing the EIS. The responsible official **must** advise the applicant(s) of the projected

costs for the EIS prior to actual preparation; the applicant **must** post bond or otherwise ensure payment of such costs.

2. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. The city may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants **must** be selected by mutual agreement of the city and applicant after an informal call for proposals.

3. If a proposal is modified so that an EIS is no longer required, the responsible official **must** refund any fees collected under subsection [\(B\)\(1\)](#) or [\(B\)\(2\)](#) of this section which remain after incurred costs are paid.

C. The city may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal as set forth in subsection [A](#) of this section.

D. The city **must** not collect a fee for performing its duties as a consulted agency.

E. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by Chapter [42.17](#) RCW. (Ord. 2704 § 1, 2005.

18.04.320 Effective date.

The effective date of the ordinance codified in this chapter is five days after posting and publication.

18.04.330 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, **must** not be affected.

Article XI. Forms

18.04.340 Adoption by reference.

The city adopts the following forms and section by reference:

WAC

[197-11-960](#) Environmental checklist.

[197-11-965](#) Adoption notice.

[197-11-970](#) Determination of nonsignificance (DNS).

[197-11-980](#) Determination of significance and scoping notice (DS).

[197-11-985](#) Notice of assumption of lead agency status.

[197-11-990](#) Notice of action.

The Anacortes Municipal Code is current through Ordinance 3039, and legislation passed through March 18, 2019.

Disclaimer: The city attorney's office has the official version of the Anacortes Municipal Code. Users should contact the city attorney's office for ordinances passed subsequent to the ordinance cited here.

[City Website: www.cityofanacortes.org](http://www.cityofanacortes.org)

City Telephone: (360) 293-1900

[Code Publishing Company](#)