1) Call to Order and Roll Call

2) Code Amendments
   a) SEPA Procedures
   b) Landscaping and Tree Standards
   c) Site Plan Review Procedures
   d) Land Use and Development Standards Table

3) 2016 Island County Population Projection

4) Adjourn

Next Regular Meeting: October 2, 2013
Minutes
City of Langley
Planning advisory board
August 8, 2013

The meeting was called to order at 3:03PM

Attendance:
Members present: Roger Gage, Aaron Simpson, Gail Fleming, Dominigue Emerson
Members absent: Sue Walsh
Staff present: Jeff Arango, Cheryl Knighton

Approval of Minutes: Motion by Roger to approve with changes of misspelling of decibel, and correction in quote by Aaron whereas he feels there should be enforcement of the “existing ordinance”. Second by Aaron. Approved.

Public Hearing - Edgecliff Rezoning Proposal - opened 3:05

Jeff spoke and explained the area and why the changes should be made to the zoning in Edgecliff. All property owners were notified and we received only one comment made. It has been recommended by the Planning Advisory Board, and by the Council. He explained that we are required by the Growth Management Act and based on the findings we are in compliance.

Aaron asked about the critical areas on the map not showing other areas of wetlands. Jeff explained there is probable areas. Dominigue is concerned that it is not sufficient. Other neighborhoods don’t have as large of an area as these and there is already development in other areas.

John Beck property owner, was concerned about more houses being built, but Jeff explained this will reduce the amount.

Jonathon Moses is in support of the proposal, and read a statement from his neighbors in support also. But they are concerned about water flow and storm water runoff. Possibly a good idea to extend the area.

Bruce Kortebein is in support of the proposal. Doris Matz asked about the Langley Passage, and Jeff explained that it is pending and he explained the history. Also that it will not affect them.

Rhonda Salerno is a major property owner in the area and is in support, but is concerned about drainage.

Hearing closed 3:38PM

Motion to move forward to council, Gail, Roger second.
Discussion on extending the Noble Creek area and including it. Jeff said they would look at that later when the Comprehensive Plan is updated. Dominique wants the proposal amended to include a larger area. But Jeff pointed out that this proposal has the support of the community, and there may be another one brought forward in the future. Thomas, Gail, Aaron and Roger all agreed to complete this proposal as it stands. Motion to take current proposal to the council was voted on. Roger– yes, Aaron –yes, Gail –yes, Thomas –yes, Dominique – no. Passed 4 to 1.

Amplified Music

Jeff gave an overview of an interim ordinance. It will allow any day of the week, but with certain times limitations. Proposal has not be sent to neighbors at this time, but will be if approved to move forward. Discussion on “audible at property line” needs some clarification. Are there mechanisms for enforcement as in the police could monitor. Dedicated time is important.

Maureen Cook said she has always wanted just to have dining music. She does monitor the decibel levels. She has noticed that people are being more thoughtful when coming and going and not being noisy. She thinks people want Mo’s to succeed.

The next step will be to send the proposal out to property owners, then council, then a public hearing. All agreed. Motion to do so, Aaron, second, Thomas. There will be a Special Meeting on August 21st at 3:00PM.

Code Amendments - Restructure of Design Review Board

Jeff handed out the code amendment as discussed in the prior meeting. He explained how he would like to see their roles and the process changed. There was much discussion on how the process would work. Jeff is open to modifying the numbers. Discussion on having more than 1 meeting a month, possibly a co-meeting with DRB to hear concerns. Jeff will outline the functions of DRB. To be continued to next meeting.

Other Items Not on the Agenda

Some discussion 1st Street parking. Will be deferred until 2nd Street in completed. Jeff is thinking of having a design competition. Parking times on 2nd Street need to be looked at. More discussion to follow.

The City’s website is cumbersome, we will be doing an RFP this fall for website design and maintenance. Discussion on the notices getting out. Cheryl is working on an email data base to notify citizens of City happenings. Aaron thinks there is a lack of multi-family dwellings. Gail said not to forget the tree ordinance.

Audience input – None

Meeting adjourned – 5:10pm
The meeting was called to order at 3:00PM

**Attendance:**
Members present: Roger Gage, Aaron Simpson, Gail Fleming, Dominique Emerson, Sue Walsh, Thomas Gill
Staff present: Jeff Arango, Cheryl Knighton

**Public Hearing - Proposed Revisions to Ordinance 989 - opened 3:05**

**Amplified Music**

Thomas opened the meeting and explained how he wanted to run the meeting. Opening statements from the board, then public comments, then back to the board for final decision.

Board comments:

Gail said she was enlightened by the letter she had received and is open to hearing more input from the community. Roger felt the same, as well as Aaron. He would like to hear more from the residence surrounding Mo’s Pub. Thomas feel the same. He realizes the impact of noise levels as he is impacted by traffic noise where he lives. He feels it may be premature to move forward with the amendment at this point. Dominique feels there is a problem I the area, in particularly the parking and the noise that goes with it. She feels it’s the process she has a concern with. She has some concerns with using an ordinance for conditional use.

Public Input:

Craig Carty of 2nd street said no one wants to shut Mo’s down. He feels it’s a zoning issue and thought it had been taken care of with a compromise. Frank Ploof of Anthes, agrees with the original Ordinance 989. Troy Chapman of Decker, supports the amended ordinance. But what is “amplified” music? Fells there should be a definition of “amplified” in the ordinance. Feels it is a meaningless term at this point. Dominique read the current noise ordinance.

Socorro Rodriquez of 3rd street, Moved here because of the small town community. Does not feel sound waves will stop at the property line. Does not want music every night as she can hear it clearly from her house. It is not consistent with the zoning. Why does this subject continually keep coming up? Wants to lead a quiet peaceful life in Langley. Wants the board to please remember this is a neighborhood. Feels the few permitted events are ok, but not nightly, because of the late night noise.
Kay Laugerquist of 2nd street, says there is an impact on the neighborhood. More music, more people, more people more parking, more noise. There have been violations of code and ordinance. The original ordinance says zero noise in residential area. Then it was changed from no events to 6. She laid out the history of Mo’s with the violations and the music. Feels the current code cannot be enforced so why do another one that would be harder to enforce. It’s not just the music, but the increasing number of people and parking that create more noise after hours. Feels Mo’s should move to the central district of Langley, they have outgrown their present building. She does not want to come back to this again. She ask that the board not give it 6 months before deciding what to do.

Connie Marcucci of Sunrise, is happy that the board is including the residents in on this decision because it sometimes feels like the residents are getting “squeezed” out.

Cynthia Tilkin, of In the Country, read a statement regarding the contract that Maureen had signed some years ago, the violations Mo’s has had, and asked the board if they were aware of them. Feels the city owes the residence and apology for allowing Mo’s to become what it is. Feels Mo’s should move to the downtown area. Russell a musician, has walked around MO’s at night while there was music. He would not want to live next to a place with music, and feels the community should be the ones who decide. He would support the ordinance and hopes there is a way to support music in Langley.

Craig Stevens, musician, says having a local place to play is great and we need places like Mo’s for musicians to play. Asked about the noise ordinance.

Maureen asked Dominique about the Saturday night she was walking her dogs when she observed loudness. Dominique said it was around 10:30PM, there were many people spilling out on to the deck, door open and very noisy. Maureen stated that if what the city and the community want is no music, then it will happen.

Chris says it does not make sense that a saxophone can play but an electric keyboard cannot. Steve O’Sullivan feels there are two different issues. One being the music and the other the people. Maureen has no control over the people. The pub shuts down at 8:30pm during the week and 10:00pm on Saturday and Sunday. Does not feel that is too late.

Board input:
Thomas feels it’s not the music so much as the patrons and their behavior. Know of the behavior because of driving taxi. They can be loud, and they do make an impact on the neighborhood. He feels the community has made a good point. Also knows that enforcement is a problem. How do they address that issue? Dominique would like the law to just set for a while and see what happens.

Jeff feels that because the community does not support it, then the board should not either.

Motion to reject Amending Ordinance 989, Sue, 2nd, Roger. Approved to reject.
County Wide Population Projection

Jeff explained the steps of how the county picks the projections. They have projected growth up to 9400 people in the next 20 years. There will be a public hearing on August 26 in Coupeville. Motion to accept the County Population Projection – Dominique, 2nd Roger. Approved.

Dominique asked if Jeff could get her the agenda and handouts about a week before the meeting.

Meeting adjourned – 4:50pm
Staff Report

To: Planning Advisory Board
From: Jeff Arango, AICP – Director of Community Planning
Date: August 30, 2013

Re: September 4, 2013 Meeting

Code Amendments

SEPA Procedures

The following amendments have been made to LMC 16.04 with respect to SEPA procedures:

1. Clarify the appeal period starts after the public comment period for threshold those actions requiring a public comment period
2. Clarify applicability of SEPA procedures for projects within critical areas
3. Update the reference to the Washington Administrative Code (WAC) regarding exemptions for minor new constructions

Landscaping Section

Requirements for landscaping are scattered throughout the LMC and should be consolidated into a revised landscaping section in Title 18: Zoning. The existing landscaping requirement in LMC 18.22.020:

All lots shall be generously landscaped, and consistent with the natural environment of Langley and appropriate to the planned use. Retention of natural landscaping is encouraged. (Ord. 527, 1989)

The revised landscaping section may be expanded to address a wider range of issues as outlined below:

A. Beautification in Downtown
   a. Planters and right-of-way improvements
B. Requirements for a landscaping professional [Landscape Architect or Designer] to prepare plan for larger scale projects
C. Site Plan Review for Multi-Family and Commercial Projects
   a. Gardens
   b. Art
   c. Lighting
   d. Maintenance
   e. Native Drought Tolerant Specie Requirements/Incentives
   f. Buffers
D. Preserve Significant and Heritage Trees; Mature Forest
   a. Exemptions for Single Family Properties
   b. Exemptions for safety, solar access
E. Best practices for View Preservation and Tree Management
F. Screen and Soften Parking Areas
   a. Requirements for # of trees per parking space
G. Food Production - Edible Gardens, Small Scale Agriculture
H. Solar Access - Active and Passive

Site Plan Review Procedures

At the PAB meeting on August 7, 2013 the board reviewed a proposal to establish a site plan review process. Two issues that were discussed were the appropriate review procedures for Type I (minor) and Type II (major) site plan application. Type I applications would be administratively reviewed while Type II applications would require review by the hearing examiner.

Staff has been reviewing site plan procedures in other communities and the City of Bainbridge Island establishes procedures for major and minor site plan reviews, which are both approved by the director. Major site plan review requires an advisory review and recommendation by the Planning Commission and Design Review Board.

Bainbridge Island Major and Minor Site Plan Review [See Diagrams on Next Page]:

C. Procedures. This section provides two methods of site plan and design review: major and minor. Application materials for both major and minor site plan and design review can be found in the administrative manual.

1. Minor. Minor site plan and design review is required for minor projects that can clearly meet the decision criteria in subsection E of this section, as determined by the director. Examples of minor administrative projects include: (a) a fourplex multifamily development; (b) minor commercial remodel or the addition of a small room; and (c) a minor change in use, such as from a church to a preschool.

2. Major. Major site plan and design review requires planning commission review and recommendation, and is required for projects that: (a) are determined by the director to be more complicated than those in subsection C.1 of this section, due to site constraints or the complexity of the project; or (b) receive written public comment(s) during the public comment period concerning the effect on the land use application of the comprehensive plan, shoreline master program, or matters not addressed by specific provisions of this code; or (c) are located on property zoned business/industrial after November 22, 1999.

The city has the following options for site plan review procedures:

1. Director approval for both major and minor site plan review with advisory review by PAB for major projects

2. Director approval for minor site plan review and hearing examiner approval for major site plan review
    a. Option: Advisory review by the PAB
Major Site Plan Review Diagram:

Minor Site Plan Review Diagram:
Land Use and Development Standards Table

Staff intends to develop a land use and development standards that will combine the allowable land uses for each zoning district into one table. The allowable land uses and development standards are now contained in list form in each of the zoning districts and is not very user friendly. Staff will provide a draft of the land use and development standards table at the September PAB meeting.
Chapter 16.04

ENVIRONMENTAL POLICY

Sections:
16.04.010 SEPA rules adopted.
16.04.030 Designation of responsible official.
16.04.040 Lead agency determination and responsibilities.
16.04.050 Transfer of lead agency status to state agency.
16.04.060 Additional consideration in time limits applicable to SEPA process.
16.04.070 Additional timing considerations.
16.04.080 Flexible thresholds for categorical exemptions.
16.04.090 Environmental checklist.
16.04.100 Mitigated DNS.
16.04.110 Additional elements.
16.04.120 Public notice.
16.04.130 Designation of official to perform consulted agency responsibilities.
16.04.140 Substantive authority.
16.04.150 Appeals.
16.04.155 Judicial appeals.
16.04.170 Environmentally sensitive areas.
16.04.180 Fees.

16.04.010 SEPA rules adopted.

The city adopts the model ordinance, Chapter 173-806 WAC, to implement SEPA rules, Chapter 197-11 WAC. (Ord. 440, 1984)


The city adopts the optional sections of the model ordinance, as codified in this chapter. (Ord. 440, 1984)

16.04.030 Designation of responsible official.

For those proposals for which the city is the lead agency, the responsible official shall be the city planning officer. For all proposals for which the city is the lead agency, the responsible official shall 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. The city shall retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available in accordance with Chapter 42.17 RCW. (Ord. 440, 1984)
16.04.040  
**Lead agency determination and responsibilities.**

The department within the city receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050 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. When the city is the lead agency for a proposal, the department receiving the application shall determine the responsible official who shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS. When the city is not the lead agency for a proposal, all departments of the city shall 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 shall 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. 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 197-11-922 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 15 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 15-day time period. Any such petition on behalf of the city may be initiated by the mayor. 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. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses?). (Ord. 440, 1984)

16.04.050  
**Transfer of lead agency status to 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 city’s 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 shall be the lead agency and the city shall 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 shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal. (Ord. 440, 1984)

16.04.060  
**Additional consideration in time limits applicable to SEPA process.**

The following time limits (expressed in calendar days) shall 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 shall identify whether an action is categorically exempt within seven days of receiving a completed application.

B. Threshold Determinations.
1. The city should complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within 15 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 15 days of receiving an adequate application and completed environmental checklist;
   b. The city shall wait no longer than 30 days for a consulted agency to respond;
   c. The responsible official should complete the threshold determination within 15 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 30 days of receiving an adequate application and a completed checklist.

4. The city shall 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 15 days of receiving an adequate application and completed checklist. (Ord. 440, 1984)

16.04.070

Additional timing considerations.

A. For nonexempt proposals, the DNS or final EIS for the proposal shall accompany the city’s staff recommendation to any appropriate decision-making body, such as the hearing examiner.

B. If the city’s only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specifications. (Ord. 957 § 5, 2011; Ord. 440, 1984)

16.04.080

Flexible thresholds for categorical exemptions.

The city establishes the following exempt levels for minor new construction in accordance with WAC 197-11-800 based on local conditions. The including, but not limited to, the following types of construction that shall be exempt, except when undertaken wholly or partly on lands covered by water:

A. The construction or location of four detached single family residential units.

B. The construction or location of four multifamily residential units.

C. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

D. The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles. This exemption includes stand-alone parking lots.

E. Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation not associated with an exempt project in subsection (b)(i), (ii), (iii), or (iv); and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

A. The construction or location of any residential structures of four dwelling units;

B. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to
be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots;

C. The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for 20 automobiles;

D. The construction of a parking lot designated for 20 automobiles;

E. Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation, and any fill or excavation classified as a Class I, II or III forest practice under RCW 76.09.050 or regulations thereunder.

Whenever the city establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504. (Ord. 440, 1984)

16.04.090

Environmental checklist.

A completed environmental checklist (or copy), in the form provided in WAC 197-11-960, shall 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. The city shall use the environmental checklist to determine the lead agency and, if the city is the lead agency, for determining the responsible official and for making the threshold determination. 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:

A. The city has technical information on a question or questions that is unavailable to the private applicant; or

B. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration. (Ord. 440, 1984)

16.04.100

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. 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.

B. The responsible official should respond to the request for early notice within seven working days. The response shall:

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.

C. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city shall base its
threshold determination on the changed or clarified proposal and should make the determination within 15 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, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall 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 shall 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 proposals to “muffle machinery to X decibel” or “construct 200-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.

D. A mitigated DNS is issued under WAC 197-11-340(2), requiring a 15-day comment period and public notice. Mitigation measures incorporated in the mitigated DNS shall 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. 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). The city’s written response under subsection (B) of this section shall 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, shall not bind the city to consider clarifications or changes in its threshold determination. (Ord. 440, 1984)

16.04.110 Additional elements.

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. Financial impacts on community and local government;
E. Social consequences of the action. (Ord. 440, 1984)

16.04.120 Public notice.

A. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city shall give public notice as follows:

1. Posting the property, for site-specification proposals;
2. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
3. Notifying the news media.

B. 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 shall be given by:

1. Posting the property, for site-specific proposals;
2. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
3. Notifying the news media.

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

D. The city may require an applicant to complete the public notice requirements for the applicant’s proposal at his or her expense. (Ord. 440, 1984)

16.04.130  Designation of official to perform consulted agency responsibilities.

A. The planning officer shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping and reviewing the DEIS.

B. This person shall 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. (Ord. 440, 1984)

16.04.140  Substantive authority.

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

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; and
   2. Such conditions are in writing; and
   3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
   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; and
   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 shall 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 codes and plans:
   a. Comprehensive plan adopted in November 1994, as amended;  
   b. Title 18 of this code;
   c. Title 16 of this code;  
   d. The State Growth Management Act and its amendments;  
   e. Title 17 of this code.

4. The city establishes the following additional policies as contained in Ordinance No. 357, adopted November 14, 1981.

   E. Except for permits and variances issued pursuant to Chapter 16.08, when any proposal or action not requiring a decision of the hearing examiner is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the hearing examiner. Review by the hearing examiner shall be on the de novo basis. (Ord. 957 § 6, 2011; Ord. 699, 1995; Ord. 570, 1990; Ord. 440, 1984)

16.04.150

Appeals.

The city establishes the following administrative appeal procedure for appeals of determinations relating to SEPA:

A. Administrative appeals of determinations relating to SEPA shall be taken within the following time limits:

   1. Final determination of non-significance (DNS) or mitigated DNS (MDNS): Appeal of the DNS or MDNS and the substantive determination of the action must be made within 10 days of the date the permit or other approval is issued or the close of the public comment period for actions requiring a public comment period;

   2. Determination of significance (DS): The appeal of a DS must be made within 10 days of the date the DS is issued;

   3. Final environment impact statement (FEIS): Appeal of the FEIS and the substantive determination on the action must be made within 10 days of the date the permit or other approval is issued; and

   4. Condition or denial on the basis of SEPA: When any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, an appeal of such condition or denial must be made within 10 days of the date such decision is made.

B. All appeals made pursuant to this section shall be perfected in the following manner:

   1. All appeals shall be in writing;
2. The written notice of appeal must specify the basis for the appeal and the argument made in support of the appeal;
3. The written notice of appeal must be made to the city planning official, and filed at City Hall;
4. The written notice of appeal, together with the required appeal fee as established by city ordinance, must be filed prior to 4:30 p.m. on the last day of the applicable time period for appealing; provided, however, that if City Hall is not open on the last day of the applicable appeal time period, then the appeal period shall be extended until 4:30 p.m. on the next day in which City Hall is open; and
5. Filing requires actual delivery to City Hall prior to 4:30 p.m. on the date due, and prior mailing is not sufficient if actual receipt by the city does not occur within the applicable time period.

C. For any appeal made pursuant to this section, a record shall be prepared, which shall consist of findings and conclusions, testimony under oath, and a taped or written transcript.
D. Procedural determinations made by the responsible official shall be entitled to substantial weight in any appeal proceeding.
E. Only one administrative appeal of a threshold determination or of the adequacy of an EIS shall be permitted.
F. Only parties of record shall be permitted to participate at the appeal hearing. The parties of record shall include, and be limited to, the city, the applicant for the proposal that is the subject of the appeal, and those persons, organizations or agencies which have filed written appeal statements within the specified appeal period. No other persons may testify at the hearing. The hearing shall be limited to consideration of the matters raised in the appeal statements filed within the specified time.
G. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action. Consequently, appeals under this chapter shall be of the governmental action, together with its accompanying environmental determination; provided, that the appeal proceeding on a determination of significance may occur before the final decision on a proposed action. There shall not be more than one administrative appeal proceeding per underlying land use action. Further appeals must be to Island County superior court per the procedures in Section 16.04.155.
H. Following the public hearing upon such appeal, the hearing examiner may affirm, remand, modify or reverse the determination of the responsible official, recognizing the weight that is to be accorded the determination of the responsible official per subsection (D) of this section. The hearing examiner’s decision shall be in the form of a report setting forth its findings, conclusions and decision.
I. Environmental Review. For some projects, an environmental checklist must be completed by the applicant and submitted along with plans, specifications, and other information when approval or permits are being requested for a project. The planning official conducts the environmental review and issues a SEPA threshold determination for the city. An applicant should consult with the planning official to determine if an environmental checklist is required. (Ord. 957 § 7, 2011; Ord. 714, 1996; Ord. 570, 1990; Ord. 440, 1984)

16.04.155  
**Judicial appeals.**  
Appeals from the decision of the city hearing body shall be made to Island County superior court within 21 days of the date of the hearing body’s written decision. (Ord. 714, 1996)
16.04.160  
Notice – Statute of limitations.  
The city applicant for, or proponent of, an action may publish a notice of action pursuant to RCW 43.21C.080. (Ord. 440, 1984)

16.04.170  
Environmentally sensitive areas.  
A. The map filed under the city’s adopted comprehensive plan designates the location of environmentally sensitive areas within the city and are adopted by reference. For each environmentally sensitive area, the exemptions within WAC 197-11-800 that are inapplicable for that area are: none. Unidentified exemptions shall continue to apply within environmentally sensitive areas of the city.

B. The city shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

C. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped. (Ord. 440, 1984)

16.04.180  
Fees.  
The city shall 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 may collect a fee from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee.

B. Environmental Impact Statement.  
1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall 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 shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall 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 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 shall be selected by mutual agreement of the city and applicant after a call for proposals.

3. If a proposal is modified so that an EIS is no longer required, the responsible official shall 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.

D. The city shall 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 42.19 RCW. (Ord. 440, 1984)