

ORDINANCE No. 119481

W

*Effectuated immediately
Law*

COUNCIL BILL No. 112679

The City

AN ORDINANCE amending Seattle's SEPA ordinance, SMC 25.05.675, to provide for additional environmental review of proposed development within Seattle's shoreline zones, and declaring an emergency requiring a 3/4 vote of the Seattle City Council so that the Ordinance may take effect immediately.

Honorable President:

Your Committee on _____

to which was referred the within C report that we have considered the

COMPTROLLER FILE No. _____

| | |
|---------------------------------------|-----------------------------|
| Introduced: <u>MAY 10 1999</u> | By: <u>DONALDSON</u> |
| Referred: <u>MAY 10 1999</u> | To: <u>FULL COUNCIL</u> |
| Referred: | To: |
| Referred: | To: |
| Reported: <u>5-24-99</u> | Second Reading: |
| Third Reading: <u>5-24-99</u> | Signed: <u>5-24-99</u> |
| Presented to Mayor: <u>5-24-99</u> | Approved: <u>6/1/99</u> |
| Returned to City Clerk: <u>6/1/99</u> | Published: <u>full 4800</u> |
| Vetoed by Mayor: | Veto Published: |
| Passed over Veto: | Veto Sustained: |

5/17/99 Full Council

5-24-99 Full Council

affected immediately
Law Department

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

able President:

Committee on

h was referred the within Council Bill No.

that we have considered the same and respectfully recommend that the same:

199 Full Council: Hold 1 week

199 Full Council: Passed 9-0 *AS Amended* (S)

Committee Chair

ORDINANCE 119481

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3 AN ORDINANCE amending Seattle's SEPA ordinance, SMC 25.05.675, to provide for additional
4 environmental review of proposed development within Seattle's shoreline zones, and declaring
5 an emergency requiring a 3/4 vote of the Seattle City Council so that the Ordinance may take
6 effect immediately.

7 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

8 **Section 1.** The City Council hereby makes the following legislative findings of fact and
9 declarations:

10 1. Seattle's existing SEPA ordinance applies the City's "Overview Policy" to proposed
11 development within the City's shoreline zones, thereby limiting the extent to which the City's SEPA
12 policies for the protection of "Plants and Animals" may be applied to proposed development within the
13 shoreline.

14 2. In 1999 the National Marine Fisheries Service listed chinook salmon as a threatened
15 species pursuant to the requirements of the Endangered Species Act.

16 3. In light of that listing, and in order to enhance the protection of plant and animal life
17 within the City's shorelines, the Council intends to provide for full application of the City's SEPA
18 policies within the shorelines, unrestricted by the limitations contained in the Overview Policy.

19 4. If the repeal of the Overview Policy as it pertains to the City's SEPA policies for "Plants
20 and Animals" does not become effective for several months, due to the standard procedures applicable
21 to ordinance adoption, development projects may become vested, thereby thwarting the Council's intent
22 to fully apply the City's authority to protect threatened species and other important animals and plants.
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1 5. If development projects become vested, uses may be permanently established which are
2 inimical to the public health, safety, and welfare. Because the acquisition of vested rights may be
3 imminent, an emergency exists which requires the adoption of this interim ordinance.

4 10. The City has legal authority to adopt this interim ordinance pursuant to the authority
5 granted by Article 11, Section 11 of the Washington Constitution, the Growth Management Act, RCW
6 36.70A.390, and *Matson v. Clark County*, 79 Wn. App. 641 (1995).

7 **Section 2.** SMC 25.05.675 (N) is hereby amended to read as follows:

8 N. Plants and Animals.

9 1. Policy Background.

10 a. Many species of birds, mammals, fish, and other classes of animals and
11 plants living in the urban environments are of aesthetic, educational, ecological and in some cases
12 economic value.

13 b. Local wildlife populations are threatened by habitat loss through
14 destruction and fragmentation of living and breeding areas and travelways, and by the reduction of
15 habitat diversity.

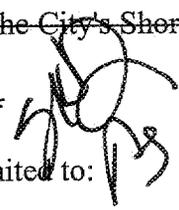
16 c. Substantial protection of wildlife habitats and travel corridors within the
17 City is provided by the Seattle Shoreline Master Program.

18 2. Policies.

19 a. It is the City's policy to minimize or prevent the loss of wildlife habitat
20 and other vegetation which have substantial aesthetic, educational, ecological, and/or economic value.
21 A high priority shall be given to the preservation and protection of special habitat types. Special habitat
22 types include, but are not limited to, wetlands and associated areas (such as upland nesting areas), and
23

1 spawning, feeding, or nesting sites. A high priority shall also be given to meeting the needs of state and
2 federal threatened, endangered, and sensitive species of both plants and animals.

3 b. For projects which are proposed within an identified plant or wildlife
4 habitat or travelway, the decisionmaker shall assess the extent of adverse impacts and the need for
5 mitigation.

6 c. When the decisionmaker finds that a proposed project would reduce or
7 damage rare, uncommon, unique or exceptional plant or wildlife habitat, wildlife travelways, or habitat
8 diversity for species (plants or animals) of substantial aesthetic, educational, ecological or economic
9 value, the decisionmaker may condition or deny the project to mitigate its adverse impacts. Such
10 conditioning or denial is permitted whether or not the project meets the criteria of the Overview Policy
11 set forth in SMC Section 25.05.665; ~~provided, that for any project subject to the City's Shoreline Master~~
12 ~~Program, the Overview Policy set forth in SMC Section 25.05.665 shall apply.~~ 

- 13 d. Mitigating measures may include but are not limited to:
- 14 i. Relocation of the project on the site;
 - 15 ii. Reducing the size or scale of the project;
 - 16 iii. Preservation of specific on-site habitats, such as trees or vegetated
17 areas;
 - 18 iv. Limitations on the uses allowed on the site;
 - 19 v. Limitations on times of operation during periods significant to the
20 affected species (i.e., spawning season, mating season, etc.); and
 - 21 vi. Landscaping and/or retention of existing vegetation.

22 **Section 3.** This ordinance shall become effective immediately upon the approval or signing of
23 the ordinance by the Mayor or passage over his veto, as provided by the Charter of the City. Passed by a
24

1 three-fourths vote of all the members of the City Council the 24th day of May, 1999, and
2 signed by me in open session in authentication of its passage this 24th day of May, 1999.

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4 Joe Arma L
President _____ of the City Council

5 Approved by me this 1st day of June, 1999.

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7 Paul Selig
8 Mayor

9 Filed by me this 1st day of June, 1999.

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11 Judith E. Lippin
City Clerk

12 (Seal)

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City of Seattle

Paul Schell, Mayor

Department of Design, Construction and Land Use
R. F. Krochalis, Director

MEMORANDUM

TO: Councilmember Sue Donaldson, President
VIA: Margaret Klockars, Law Department
FROM: Rick Krochalis, Director *R. Krochalis*
DATE: May 6, 1999
SUBJECT: Proposed Amendment to the SEPA Policy on Plants and Animals

We are in an unusual period of time surrounding the listing of salmon as a threatened species since the federal government's response to State and local early action plans is unclear. The review of individual permit applications is also raising policy issues as in the case with the Seaview moratorium recently enacted by Council. We now have another situation that has caused us to recommend an amendment to the City's SEPA Policy on Plants and Animals. I am proposing this minor change to clarify and strengthen the City's regulatory authority to reasonably mitigate the impacts on salmon and natural habitat, and when reasonable mitigation is not possible, to deny projects that may have significant impacts on salmon.

Our City's SEPA Overview policies direct the incorporation of environmental concerns into our codes and development regulations to the maximum extent possible. Upon review of our SEPA policy on plants and animals, we are aware that our authority to condition or deny projects may be somewhat limited by the SEPA Overview policy. The proposed amendment would remove this restriction and enable the City to deny applications or directly mitigate the impacts from any project subject to SEPA that may adversely affect salmon.

I believe that this change to broaden our authority in protecting salmon is needed urgently. The construction season is now upon us and there are several proposed projects with potential impacts that will require us to fully assess salmon impacts and reasonable mitigation. Therefore, I recommend that the City Council adopt this attached amendment as an emergency.

Please do not hesitate to contact me or Margaret Klockars in the Law Department if you have any questions or need additional information.

All City Councilmembers
Mayor Paul Schell
Deputy Mayor Maud Daudon
Denna Cline, Mayor's Office

Mark Sidran, City Attorney
Martin Baker, SPU
Diane Sugimura, DCLU

City of Seattle, Department of Design, Construction and Land Use
710 Second Avenue, Suite 200, Seattle, WA 98104-1703

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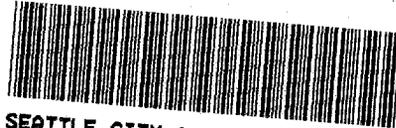
11-22-99
MEM

Return Address:

Seattle City Clerk's Office

600 4th Avenue, Room 104

Seattle, WA 98104



SEATTLE CITY O MISC

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PAGE 001 OF 006
08/11/1999 09:30
KING COUNTY, WA

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

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|--|
| Document Title(s) (or transaction contained therein): (all areas applicable to your document <u>must</u> be filled in.) 1. ORDINANCE # 119481 |
| Re - _____ of document. |
| Grantor(s) (Last name first, then first name and initials) 1. City of Seattle <input type="checkbox"/> Additional names on page ---- of document. |
| Grantee(s) (Last name first, then first name and initials) 1. N/A 2. |
| Legal description (abbreviated: i.e. lot, block, plat or section, township, range) <input type="checkbox"/> Additional reference #'s on page ----- of document N/A |
| Assessor's Property Tax Parcel/Account Number/ N/A <input type="checkbox"/> Assessor Tax # not yet assigned. |

ORDINANCE 119481

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AN ORDINANCE amending Seattle's SEPA ordinance, SMC 25.05.675, to provide for additional environmental review of proposed development within Seattle's shoreline zones, and declaring an emergency requiring a 3/4 vote of the Seattle City Council so that the Ordinance may take effect immediately.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council hereby makes the following legislative findings of fact and declarations:

1. Seattle's existing SEPA ordinance applies the City's "Overview Policy" to proposed development within the City's shoreline zones, thereby limiting the extent to which the City's SEPA policies for the protection of "Plants and Animals" may be applied to proposed development within the shoreline.

2. In 1999 the National Marine Fisheries Service listed chinook salmon as a threatened species pursuant to the requirements of the Endangered Species Act.

3. In light of that listing, and in order to enhance the protection of plant and animal life within the City's shorelines, the Council intends to provide for full application of the City's SEPA policies within the shorelines, unrestricted by the limitations contained in the Overview Policy.

4. If the repeal of the Overview Policy as it pertains to the City's SEPA policies for "Plants and Animals" does not become effective for several months, due to the standard procedures applicable to ordinance adoption, development projects may become vested, thereby thwarting the Council's intent to fully apply the City's authority to protect threatened species and other important animals and plants.



1 5. If development projects become vested, uses may be permanently established which are
2 inimical to the public health, safety, and welfare. Because the acquisition of vested rights may be
3 imminent, an emergency exists which requires the adoption of this interim ordinance.

4 10. The City has legal authority to adopt this interim ordinance pursuant to the authority
5 granted by Article 11, Section 11 of the Washington Constitution, the Growth Management Act, RCW
6 36.70A.390, and *Matson v. Clark County*, 79 Wn. App. 641 (1995).

7 Section 2. SMC 25.05.675 (N) is hereby amended to read as follows:

8 N. Plants and Animals.

9 1. Policy Background.

10 a. Many species of birds, mammals, fish, and other classes of animals and
11 plants living in the urban environments are of aesthetic, educational, ecological and in some cases
12 economic value.

13 b. Local wildlife populations are threatened by habitat loss through
14 destruction and fragmentation of living and breeding areas and travelways, and by the reduction of
15 habitat diversity.

16 c. Substantial protection of wildlife habitats and travel corridors within the
17 City is provided by the Seattle Shoreline Master Program.

18 2. Policies.

19 a. It is the City's policy to minimize or prevent the loss of wildlife habitat
20 and other vegetation which have substantial aesthetic, educational, ecological, and/or economic value.
21 A high priority shall be given to the preservation and protection of special habitat types. Special habitat
22 types include, but are not limited to, wetlands and associated areas (such as upland nesting areas), and
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1 spawning, feeding, or nesting sites. A high priority shall also be given to meeting the needs of state and
2 federal threatened, endangered, and sensitive species of both plants and animals.

3 b. For projects which are proposed within an identified plant or wildlife
4 habitat or travelway, the decisionmaker shall assess the extent of adverse impacts and the need for
5 mitigation.

6 c. When the decisionmaker finds that a proposed project would reduce or
7 damage rare, uncommon, unique or exceptional plant or wildlife habitat, wildlife travelways, or habitat
8 diversity for species (plants or animals) of substantial aesthetic, educational, ecological or economic
9 value, the decisionmaker may condition or deny the project to mitigate its adverse impacts. Such
10 conditioning or denial is permitted whether or not the project meets the criteria of the Overview Policy
11 set forth in SMC Section 25.05.665; ~~provided, that for any project subject to the City's Shoreline Master~~
12 ~~Program, the Overview Policy set forth in SMC Section 25.05.665 shall apply.~~

13 d. Mitigating measures may include but are not limited to:
14 i. Relocation of the project on the site;
15 ii. Reducing the size or scale of the project;
16 iii. Preservation of specific on-site habitats, such as trees or vegetated
17 areas;
18 iv. Limitations on the uses allowed on the site;
19 v. Limitations on times of operation during periods significant to the
20 affected species (i.e., spawning season, mating season, etc.); and
21 vi. Landscaping and/or retention of existing vegetation.

22 **Section 3.** This ordinance shall become effective immediately upon the approval or signing of
23 the ordinance by the Mayor or passage over his veto, as provided by the Charter of the City. Passed by a
24



1 three-fourths vote of all the members of the City Council the 24th day of May, 1999, and
2 signed by me in open session in authentication of its passage this 24th day of May, 1999.

3 [Signature]
4 President _____ of the City Council

5 Approved by me this 1st day of June, 1999.

6 [Signature]
7 Mayor

8
9 Filed by me this 15th day of June, 1999.

10 [Signature]
11 City Clerk

12 (Seal)

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TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

[Handwritten Signature]

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE



STATE OF WASHINGTON - KING COUNTY

106729
City of Seattle, City Clerk

—ss.

No. **ORDINANCE IN**

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 119481

was published on

06/14/99

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

N. Patterson

Subscribed and sworn to before me on

06/14/99

M. Williams

Notary Public for the State of Washington,
residing in Seattle

City of Seattle

ORDINANCE NO. 118481

AN ORDINANCE amending Sec III SEPA ordinance, SMC 25.06.075, to provide for additional environmental review of proposed development within Seattle's shoreline zones, and declaring an emergency requiring a 3/4 vote of the Seattle City Council so that the Ordinance may take effect immediately.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

SECTION 1. The City Council hereby makes the following legislative findings of fact and declarations:

1. Seattle's existing SEPA ordinance applies the City's "Overview Policy" to proposed development within the City's shoreline zones, thereby limiting the extent to which the City's SEPA policies for the protection of "Plants and Animals" may be applied to proposed development within the shoreline.

2. In 1993 the National Marine Fisheries Service listed chinook salmon as a threatened species pursuant to the requirements of the Endangered Species Act.

3. In light of that listing, and in order to enhance the protection of plant and animal life within the City's shorelines, the Council intends to provide for full application of the City's SEPA policies within the shorelines, unrestricted by the limitations contained in the Overview Policy.

4. If the repeal of the Overview Policy as it pertains to the City's SEPA policies for "Plants and Animals" does not become effective for several months, due to the standard procedures applicable to ordinance adoption, development projects may become vested, thereby thwarting the Council's intent to fully apply the City's authority to protect threatened species and other important animals and plants.

5. If development projects become vested, uses may be permanently established which are inimical to the public health, safety, and welfare. Because the acquisition of vested rights may be imminent, an emergency exists which requires the adoption of this interim ordinance.

10. The City has legal authority to adopt this interim ordinance pursuant to the authority granted by Article II, Section 11 of the Washington Constitution, The Growth Management Act, RCW 36.70A-390, and *Mutton v. Clark County*, 79 Wa. App. 541 (1995).

SECTION 2. SMC 25.06.075 (N) is hereby amended to read as follows:

N. Plants and Animals.

1. Policy Background.

a. Many species of birds, mammals, fish, and other classes of animals and plants living in the urban environments are of aesthetic, educational, ecological and in some cases economic value.

b. Local wildlife populations are threatened by habitat loss through destruction and fragmentation of living and breeding areas and travelways, and by the reduction of habitat diversity.

c. Substantial protection of wildlife habitats and travel corridors within the City is provided by the Seattle Shoreline Master Program.