ORDINANCE NO. 3005

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, AMENDING SECTION 17.02.230 AND DELETING SECTION 17.02.250 OF THE LYNNWOOD MUNICIPAL CODE RELATING TO ENVIRONMENTAL REVIEW CATEGORICAL EXEMPTIONS AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

WHEREAS, pursuant to the Washington State Environmental Policy Act (SEPA), RCW 43.21C, the City of Lynnwood is charged with reviewing the environmental impact of development activity that occurs within the city; and

WHEREAS, the Washington State Department of Ecology has adopted SEPA Rules (chapter 197-11 WAC) to guide local jurisdictions in implementation of their requirements under SEPA; and

WHEREAS, Section 301(2)(d) of 2SSB 6064 as passed by the 2012 Washington State Legislature and signed into law by then Governor Gregoire, directed the Department of Ecology (DOE) to modernize SEPA Rules, and specifically to allow cities, towns, and counties to raise the levels of categorical exemptions specified by WAC 197-11-800(1); and

WHEREAS, DOE convened a SEPA Advisory Committee (Committee) to develop the new SEPA Rules as required by 2SSB 6064 and the Committee’s recommendations regarding categorical exemption levels were adopted by DOE as amendments to WAC 197-11-800(1); and

WHEREAS, WAC 197-11-800(1)(c) and (d) authorize cities, towns, and counties to raise the level of categorical exemptions above the minimum thresholds in order to reflect local conditions; and

WHEREAS, as specified by this Ordinance, the City Council finds there are adequate protections in existing regulations and development standards to address the impacts of minor new construction; and
WHEREAS, raising the categorical exemption levels will allow staff to focus on more substantive developments within the city limits and expedite review and permitting of minor new construction; now therefore,

THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. The Findings contained in Exhibit A to this Ordinance are adopted.

Section 2. Lynnwood Municipal Code Section 17.02.230 is hereby amended as follows:

Article IX. Categorical Exemptions

17.02.230 Adoption by reference (WAC 173-806-180).
   A. The city adopts by reference the following rules for categorical exemptions, as supplemented in this chapter, including WAC 173-806-080, Use of Exemptions, and WAC 173-806-190, Environmentally Sensitive Areas:

   WAC 197-11-800  Categorical Exemptions.
   WAC 197-11-880  Emergencies.
   WAC 197-11-890  Petitioning DOE to Change Exemptions.

   B. As provided by WAC 197-11-800(1)(c) – (d), the City adopts the following, raised exempt levels for minor new construction that is consistent with the Comprehensive Plan and Zoning Code, and not located upon lands covered by water:

   1. Single family residential: 30 dwelling units.
   2. Multifamily residential: 60 dwelling units.
   3. Office, school, commercial, recreational, service, storage building, and parking facilities: 30,000 square feet and 90 parking spaces.
   4. Landfill, excavation and grading: 1,000 cubic yards.

Section 3. Section 17.02.250 LMC and that portion of Section 2 of Ordinance 1415 is hereby repealed.

Section 4. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 5. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.
PASSED BY THE CITY COUNCIL, this 29th day of July, 2013, and signed in authentication of its passage this 5th day of August, 2013

APPROVED:

Don Gough, Mayor

ATTEST/AUTHENTICATED:

Lorenzo Hines Jr., Finance Director

APPROVED AS TO FORM:

Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES: 07/24/2013
PASSED BY THE CITY COUNCIL: 07/29/2013
PUBLISHED: 08/02/2013
EFFECTIVE DATE: 08/07/2013
ORDINANCE NUMBER: 3005
Exhibit A
Ordinance 3005
SEPA Exempt Levels For Minor New Construction

Findings

1. In 2012, the State Legislature directed the Department of Ecology (DOE) to modernize State Environmental Policy Act (SEPA) Rules, including provisions for raised exempt levels for minor new construction (2ESSB 6406).

2. In response to 2ESSB 6406, DOE convened a special SEPA Advisory Committee consisting of broad representation of interests including local government. Based upon the recommendations of the SEPA Advisory Committee, the DOE amended WAC 197-11-800 to allow local governments to raise exempt levels for minor new construction.

3. As of July 2013, the SEPA Advisory Committee is addressing other provisions of the SEPA Rules (chapter 197-11 WAC), and corresponding Rule updates are expected to be issued by the DOE in the future.

4. 2ESSB 6406 authorized local governments to raise exempt levels for minor new construction on an interim basis, and since May 23, 2012, the City of Lynnwood has used higher exempt levels.

5. In applying the raised exempt levels on an interim basis for more than one year, the Community Development Director, acting as the SEPA Responsible Official, has determined that no degradation to the environment has occurred during the interim period.

6. The new SEPA exempt levels were developed by the SEPA Advisory Committee convened by the Department of Ecology (DOE), the agency with administrative authority for SEPA. Committee membership included persons representing environmental, regulatory, historic/cultural, construction, and neighborhood interests. Higher exempt levels were supported by the Association of Washington Cities (AWC) and Washington’s consortium of planning directors. The DOE embraced the recommendations of the SEPA Advisory Committee and subsequently enacted those recommendations as Administrative Law.

7. Lynnwood is a fully-built community and therefore nearly all new construction consists of redevelopment of properties where considerable infrastructure is already in place, and the extent of environmentally sensitive areas is already known.

8. As an urban community that is also designated as a Regional Growth Center, land development within Lynnwood will be fairly intense/dense. Accordingly, the scale of new construction (as allowed by existing policies and regulations) will be more “urban” than “suburban”. Meanwhile, the City has policies and regulations to protect existing single family areas from incompatible land uses.

9. SEPA authority can be used to mitigate adverse impacts when it is proven that existing regulations do not adequately mitigate the impact expected. With the myriad of environmental controls that apply -- whether federal, state, or local -- it is rare that an impact is not be sufficiently addressed by those regulations.
10. Land use permit approvals required for larger developments, such as Project Design Review (PDR), include required public notice to nearby property owners and tenants. Therefore, with or without SEPA threshold determination requirements, citizens will receive comparable public notice of proposed development, and have opportunity to comment upon such development prior to City action on the permit application(s).

11. The Community Development Department provided notice of the proposed change to SEPA exempt to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provided an opportunity for comment. Although not required by law, the City Council conducted a public hearing on this proposed amendment to Title 17 LMC. In addition to the regular provisions for public notice, the City published a special notice in The Herald on June 24, 2013. On July 15, 2013, the City Council conducted a public hearing on the proposed code amendment and all persons wishing to be heard were heard.

12. The requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) are adequately addressed for the development exempted. The regulations, requirements and controls that provide protection and mitigation for impacts include local, state and federal regulations summarized within Table 1 below.

Table 1. Overview of environmental protections (in addition to SEPA) that provide for environmental analysis, protection and mitigation for impacts to the environment.

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<td><strong>Impacts upon the Natural Environment - Earth</strong></td>
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<td><strong>Impacts upon the Natural Environment - Air</strong></td>
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<td><strong>Air quality/Odor</strong></td>
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<tr>
<td>Federal Clean Air Act, 42 USC §7401</td>
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<td>Federal Pollution Prevention Act, 42 U.S.C. §13101</td>
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<td>WA Clean Air Act, Ch. 70.94 RCW</td>
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<td>WA General Regulations for Air Pollution Sources, Ch. 173-400 WAC</td>
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<td>WA Solid Waste Disposal regulations, Ch. 36.58 RCW</td>
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## Impacts upon the Natural Environment - Water

**Surface water**
- National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347
- EPA Federal Ground Water Rule
- Federal Pollution Prevention Act, 42 U.S.C. §13101
- WA Water Resources Management, Ch. 90.54 RCW
- WA Oil and Hazardous Substance Spill Prevention, Ch. 90.56 RCW
- WA Shoreline Management Act, Ch. 90.58 RCW
- WA Watershed Planning Act, Ch. 90.82 RCW
- WA Wetland Mitigation Banking, Ch. 90.84 RCW
- WA Growth Management Act, Ch. 36.70A RCW
- WA Aquifer Protection Areas, Ch. 36.36 RCW
- WA Water Pollution Control Act, Ch. 90.48 RCW
- CoL Environmental Regulations, Ch. 17.05-15 LMC
- CoL Regulations related to animal waste, LMC 6.02.160
- CoL Health and Sanitation Regulations, Title 7 LMC

## Impacts upon the Natural Environment – Plants and Animals

**Plants and animals**
- Federal Pollution Prevention Act, 42 U.S.C. §13101
- Joint Aquatics Resources Permit Application (JARPA)
- Army Corps of Engineers permit for alteration of wetlands
- HPA Hydraulic Project Approval (HPA)
- WA Water Pollution Control Act, Ch. 90.48 RCW
- WA Oil and Hazardous Substance Spill Prevention, Ch. 90.56 RCW
- WA Shoreline Management Act, Ch. 90.58 RCW
- WA Wetland Mitigation Banking, Ch. 90.84 RCW
- WA Growth Management Act, Ch. 36.70A RCW
- CoL Environmental Regulations, Ch. 17.05-15 LMC

## Impacts upon the Natural Environment – Energy and Natural Resources

- WA State Building Code, Ch. 19.27 RCW
- WA Energy-Related Building Standard, Ch. 19.27A RCW
- WA Solid Waste Management, Ch. 70.95 RCW
- WA Shoreline Management Act, Ch. 90.58 RCW
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### Impacts upon the Built Environment - Environmental Health

#### Noise
- WA Emergency Management regulations, Ch. 38.52 RCW
- WA Water Pollution Control Act, Ch. 90.48 RCW

#### Risk of explosion
- Federal Pollution Prevention Act, 42 U.S.C. §13101

#### Toxic/hazardous materials
- Federal Pollution Prevention Act, 42 U.S.C. §13101
- WA Model Litter Control Act, Ch. 70.93 RCW
- WA Hazardous Substance Information, Ch. 70.102 RCW
- WA Hazardous Waste Management, Ch. 70.105 RCW
- WA Model Toxics Control Act, Ch. 70.105D RCW
- WA Water Pollution Control Act, Ch. 90.48 RCW
- WA Shoreline Management Act, Ch. 90.58 RCW
- WA Watershed Planning Act, Ch. 90.82 RCW, Ch. 90.82 RCW
- WA Aquifer Protection Areas, Ch. 36.36 RCW
- WA Radioactive Waste Act, Ch. 43.200 RCW
- CoL Health and Sanitation Regulations, Title 7 LMC

### Impacts upon the Built Environment - Land and Shoreline Use

#### Existing land use plans
- WA Shoreline Management Act, Ch. 90.58 RCW
- WA Growth Management Act, Ch. 36.70A RCW
- CoL Business Regulations and Licenses, Title 5 LMC
- CoL Comprehensive Plan
- CoL Environmental Regulations, Ch. 17.05-15 LMC
- CoL Citywide Design Guidelines, City Center Design Guidelines, Highway 99 Design Guidelines
- CoL Zoning Code, Title 21 LMC

#### Existing population
- WA Growth Management Act, Ch. 36.70A RCW
**Light and glare**
WA Energy Code, Title 51 WAC

**Recreation**
WA Growth Management Act, Ch. 36.70A RCW
WA Water Pollution Control Act, Ch. 90.48 RCW
CoL Parks regulation, Ch. 10.16 LMC

**Agricultural crops (no commercial agricultural lands within Lynnwood)**
Federal Insecticide, Fungicide and Rodenticide Act
Federal Food, Drug and Cosmetic Act
WA Water Pollution Control Act, Ch. 90.48 RCW
WA Water Resources Management, Ch. 90.54 RCW
WA Growth Management Act, Ch. 36.70A RCW

**Impacts upon the Built Environment - Transportation**
*Transportation systems/Movement of people or goods/Traffic/Parking*
Federal Highway Administration, Highways and Transportation, Titles 23 and 49, U.S.C.
Manual on Uniform Traffic Control Devices, 2009, Federal Highway Administration
WA Growth Management Act, Ch. 36.70A RCW
WA Statewide Transportation Planning regulations, Ch. 47.06 RCW
WA Commute Trip Reduction Act (Transportation Demand Management), RCW 70.94.521-555
WA Concurrency regulations, WAC 365-196-840
CoL Transportation Impact Fee regulations, Ch. 3.105 LMC
CoL Traffic Code, Title 11 LMC
CoL Streets Code, Title 12 LMC
CoL Standard Plans for streets, traffic control, sidewalks, utilities, etc.
CoL Off-Street Parking regulations, Ch. 21.18 LMC

**Impacts upon the Built Environment – Public Services and Utilities**
*Fire and Police*
WA Emergency Management regulations, Ch. 38.52 RCW

*Parks and recreation*
See above.

*Communications*
Federal Communications Act of 1934, 47 U.S.C., § 151
WA Telecommunications regulations, Ch. 80,36 RCW
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<th>CoL Wireless Communications Facilities regulations, Ch. 21.90 LMC</th>
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<td><strong>Other governmental services/utilities</strong></td>
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On the 29th day of July 2013, the City Council of the City of Lynnwood, Washington, passed Ordinance No. 3005. A summary of the content of said ordinance, consisting of the title, provides as follows:

ORDINANCE NO. 3005

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, AMENDING SECTION 17.02.230 AND DELETING SECTION 17.02.250 OF THE LYNNWOOD MUNICIPAL CODE RELATING TO ENVIRONMENTAL REVIEW CATEGORICAL EXEMPTIONS AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

The full text of this ordinance will be mailed upon request or may be previewed at www.ci.lynnwood.wa.us.

DATED this 2nd day of August, 2013

Lorenzo Hines Jr., City Clerk and Finance Director
STATE OF WASHINGTON, COUNTY OF SNOHOMISH

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Ordinance Summaries:

3003, 3004, 3005, 3006,

3007, 3008, 3009

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

August 02, 2013

and that said newspaper was regularly distributed to its subscribers during all of said period.

Subscribed and sworn to before me this

2nd day of August, 2013

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

Account Number: 127890 Order Number: 0001828704

Published: August 7, 2013

Lorenzo Hines Jr., Finance Director
CERTIFICATE

I, the undersigned, Lorenzo Hines Jr., the duly appointed City Clerk of the City of Lynnwood, Washington, hereby certify that the Ordinance hereto attached is a full, true and correct copy of Ordinance No. 3005 of the City of Lynnwood, Washington, entitled as follows:

ORDINANCE NO. 3005

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, AMENDING SECTION 17.02.230 AND DELETING SECTION 17.02.250 OF THE LYNNWOOD MUNICIPAL CODE RELATING TO ENVIRONMENTAL REVIEW CATEGORICAL EXEMPTIONS AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

That said ordinance was passed by the Council of said City and was published and posted according to law; that said ordinance was duly published in the official newspaper of said City on August 2, 2013.

[Signature]

Lorenzo Hines, Jr., City Clerk and Finance Director