

C Preliminary Planned Action Ordinance

ORDINANCE XXX

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ESTABLISHING A PLANNED ACTION FOR THE KIRKLAND NE 85TH STREET STATION AREA.

WHEREAS, the State Environmental Policy Act (SEPA) and its implementing regulations provide for the integration of environmental review with land use planning and project review through the designation of planned actions by jurisdictions planning under the Growth Management Act (GMA), including the City of Kirkland ("City"); and

WHEREAS, Section 43.21C.440 of the Revised Code of Washington (RCW), Sections 197-11-164 through 172 of the Washington Administrative Code (WAC) allow for and govern the adoption and application of a planned action designation under SEPA; and

WHEREAS, the City has adopted State Environmental Policy Act Rules regarding Planned Actions in Kirkland Municipal Code (KMC) 24.02.180; and

WHEREAS, the designation of a planned action expedites the permitting process for projects of which the impacts have been previously addressed in an environmental impact statement (SEIS); and

WHEREAS, a subarea of the city consisting of the NE 85th Street Station Area as depicted on the map attached hereto as **Exhibit A** and incorporated herein by this reference, has been identified as a planned action area for future redevelopment to a mixed-use center ("Planned Action Area"); and

WHEREAS, the City has adopted and updated a subarea plan as part of the Comprehensive Plan addressing the NE 85th Street Station Area complying with the GMA (RCW 36.70A), dated XXX, to guide the development of the Planned Action Area ("Station Area Plan"); and

WHEREAS, after public participation and coordination with affected parties, the City, as lead SEPA agency, issued the NE 85th Street Station Area Final Supplemental Environmental Impact Statement ("Final SEIS") dated XXX, which identifies the impacts and mitigation measures associated with planned development in the Planned Action Area as identified in the Station Area Plan; and

WHEREAS, the Final SEIS addresses a preferred alternative, includes by incorporation the NE 85th Street Station Area Draft Supplemental Environmental Impact Statement issued on January 5, 2021, and responds to comments on the Draft SEIS (collectively referred to herein as the "Planned Action SEIS"); and

WHEREAS, the City desires to designate a planned action under SEPA for the NE 85th Street Station Area ("Planned Action"); and

WHEREAS, adopting a Planned Action for the NE 85th Street Station Area with appropriate standards and procedures will help achieve efficient permit processing and promote environmental quality protection; and

WHEREAS, the City is amending the Kirkland Comprehensive Plan for consistency with the Station Area Plan as amended and supporting infrastructure plans; and

WHEREAS, the City is adopting form-based zoning regulations concurrent with the NE 85th Street Station Area to implement said Plan; and

WHEREAS, the City Council of the City of Kirkland finds that adopting this Ordinance and its Exhibits is in the public interest and will advance the public health, safety, and welfare.

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Findings. The findings of the City of Kirkland City Council are as follows:

- A.** The procedural and substantive requirements of SEPA (RCW 43.21C) have been complied with.
- B.** The procedural requirements of GMA (RCW 36.70A) have been complied with.
- C.** The proposed action is consistent with Kirkland Comprehensive Plan as amended.
- D.** The proposed amendments have been reviewed and processed in accordance with the SEPA Procedures and Policies in Chapter 24.02 KMC.
- E.** All necessary public meetings and opportunities for public testimony and comment have been conducted in compliance with State law and the City's municipal code.
- F.** The Kirkland City Council finds and determines that regulation of land use and development is subject to the authority and general police power of the City, and the City reserves its powers and authority to appropriately amend, modify and revise such land use controls in accordance with applicable law.
- G.** The Kirkland City Council finds and determines that approval of such amendments to the Comprehensive Plan and Zoning Code is in the best interests of the residents of Kirkland, and will promote the general health, safety and welfare.
- H.** The Planned Action SEIS adequately identifies and addresses the probable significant environmental impacts associated with the type and amount of development planned to occur in the designated Planned Action Area.
- I.** The mitigation measures identified in the Planned Action SEIS, attached to this Ordinance as **Exhibit B** and incorporated herein by reference, together with adopted Kirkland development regulations are adequate to mitigate significant adverse impacts from development within the Planned Action Area.
- J.** The Station Area Plan, form-based zoning regulations, and Planned Action SEIS identify the location, type, and amount of development that is contemplated by the Planned Action.
- K.** Future projects that are implemented consistent with the Planned Action will protect the environment, benefit the public, and enhance economic development.
- L.** The City provided several opportunities for meaningful public involvement and review in the Station Area Plan and Planned Action SEIS processes, including a community meeting consistent with RCW 43.21C.440; has considered all comments received; and, as appropriate, has modified the proposal or mitigation measures in response to comments.
- M.** Essential public facilities as defined in RCW 36.70A.200 are excluded from the Planned Action as designated herein and are not eligible for review or permitting as Planned Action Projects unless they are accessory to or part of a project that otherwise qualifies as a Planned Action Project.
- N.** The designated Planned Action Area is located entirely within an Urban Growth Area.

O. Implementation of the mitigation measures identified in the Planned Action SEIS will provide for adequate public services and facilities to serve the proposed Planned Action Area.

Section 2. Purpose. The purposes of this Ordinance are to:

A. Combine environmental analysis, land use plans, development regulations, and City codes and ordinances together with the mitigation measures in the Planned Action SEIS to mitigate environmental impacts and process Planned Action development applications in the Planned Action Area;

B. Designate the NE 85th Street Station Area shown in **Exhibit A** as a Planned Action Area for purposes of environmental review and permitting of designated Planned Action Projects pursuant RCW 43.21C.440;

C. Determine that the Planned Action SEIS meets the requirements of a planned action SEIS pursuant to the State Environmental Policy Act (SEPA);

D. Establish criteria and procedures for the designation of certain projects within the Planned Action Area as “Planned Action Projects” consistent with RCW 43.21C.440;

E. Provide clear definition as to what constitutes a Planned Action Project within the Planned Action Area, the criteria for Planned Action Project approval, and how development project applications that qualify as Planned Action Projects will be processed by the City;

F. Streamline and expedite the land use permit review process by relying on the Planned Action SEIS; and

G. Apply applicable regulations within the City’s development regulations and the mitigation framework contained in this Resolution for the processing of Planned Action Project applications and to incorporate the applicable mitigation measures into the underlying project permit conditions in order to address the impacts of future development contemplated by this Ordinance.

Section 3. Procedures and Criteria for Evaluating and Determining Planned Action Projects within the Planned Action Area.

A. Planned Action Area. This “Planned Action” designation shall apply to the area shown in **Exhibit A** of this Ordinance.

B. Environmental Document. A Planned Action Project determination for a site-specific project application within the Planned Action Area shall be based on the environmental analysis contained in the Planned Action SEIS. The mitigation measures contained in Exhibit B of this Ordinance are based upon the findings of the Planned Action SEIS and shall, along with adopted City regulations, provide the framework the City will use to apply appropriate conditions on qualifying Planned Action Projects within the Planned Action Area.

C. Planned Action Project Designated. Land uses and activities described in the Planned Action SEIS, subject to the thresholds described in Subsection 3.D of this Ordinance and the mitigation measures contained in Exhibit B of this Ordinance, are designated “Planned Action Projects” pursuant to RCW 43.21C.440. A development application for a site-specific project located within the Planned Action Area that meets the criteria in Subsections 3.D and 3.E may be designated a Planned Action Project pursuant to the process in Subsection 3.G.

D. Planned Action Qualifications. The following thresholds shall be used to determine if a site-specific development proposed within the Planned Action Area was contemplated as a Planned Action Project and has had its environmental impacts evaluated in the Planned Action SEIS:

(1) Qualifying Land Uses.

(a) Planned Action Categories: The following general categories/types of land uses are defined in the NE 85th Street Station Area Plan and can qualify as Planned Actions:

- i. Townhome/Multiplex
- ii. Multifamily
- iii. Industrial
- iv. Office
- v. Retail
- vi. Mixed uses
- vii. Open Space, Parks, Trails, Recreation, Gathering Spaces
- viii. Street and non-motorized circulation improvements consistent with the Transportation evaluation in the Planned Action SEIS.
- ix. Civic, Cultural, Governmental and Utility Facilities as identified in the NE 85th Street Station Area Plan and allowed in the Kirkland Zoning Code
- x. Other uses allowed in the Zoning regulations applicable to the NE 85th Street Station Area that are similar to studied uses as determined by the responsible official or designee.

(b) Planned Action Project Land Uses: A land use can qualify as a Planned Action Project land use when:

- i. it is within the Planned Action Area as shown in Exhibit A of this Ordinance; and
- ii. it is within one or more of the land use categories described in Subsection 3.D(1)(a) above; or
- iii. it is a common accessory use or appurtenance to a permitted use.

A Planned Action Project may be a single Planned Action land use, or a combination of Planned Action land uses together in a mixed-use development. Planned Action land uses may include accessory uses.

(c) Public Services: The following public services, infrastructure, and utilities can also qualify as Planned Actions: streets and non-motorized improvements, utilities, parks, trails, civic, cultural, governmental, and similar facilities developed consistent with the Planned Action SEIS mitigation measures, City design standards, critical area regulations, and the Kirkland Municipal Code.

(2) Development Thresholds:

(a) Land Use: The following maximum levels of new land uses are contemplated by the Planned Action:

Net Development 2020-2044+	Existing	Preferred Net Growth	Total
Housing Units	1,909	6,243	8,152
Jobs	4,988	17,763	22,751

(b) Shifting development amounts between land uses identified in Subsection 3.D(2)(a) may be permitted by the responsible official or designee provided the traffic trips for the preferred alternative are not exceeded and the development impacts identified in the Planned Action SEIS are mitigated consistent with Exhibit B of this Ordinance.

(c) Further environmental review may be required pursuant to WAC 197-11-172, if any individual Planned Action Project or combination of Planned Action Projects exceeds the development levels specified in this Ordinance and/or alter the assumptions and analysis in the Planned Action SEIS.

(3) Transportation Thresholds:

(a) Trip Ranges & Thresholds. The number of new PM peak hour trips anticipated in the Planned Action Area and reviewed in the Planned Action SEIS are as follows:

New Weekday PM Peak Hour Trips

Alternative	PM Peak Hour Vehicle Trips
Existing	4,559
Preferred Alternative	16,140

i. In no case shall trips exceed the Preferred Alternative. Monitoring shall be conducted by the City to ensure planned improvements are implemented concurrent with development before the final level of trips in the Preferred Alternative is authorized for development.

ii. All planned actions shall be consistent with the following:

(b) Concurrency. All Planned Action Projects shall meet the transportation concurrency requirements and the Level of Service (LOS) thresholds established in the Kirkland Comprehensive Plan and Kirkland Municipal Code.

(c) Impact Fee. All Planned Action Projects shall pay applicable impact fees for improvements addressed in the City Comprehensive Plan and Capital Facility Plan and impact fee ordinances.

(d) Mitigation. Each planned action shall provide its proportionate share of transportation capital improvements considered in the Planned Action SEIS and listed in **Exhibit B** and not otherwise included in the City Comprehensive Plan and Capital Facility Plan. Other transportation mitigation shall be provided consistent with mitigation measures in **Exhibit B**.

(e) The responsible City official shall require documentation by Planned Action Project applicants demonstrating that the total trips identified in Subsection 3.D(3)(a) are not exceeded, that the project meets the concurrency and intersection standards of Subsection 3.D(3)(b), paid impact fees per 3.D(3)(c), and that the project has mitigated impacts consistent with Subsection 3.D (3)(d).

(f) Discretion.

- i. The responsible City official shall have discretion to determine incremental and total trip generation, consistent with the Institute of Traffic Engineers (ITE) Trip Generation Manual (latest edition) or an alternative manual accepted by the responsible City official at their sole discretion, for each project permit application proposed under this Planned Action.
- ii. The responsible City official shall have discretion to condition Planned Action Project applications to meet the provisions of this Planned Action Ordinance and the Kirkland Municipal Code.
- iii. Planned Action Project applicants shall pay a proportionate share of the costs of the projects identified in Exhibit B. The responsible City official shall have the discretion to adjust the allocation of responsibility for required improvements between individual Planned Action Projects based upon their identified impacts.

(4) Elements of the Environment and Degree of Impacts. A proposed project that would result in a significant change in the type or degree of adverse impacts to any element(s) of the environment analyzed in the Planned Action SEIS would not qualify as a Planned Action Project.

(5) Changed Conditions. Should environmental conditions change significantly from those analyzed in the Planned Action SEIS, the City's SEPA Responsible Official may determine that the Planned Action Project designation is no longer applicable until supplemental environmental review is conducted.

E. Planned Action Project Review Criteria.

(1) The City's SEPA Responsible Official, or authorized representative, may designate as a Planned Action Project, pursuant to RCW 43.21C.440, a project application that meets all of the following conditions:

- (a) the project is located within the Planned Action Area identified in **Exhibit A** of this Ordinance;
- (b) the proposed uses and activities are consistent with those described in the Planned Action SEIS and Subsection 3.D of this Ordinance;
- (c) the project is within the Planned Action thresholds and other criteria of Subsection 3.D of this Ordinance;
- (d) the project is consistent with the Kirkland Comprehensive Plan including the policies of the NE 85th Street Station Area Plan incorporated into the Comprehensive Plan and the regulations of the NE 85th Street Station Area Plan integrated into the Kirkland Municipal Code;
- (e) the project's significant adverse environmental impacts have been identified in the Planned Action SEIS;
- (f) the project's significant impacts will be mitigated by application of the measures identified in **Exhibit B** of this Ordinance and other applicable City regulations, together with any conditions, modifications, variances, or special permits that may be required;
- (g) the project complies with all applicable local, state and/or federal laws and regulations and the SEPA Responsible Official determines that these constitute adequate mitigation; and
- (h) the project is not an essential public facility as defined by RCW 36.70A.200 unless the essential public facility is accessory to or part of a development that is designated as a Planned Action Project

under this Ordinance.

(2) The City shall base its decision to qualify a project as a Planned Action Project on review of the SEPA Checklist form in WAC 197-11 and review of the Planned Action Project submittal and supporting documentation, provided on City required forms, using the procedures of Subsection 3.G. [the City may develop its own SEPA checklist for the planned action area; however, the standard form is assumed here]

F. Effect of Planned Action Designation.

(1) Designation as a Planned Action Project by the City's SEPA Responsible Official means that a qualifying project application will be reviewed in accordance with this Ordinance.

(2) Upon determination by the City's SEPA Responsible Official, pursuant to the process in Subsection 3.G, that the project application meets the criteria of Subsection 3.D and qualifies as a Planned Action Project, the project shall not require a SEPA threshold determination, preparation of an SEIS, or be subject to further review pursuant to SEPA. Planned Action Projects will still be subject to all other applicable City, state, and federal regulatory requirements. The Planned Action Project designation shall not excuse a project from meeting the City's code and ordinance requirements apart from the SEPA process.

G. Planned Action Project Permit Process. Applications submitted for qualification as a Planned Action Project shall be reviewed pursuant to the following process:

(1) Development applications shall meet all applicable requirements of the Kirkland Municipal Code, Kirkland Zoning Code, and this Ordinance in place at the time of the Planned Action Project application.

(2) Applications for Planned Action Projects shall:

(a) be made on forms provided by the City;

(b) include the SEPA checklist in WAC 197-11;

(c) meet all applicable requirements of the Kirkland Municipal Code and this Ordinance.

(3) The City's SEPA Responsible Official shall determine whether the application is complete and shall review the application to determine if it is consistent with and meets all of the criteria for qualification as a Planned Action Project as set forth in this Ordinance.

(4) (a) If the City's SEPA Responsible Official determines that a proposed project qualifies as a Planned Action Project, they shall issue a "Determination of Consistency" and shall mail or otherwise verifiably deliver said Determination to the applicant; the owner of the property as listed on the application; and ,federally recognized tribal governments and agencies with jurisdiction over the Planned Action Project, pursuant to RCW 43.21C.440(3)(b).

(b) Upon issuance of the Determination of Consistency, the review of the underlying project permit(s) shall proceed in accordance with the applicable permit review procedures specified in the Kirkland Zoning Code and Municipal Code, except that no SEPA threshold determination, SEIS, or additional SEPA review shall be required.

(c) The Determination of Consistency shall remain valid and in effect as long as the underlying project application approval is also in effect.

(d) Public notice and review for qualified Planned Action Projects shall be tied to the underlying project permit(s). If notice is otherwise required for the underlying permit(s), the notice shall state that the project qualifies as a Planned Action Project. If notice is not otherwise required for the underlying project permit(s), no special notice is required by this Ordinance.

(5) (a) If the City's SEPA Responsible Official determines that a proposed project does not qualify as a Planned Action Project, they shall issue a "Determination of Inconsistency" and shall mail or otherwise verifiably deliver said Determination to the applicant; the owner of the property as listed on the application; and federally recognized tribal governments and agencies with jurisdiction over the Planned Action Project, pursuant to RCW 43.21C.440(3)(b).

(b) The Determination of Inconsistency shall describe the elements of the Planned Action Project application that result in failure to qualify as a Planned Action Project.

(c) Upon issuance of the Determination of Inconsistency, the City's SEPA Responsible Official shall prescribe a SEPA review procedure for the non-qualifying project that is consistent with the City's SEPA regulations and the requirements of state law.

(d) A project that fails to qualify as a Planned Action Project may incorporate or otherwise use relevant elements of the Planned Action SEIS, as well as other relevant SEPA documents, to meet the non-qualifying project's SEPA requirements. The City's SEPA Responsible Official may limit the scope of SEPA review for the non-qualifying project to those issues and environmental impacts not previously addressed in the Planned Action SEIS.

(6) To provide additional certainty about applicable requirements, the City or applicant may request consideration and execution of a development agreement for a Planned Action Project, consistent with RCW 36.70B.170 et seq.

(7) A Determination of Consistency or Inconsistency is a Process I land use decision and may be appealed pursuant to the procedures established in Chapter 145 of the Kirkland Zoning Code. An appeal of a Determination of Consistency shall be consolidated with any pre-decision or appeal hearing on the underlying project application.

Section 4. Monitoring and Review.

A. The City should monitor the progress of development in the designated Planned Action area in association with the City periodic review of its Comprehensive Plan to ensure that it is consistent with the assumptions of this Ordinance and the Planned Action SEIS regarding the type and amount of development and associated impacts and with the mitigation measures and improvements planned for the Planned Action Area.

B. This Planned Action Ordinance shall be reviewed by the SEPA Responsible Official every two (2) years from its effective date in conjunction with the City's regular Comprehensive Plan review or docket cycle, as applicable. The review shall determine the continuing relevance of the Planned Action assumptions and findings with respect to environmental conditions in the Planned Action Area, the impacts of development, and required mitigation measures (**Exhibit B**). Based upon this review, the City may propose amendments to this Ordinance or may supplement or revise the Planned Action SEIS.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2022.

Signed in authentication thereof this _____ day of _____, 2022.

Penny Sweet, Mayor

Attest:

Kathi Anderson, City Clerk

Approved as to Form:

Kevin Raymond, City Attorney

Preliminary

Exhibit A. Planned Action Area



Exhibit B. Mitigation Measures

INTRODUCTION

B-1. MITIGATION MEASURES

Air Quality/Greenhouse Gas

Surface Water and Stormwater

Land Use Patterns and Policies

Plans and Policies

Aesthetics

Transportation

Public Services

Utilities

Other (from Scoping SEPA Checklist)

B-2. CODES AND REGULATIONS SERVING AS MITIGATION

Air Quality/Greenhouse Gas

Surface Water and Stormwater

Land Use Patterns and Policies

Plans and Policies

Aesthetics

Transportation

Public Services

Utilities

Other (from Scoping SEPA Checklist)

B-3. MITIGATION STANDARDS AND FEES

May include design standards (e.g. frontage) and mitigation fees that reflect infrastructure investments not already in capital plan/impact fee basis.