

August 7, 2023

## **DIRECTOR'S REPORT**

### **Master Use Permit Expiration Amendments**

#### **Introduction and Proposal**

These are extraordinary times, as both the Seattle region and the nation seek post-pandemic economic recovery. Seattle's Department of Construction and Inspections (SDCI) recognizes that national and regional economic conditions lead to uncertainties that may affect development project viability to proceed. In the short term, the City should consider strategies to increase flexibility and time for development proposals already in permitting.

Approximately 205 significant development projects throughout Seattle have obtained a Master Use Permit (MUP) or are recently in MUP land use review, but have not yet received building permit approvals, which is the final step needed to start construction. These projects could benefit from additional flexibility in the City's approval process. Going forward, issued MUPs without building permits may either expire or face costly permit revisions to conform to changes in land use and environmental code requirements.

To help development projects to weather this economic period, SDCI proposes amendments that would accomplish the following:

- Change the term for most active MUPs from three years to six years;
- Focus on MUPs approved for issuance after March 1, 2020, and until December 31, 2026. After that, the code would revert to expiration provisions in Chapter 23.76.029 – 032;
- Allow MUPs to vest to the land use regulations in effect at the time of approval for issuance (or as otherwise specified in existing Code) for the six-year MUP term, plus any additional time based on extensions through the building permit process, as currently provided;
- Include the first phases of Major Phased Development and Planned Community Development MUPs;
- No renewals of MUPs after the proposed six-year duration would be allowed;
- No change is proposed to the current process for temporary use permits, and other actions including shoreline permits, variances and subdivisions.

The proposal is an interim action addressing near-term economic conditions; it is proposed to expire on December 31, 2026.

The existing MUP process and proposed changes are shown in a chart at the end of this report.

## Background

A Master Use Permit (MUP) is the document issued to an applicant that records all land use decisions made by SDCI on an application for development. The Land Use Code's Chapter 23.76 designates most MUPs as either Type I decisions (not appealable), or Type II decisions, which are appealable. Type I decisions are made by SDCI staff usually without public notice or comment opportunity, while Type II decisions require public notice and opportunity to comment, followed by notice of and publication of a written land use decision. This action is followed by a period for an administrative appeal opportunity, usually to the City Hearing Examiner.

The MUP is ready to issue, or approved for issuance, at the point the SDCI decision is made for a Type I MUP or, for Type II MUPs, on the day following the close of the administrative appeal period or on the fourth day following the date of final administrative appeal decision (Section 23.76.028).

A MUP currently has a term of three years from the date it is approved for issuance. A few MUP types are treated differently as described in Sections 23.76.029 and .030. During the three-year term for most MUPs, the permit is "vested," meaning it is subject to the Land Use Code regulations and other land use control ordinances (such as the Regulations for Environmentally Critical Areas) in effect on:

- The date a complete application for a MUP is received by SDCI after early design guidance (or other streamlined design guidance from the SDCI Director) for proposals in the Design Review process; or
- The date of published notice of the SDCI decision on other Type II MUPs; or
- The date of decision for Type I MUPs.

MUPs expire at the end of the three-year term unless they are renewed or unless a fully complete building permit application is submitted according to the requirements of Sections 23.76.029 through .032, and the building permit is subsequently issued.<sup>1</sup> Once the building permit is issued, the MUP term is extended based on the term for which the building permit is issued, including renewals of the building permit. The period in which the MUP is vested to a specific set of land use regulations is extended by the term of the building permit but is not extended by a renewal of the MUP without an associated building permit.

The current Code provides an option for a two-year renewal of a MUP. Renewal requires that Code changes adopted since the date of approval for issuance of the original MUP be reflected in the project. Such changes, if sufficiently significant, could make a project infeasible. Even if required design changes would not preclude the project from being built, the changes may trigger additional Design Review and MUP approval process, with attendant extension of time

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<sup>1</sup> A few MUPs, for projects not requiring building permits or for Major Phased Developments, are treated differently.

for process and uncertainty. By reducing deadline-related pressures, a longer term for MUP approvals to remain active would remove costs and uncertainty for project proponents who intend to proceed with construction later in the future.

## **Analysis**

While the ultimate goal of most MUP applications is to obtain a building permit and construct a project, MUPs are frequently reviewed and issued prior to the time that application is made for a building permit or other construction permit. If the project proposal is of a significant size or type of use, then the MUP application requires a public notice and opportunity for public comment, and usually also requires a written land use decision, followed by public notice of the decision and public notice of opportunity for appeal, typically to the City's Office of Hearing Examiner. Other land use decisions are included in most MUPs, particularly projects requiring Design Review or land use approvals under the State Environmental Policy Act (SEPA). Other types of possible land use approvals include variances, conditional use review, and special exceptions.

The land use review and approval process for a MUP often requires extensive planning and preparation by applicants and in-depth reviews by SDCI staff. For projects reaching the MUP decision milestone, the MUP assures an applicant that any later changes to Code requirements will not apply to the project, for the term of the MUP. The right to hold an approved permit for a period of time, and to apply specific standards to the development approved by that permit, is known as "vesting." The MUP thus has a specific term of effectiveness, or "lifespan" in which the permit holder has certainty about the requirements for the authorized project. The current term for a MUP is three years from the date the MUP is approved for issuance (usually at the end of an appeal period), with the option to renew the MUP for an additional two-year period. Renewal, however, requires updating an approved project to meet the current Land Use Code requirements at the time of renewal, if any requirements have changed. Thus, the actual time a project can "vest" to a MUP is limited to three years unless a complete application for a building permit is submitted. Building permit submittal is not financially practicable for some developers in a time of economic downturn.

In this current period with uncertainties about project financing, the real estate market, or other feasibility reasons, the existing time limit for an approved MUP may be too abbreviated. Giving a longer MUP life would allow projects to remain active with some assurance that specific land use requirements would continue to apply to them until the time best suited to proceed with development arrives.

A six-year MUP term, rather than the current three years, would be a reasonable amount of additional time to allow a MUP to remain in effect and subject to a particular set of regulations. A six-year term would only effectively add one year to the current Code requirements of a three-year life plus a two-year renewal option. There would be no option for additional renewal of a six-year MUP. The existing regulations for extension of a MUP term based on submittal of a complete application for a building permit would remain.

The proposed amendment is anticipated to affect approximately 205 outstanding MUP actions, where either:

- The written land use decision approving the MUP has been published since March 1, 2020 but a building permit has not yet been approved; or
- The MUP is under review and may have a MUP issued within the next three years.

MUPs in both scenarios would thus receive the six-year MUP duration.

The proposal would only apply to future permit applications until December 31, 2026, and to existing MUPs approved for issuance since March 1, 2020. Upon expiration of the legislation, the current regulations, including the three-year term and two-year option to renew, would apply.

The proposed change would apply only to certain Type I MUPs<sup>2</sup> and Type II MUPs as identified in Section 23.76.029. Some Type II decisions, such as short subdivision decisions and shoreline approvals, have separate terms established elsewhere in the Code and will not be affected. Full subdivisions (Type III MUPs), as well as Type IV and Type V decisions involving City Council approval will also continue to be regulated under existing Code that specifies separate terms for MUPs issued under those processes.

### **Other considerations**

***Projects vested pre-MHA:*** Of the pool of eligible MUPs under the proposal, approximately 11 projects are vested prior to the enactment of the Mandatory Housing Affordability (MHA) requirements. If these projects all were helped by the proposed legislation and do not expire according to existing code provisions, it could result in lost MHA revenue estimated at \$3.0 to \$5.5 million. The largest single development in this category would account for as much as \$2.5 million of this amount if it benefits from this proposal and retains its vesting to avoid MHA payments.

The impact of reduced MHA revenues depends on the share of projects for which MUPs would be renewed at Year 3 rather than allowed to expire. This analysis does not forecast which or how many of these projects may ultimately gain the benefit of this legislation, which could depend on individual circumstances of each situation. These projects would benefit the City in construction tax revenue and new housing units. For projects that would not move forward (e.g., not proceeding with a 2-year MUP renewal) upon reaching the 3-year deadline, this legislation would have no impact on MHA revenue, because those affordable housing contributions would not have materialized in those cases.

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<sup>2</sup> Section 23.76.029 specifies different permit duration terms for a number of certain MUP types, including but not limited to Type I MUPs for temporary or intermittent use permits, transitional encampment interim use permits, and lot boundary adjustments, and Type II MUPs for shoreline components, variances, and short plats.

***Inflation effects on value of contributions:*** Future projects that benefit from the legislation would be subject to MHA, but MHA revenue could be reduced due to the longer MUP lifespan. Currently, the per-square-foot MHA fee amount is adjusted for inflation when a MUP is renewed at end of Year 3. In coming years, annual inflation adjustments are estimated to be between 3% and 5%. For projects with 6-year MUPs (rather than two-year renewal at end of Year 3), the MHA contributions for affordable housing would therefore have 3 to 5% less value due to the effects of inflation.

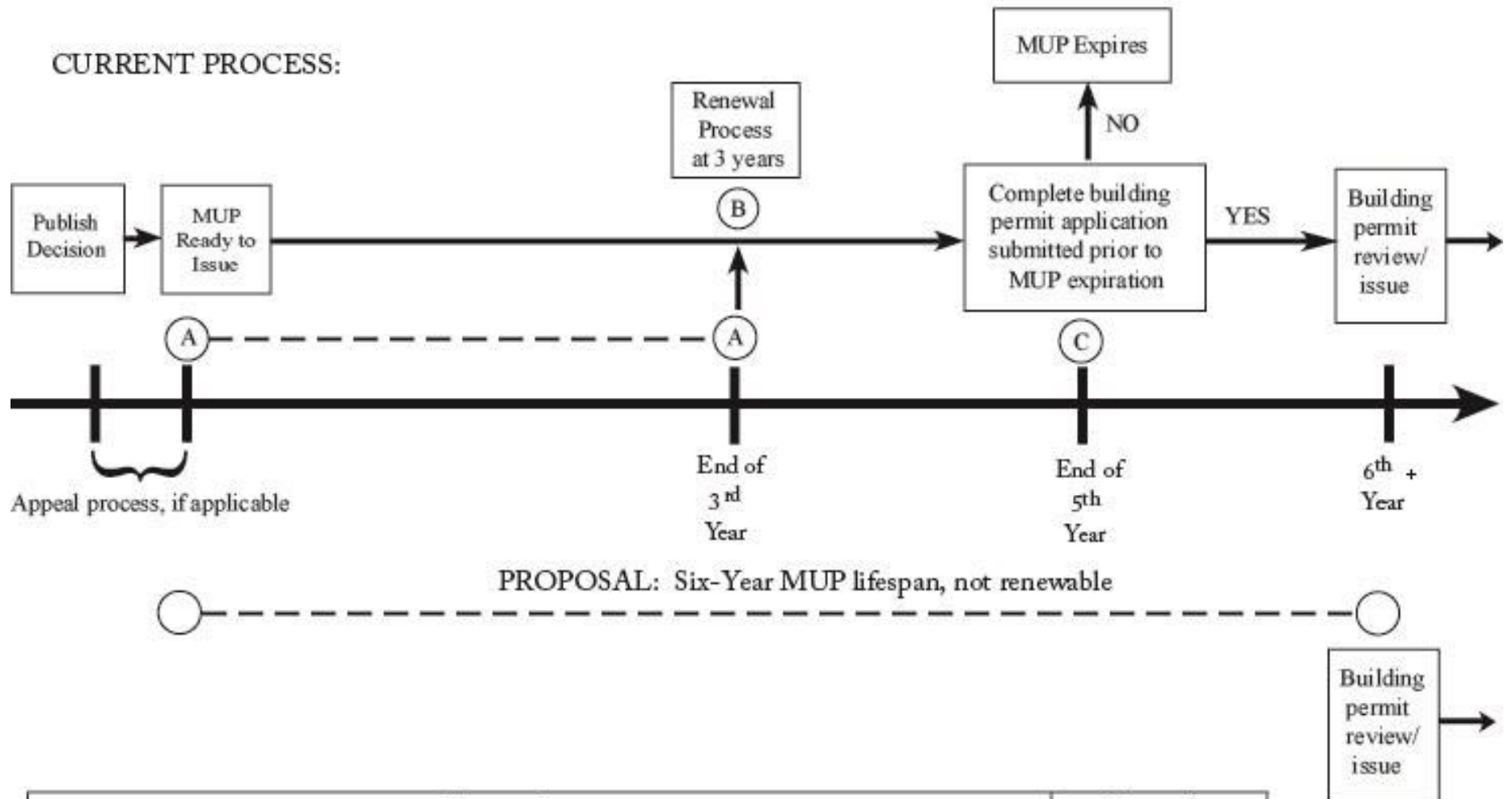
To provide some scale, the overall amount of MHA revenue collected to date totals \$246 million; the average annual MHA contributions is \$60 million; and \$38 million has been collected in 2023 year-to-date. Under the proposed legislation, reduced MHA revenue impacts would only be associated with active MUPs approved between March 1, 2020 and December 31, 2026. Starting in 2027, MUP renewals at end of Year 3 would resume under the existing provisions, including the inflation adjustment for MHA fee amounts.

### **Recommendation**

The proposed extension of the term for Master Use Permits will benefit applicants whose development proposals have been adversely affected by recent economic challenges, while creating only modest changes to the current system of MUP expiration and renewal. SDCI recommends approval of the proposed Code changes.

# Attachment

### Current and Proposed Master Use Permit (MUP) Lifespan and Expiration



Current Provisions	Proposal
A. MUPs generally have a lifespan of 3 years from the date the MUP is ready to be issued by DPD	6 year lifespan
B. MUPs can be renewed for up to 2 years for a total life of 5 years, but in being renewed the MUP must conform to any changes in code requirements	No renewals
C. Once a building permit application is submitted, the lifespan of the MUP is subject to provisions for building permits, which generally allow for longer lifespans than MUPs. When a building permit is submitted, the project does not need to conform to any changes in code requirements	No changes