

MEMORANDUM

To: Councilmember Rob Johnson, Chair
Councilmembers Mike O’Brien and Lisa Herbold, Members
Planning, Land Use and Zoning Committee

From: Ketil Freeman, Legislative Analysts

Date: March 30, 2017

Subject: C.B. 118753 – State Environmental Policy Act Infill Legislation

Council Bill (CB) 118753 would amend Seattle Municipal Code Chapter 25.05, to reestablish higher State Environmental Policy Act (SEPA) review thresholds in certain planning geographies of the City.¹ The higher thresholds would apply to infill residential, mixed-use, and commercial projects.

This memorandum sets out proposed amendments, which are all incorporated into a substitute bill.

Amendments in the Substitute

Amendment	Discussion
1. Recitals (p.2)	The proposed amendment would modify the recitals to reflect (1) changes in the legislative history since adoption, such as Council action on <i>Seattle 2035</i> , and (2) changes set out in the proposed substitute, such as limiting the exemption to Urban Centers.
2. Additional Finding (p. 3)	The proposed amendment would add a finding that the infill exemption is an incentive and modification to regulations pursuant to RCW 36.70A.540, which authorizes jurisdictions planning under the Growth Management Act to implement programs like the Mandatory Housing Affordability Program. When implementing an inclusionary housing program a jurisdiction must provide “increased residential development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives.” ²
3. Applicability to Urban Centers Only (p. 9-12)	The proposed amendment would limit applicability of the infill exemption to urban centers only. Urban Villages with Station Area Overlay Districts would continue to have lower thresholds pending the reporting and recommendation described below.
4. Reporting and recommendation by December 2017 (p. 13)	The proposed amendment requests that SDCI work with other City departments to analyze how SEPA review operates. The analysis would inform recommendations to the Council on process improvements. The amendment requests a report no later than December 31, 2017. The proposed amendment is consistent with a recommendation from the HALA advisory committee.

Attachments: Attachment A – Substitute Bill

¹ These geographies are (1) Urban Centers, which are Northgate, the University Community, First Hill / Capitol Hill, Uptown, South Lake Union and Downtown; and (2) Urban Villages with Station Area Overlay Districts, which are Roosevelt, North Beacon Hill, Mt. Baker, Columbia City, Othello, and Rainier Beach.

² [RCW 36.70A.540\(3\)\(d\)](#).

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to land use and zoning; amending Sections 25.05.675 and 25.05.800 of the Seattle Municipal Code to clarify and update references to the Comprehensive Plan and restore the categorical exemptions for State Environmental Policy Act review of proposed “infill” development.

..body

WHEREAS, in 2003, the law governing infill development categorical exemptions (RCW 43.21C.229) was enacted by the state of Washington to encourage growth consistent with the Growth Management Act; and

WHEREAS, RCW 43.21C.229 authorizes cities planning under RCW 36.70A.040 to establish categorical exemptions from RCW 43.21C (the State Environmental Policy Act) that differ from the exemptions in RCW 43.21C.110(1)(a); and

WHEREAS, under RCW 43.21C.229, the infill development categorical exemptions are allowed to be applied by local governments within an urban growth area, when the environmental impacts of such exemptions have been considered, when the City’s comprehensive plan has received environmental review in the form of an environmental impact statement, and where current density and intensity for growth areas are lower than called for in the City’s comprehensive plan; and

WHEREAS, in 2012, The City of Seattle adopted infill development categorical exemptions for Urban Centers and Urban Villages that contain a Station Area Overlay District where the density and intensity for growth areas were lower than those called for in the City’s comprehensive plan; and

WHEREAS, in 2015, The City of Seattle removed infill development categorical exemptions pending further analysis to be completed as part of Seattle 2035 planning process to

1 develop growth estimates for Urban Centers and-Villages for the 2015-2035 planning
2 horizon; and

3 WHEREAS, in 2016, the Office of Planning and Community Development ~~has~~ completed its
4 Seattle 2035 planning process and associated environmental impact statement for Council
5 consideration and ~~possible action that includes the City Council adopted “Seattle 2035”,~~
6 ~~the updated Comprehensive Plan for the planning horizon 2015-2035 including adoption~~
7 ~~of adoptionn-of~~ growth estimates for Urban Centers and Villages; and

8 WHEREAS, the amendments proposed in this bill are intended to update references to the
9 Comprehensive Plan in Chapter 25.05 of the Seattle Municipal Code, the City’s
10 Environmental Policies and Procedures, and restore the infill development categorical
11 exemptions ~~for development in Urban Centers only~~~~after the City Council has adopted~~
12 ~~new Urban Village growth estimates into the Comprehensive Plan~~, NOW, THEREFORE,

13 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

14 Section 1. Findings.

15 A. The Mayor and City Council find that infill development categorical exemptions are
16 authorized by the State, and have been effective as a factor that encourages new development to
17 locate within urban centers ~~and urban villages~~ consistent with the City’s Comprehensive Plan.

18 This pattern of growth favoring centers and villages is leading to greater efficiencies of
19 residential living and activity patterns that encourage greater use of mass transit and enliven
20 individual neighborhoods and the City. As such, the use of infill categorical exemption levels
21 should be re-authorized to continue to support these positive trends. This kind of efficiency will
22 be increasingly important as Seattle will continue to need to accommodate new residents and

1 employees, and will continue to need to encourage diversity of housing options located near
2 mass transit systems and a variety of transportation choices.

3 B. The Mayor and the City Council find that these efficiencies are due, in part, to
4 increased certainty for developers about the timeline for development and project delivery.
5 Increasing infill development categorical exemptions is a recommendation of the Housing
6 Affordability and Livability Agenda Advisory Committee, and the Mayor and City Council find
7 that the infill development categorical exemption is an incentive and regulatory change pursuant
8 to RCW 36.70A.540 for the purposes of implementing the Mandatory Housing Affordability
9 Program codified in 23.58C of the Seattle Municipal Code.

10 B. The Mayor and City Council find that State Environmental Policy Act (SEPA)
11 environmental review should be maintained for the categories of development actions where
12 significant levels of adverse environmental impacts are likely. In Seattle's context as the core
13 and largest city of the metropolitan area, it is already highly urbanized, and it can support more
14 growth, particularly in places where the City's planning policies prefer for growth to occur such
15 as Urban Centers and near major transit system stations and hubs. In these settings, the overall
16 potential for significant adverse impacts of development within Urban Centers, ~~and in Urban~~
17 ~~Villages that contain transit station areas,~~ is generally likely only at higher levels of development
18 than are represented by the City's current SEPA categorical exemption levels. Thus, the infill
19 development categorical exemption levels should be re-set in those areas at appropriate threshold
20 levels for environmental review, and to eliminate layers of development review where they will
21 not be productive. In other areas of Seattle, SEPA environmental review categorical exemption
22 levels should remain at their current levels.

1 C. The Mayor and City Council find that the City's codes have evolved in recent decades
2 such that there is generally less need to employ SEPA, because other City codes and
3 requirements effectively mitigate environmental impacts. Relevant policies and codes include:
4 environmental critical areas; shoreline, grading and drainage, and stormwater regulations; and
5 design review, land use/zoning code, noise code, transportation mitigation programs, energy
6 code, building code, and historic and cultural preservation policies and practices. These codes
7 and processes are periodically updated, generally moving in the direction of greater protections.
8 As one example, Seattle's shoreline master program regulations – Chapter 23.60A of the Seattle
9 Municipal Code – were recently updated with greater protections that comply with State
10 requirements. The Seattle Department of Construction and Inspections (SDCI) has prepared a
11 summary of environmental protections contained in existing codes and rules that correspond to
12 elements of the environment to be evaluated pursuant to SEPA, which is located in Table 1 of the
13 SDCI Director's Report. Therefore, it is reasonably concluded that development impacts in the
14 affected areas will continue to be adequately addressed by the development regulations and other
15 applicable requirements of City codes, policies, or plans, and other local, state, or federal rules or
16 laws.

17 Section 2. Subsections 25.05.675.G and 25.05.675.J of the Seattle Municipal Code,
18 which section was last amended by Ordinance 124895, are amended as follows:

19 **25.05.675 Specific environmental policies**

20 * * *

21 G. Height, (~~Bulk and Scale.~~) bulk, and scale

22 1. Policy (~~Background.~~) background

1 a. The purpose of the City's adopted land use regulations is to provide for
2 smooth transition between industrial, commercial, and residential areas, to preserve the character
3 of individual ((city)) City neighborhoods, and to reinforce natural topography by controlling the
4 height, bulk, and scale of development.

5 b. However, the City's land use regulations cannot anticipate or address all
6 substantial adverse impacts resulting from incongruous height, bulk, and scale. For example,
7 unanticipated adverse impacts may occur when a project is located on a site with unusual
8 topographic features or on a site which is substantially larger than the prevalent platting pattern
9 in an area. Similarly, the mapping of the City's zoning designations cannot always provide a
10 reasonable transition in height, bulk, and scale between development in adjacent zones.

11 2. Policies ((-))

12 a. It is the City's policy that the height, bulk, and scale of development
13 projects should be reasonably compatible with the general character of development anticipated
14 by the goals and policies set forth in ((Section B of the land use element of the Seattle
15 Comprehensive Plan regarding Land Use Categories, the shoreline goals and policies set forth in
16 Section D 4 of the land use element of the Seattle Comprehensive Plan,)) the Land Use Element,
17 Growth Strategy Element, and Shoreline Element of the Seattle Comprehensive Plan; the
18 procedures and locational criteria for shoreline environment redesignations set forth in ((SMC))
19 Sections 23.60A.060 and 23.60A.220 ((-)) ; and the adopted land use regulations for the area in
20 which they are located, and to provide for a reasonable transition between areas of less intensive
21 zoning and more intensive zoning.

22 b. Subject to the overview policy set forth in ((SMC)) Section 25.05.665,
23 the ((decision maker)) decisionmaker may condition or deny a project to mitigate the adverse

1 impacts of substantially incompatible height, bulk, and scale. Mitigating measures may include
2 but are not limited to:

3 ((i-)) 1) Limiting the height of the development;

4 ((ii-)) 2) Modifying the bulk of the development;

5 ((iii-)) 3) Modifying the development's facade including but not
6 limited to color and finish material;

7 ((iv-)) 4) Reducing the number or size of accessory structures or
8 relocating accessory structures including but not limited to towers, railings, and ((antennae))
9 antennas;

10 ((v-)) 5) Repositioning the development on the site; and

11 ((vi-)) 6) Modifying or requiring setbacks, screening, landscaping,
12 or other techniques to offset the appearance of incompatible height, bulk, and scale.

13 c. The Citywide design guidelines (and any Council-approved ((-))
14 neighborhood design guidelines) are intended to mitigate the same adverse height, bulk, and
15 scale impacts addressed in these policies. A project that is approved pursuant to the design
16 review process is presumed to comply with these height, bulk, and scale policies. This
17 presumption may be rebutted only by clear and convincing evidence that height, bulk, and scale
18 impacts documented through environmental review have not been adequately mitigated. Any
19 additional mitigation imposed by the decisionmaker pursuant to these height, bulk, and scale
20 policies on projects that have undergone design review shall comply with design guidelines
21 applicable to the project.

22 * * *

1 J. Land (~~(Use.)~~) use

2 1. Policy (~~(Background.)~~) background

3 a. The City has adopted land use regulations that are designed, in part, to
4 minimize or prevent impacts resulting from incompatible land use. However, the adopted Land
5 Use Code (Title 23) cannot identify or anticipate all possible uses and all potential land use
6 impacts. For example, adverse cumulative land use impacts may result when a particular use or
7 uses permitted under (~~(the Zoning Code)~~) Title 23 occur in an area to such an extent that they
8 foreclose opportunities for higher-priority, preferred uses called for in (~~(Section B of the land use~~
9 ~~element of the Comprehensive Plan and the shoreline goals and policies set forth in section D-4~~
10 ~~of the land use element)~~) the Land Use Element, Growth Strategy Element, and Shoreline
11 Element of the Seattle Comprehensive Plan.

12 b. Density-related impacts of development are addressed under the
13 policies set forth in subsections 25.05.675.G (height, bulk, and scale), 25.05.675.M (parking),
14 25.05.675.R (traffic and transportation) and 25.05.675.O (public services and facilities) (~~(of this~~
15 ~~section))~~) and are not addressed under this policy.

16 2. Policies (~~(-)~~)

17 a. It is the City's policy to ensure that proposed uses in development
18 projects are reasonably compatible with surrounding uses and are consistent with any applicable,
19 adopted City land use regulations, the goals and policies set forth in (~~(Section B of the land use~~
20 ~~element of the Seattle Comprehensive Plan regarding Land Use Categories, and the shoreline~~
21 ~~goals and policies set forth in section D-4 of the land use element)~~) the Land Use Element,
22 Growth Strategy Element, and Shoreline Element of the Seattle Comprehensive Plan for the area
23 in which the project is located.

1 b. Subject to the overview policy set forth in ~~((SMC))~~ Section 25.05.665,
2 the decisionmaker may condition or deny any project to mitigate adverse land use impacts
3 resulting from a proposed project or to achieve consistency with the applicable City land use
4 regulations ~~((§))~~ ; the goals and policies set forth in ~~((Section B of the land use element of the~~
5 ~~Seattle Comprehensive Plan regarding Land Use Categories, the shoreline goals and policies set~~
6 ~~forth in Section D-4 of the land use element of the Seattle Comprehensive Plan,))~~ the Land Use
7 Element, Growth Strategy Element, and Shoreline Element of the Seattle Comprehensive Plan;
8 the procedures and locational criteria for shoreline environment redesignations set forth in
9 ~~((SMC))~~ Sections 23.60A.060 and 23.60A.220, respectively ~~((§))~~ ; and the environmentally
10 critical areas policies.

11 * * *

12 Section 3. Section 25.05.800 of the Seattle Municipal Code, last amended by Ordinance
13 124885, is amended as follows:

14 **Subchapter IX Categorical Exemptions**

15 **25.05.800 Categorical exemptions**

16 The proposed actions contained in this Section 25.05.800 are categorically exempt from
17 threshold determination and ~~((EIS))~~ environmental impact statement requirements, subject to the
18 rules and limitations on categorical exemptions contained in Section 25.05.305.

19 A. Minor new construction; flexible thresholds

20 1. The exemptions in this subsection 25.05.800.A apply to all licenses required to
21 undertake the construction in question. To be exempt under this Section 25.05.800, the project
22 shall be equal to or smaller than the exempt level. For a specific proposal, the exempt level in
23 subsection 25.05.800.A.2 shall control. If the proposal is located in more than one city or county,

1 the lower of the agencies' adopted levels shall control, regardless of which agency is the lead
 2 agency. The exemptions in this subsection 25.05.800.A apply except when the project:

3 a. Is undertaken wholly or partly on lands covered by water;

4 b. Requires a license governing discharges to water that is not exempt
 5 under RCW 43.21C.0383;

6 c. Requires a license governing emissions to air that is not exempt under
 7 RCW 43.21C.0381 or WAC 197-11-800(7) or 197-11-800(8); or

8 d. Requires a land use decision that is not exempt under subsection
 9 25.05.800.F.

10 2. The following types of construction are exempt, except when undertaken
 11 wholly or partly on lands covered by water or unless undertaken in environmentally critical areas
 12 listed in subsection 25.05.908.A:

13 a. The construction or location of residential or mixed-use development
 14 containing no more than the number of dwelling units identified in Table A for 25.05.800;

**Table A for 25.05.800
 Exemptions for residential uses**

Zone	Residential uses		
	Number of exempt dwelling units		
	Outside of urban centers ((, and urban villages containing SAODs))	Within urban centers, or urban villages containing SAODs, where growth estimates have not been exceeded	Within urban centers ((, or urban villages containing SAODs,)) where growth estimates have been exceeded
SF, RSL	4	4	4
LR1	4	200 ¹	20
LR2	6	200 ¹	20
LR3	8	200 ¹	20
NC1, NC2, NC3, C1, C2	4	200 ¹	20
MR, HR, SM, SM-SLU, SM-D, SM-NR	20	200 ¹	20
MPC-YT	NA	30 ¹	20

Footnotes to Table B for 25.05.800:

~~((SAOD = Station Area Overlay District))~~

NA = not applicable

Urban centers ~~((and urban villages))~~ are identified in the Seattle Comprehensive Plan

¹ New nonresidential development that is not part of a mixed-use development and that does not exceed 12,000 square feet in size is categorically exempt from the State Environmental Policy Act (SEPA). Pursuant to RCW 43.21C.229, new nonresidential development that does not exceed 30,000 square feet and that is part of a mixed-use development located in an urban center, ~~or in an urban village that contains a SAOD~~, is categorically exempt from SEPA, unless the Department has determined that employment growth within the urban center ~~or urban village~~ has exceeded exemption limits for the center ~~or village~~ that the Department has established pursuant to subsection 25.05.800.A.2.i.

1 d. The construction of a parking lot designed for 40 or fewer automobiles,
2 as well as the addition of spaces to existing lots up to a total of 40 spaces;

3 e. Any fill or excavation of 500 cubic yards or less throughout the total
4 lifetime of the fill or excavation; and any excavation, fill, or grading necessary for an exempt
5 project in subsections 25.05.800.A.2.a, 25.05.800.A.2.b, 25.05.800.A.2.c, or 25.05.800.A.2.d
6 shall be exempt ((-)) ;

7 f. Mixed-use construction, including but not limited to projects combining
8 residential and commercial uses, is exempt if each use, if considered separately, is exempt under
9 the criteria of subsections 25.05.800.A.2.a through 25.05.800.A.2.d, unless the uses in
10 combination may have a probable significant adverse environmental impact in the judgment of
11 an agency with jurisdiction (see subsection 25.05.305.A.2.b);

12 g. In zones not specifically identified in this subsection 25.05.800.A, the
13 standards for the most similar zone addressed by this subsection 25.05.800.A apply ((-)) ;

14 h. For the purposes of this subsection 25.05.800.A, “mixed-use
15 development” means development having two or more principal uses, one of which is a
16 residential use comprising 50 percent or more of the gross floor area;

1 i. To implement the requirements of Table A for 25.05.800 and Table B
2 for 25.05.800, the Director shall establish implementation guidance (~~(exemption limits)~~) by rule
3 for how growth is measured against exemption limits and how changes to thresholds will occur if
4 exemption limits are reached. (~~(each urban center and each urban village containing a SAOD to~~
5 ~~assure that proposed development that could cause growth targets in Appendix A of the~~
6 ~~Comprehensive Plan's Urban Village Element to be exceeded is subject to SEPA review.)~~) The
7 exemption limits shall (~~(contain)~~) consist of the growth estimates established in the
8 Comprehensive Plan for a given area, minus a "cushion" of ten percent to assure that
9 development does not exceed growth (~~(targets)~~) estimates without SEPA review (~~(;)~~) ; (~~(provided~~
10 ~~that the cushion shall be at least 10 percent of the residential or employment growth targets~~
11 ~~established in the Comprehensive Plan;)~~) and

12 j. The Director shall monitor residential and employment growth and
13 periodically publish (~~(quarterly)~~) a determination of growth for each urban center (~~(; and urban~~
14 ~~village containing an SAOD)~~). Residential growth shall include, but need not be limited to, net
15 new units that have been built and net new units in projects that have received a building permit
16 but have not received a certificate of occupancy. (~~(If)~~) Per implementation guidance established
17 by rule, if the Director determines that exemption limits have been reached for an urban center (~~(;~~
18 ~~or for an urban village containing an SAOD,)~~) subsequent development (~~(is not categorically~~
19 ~~exempt from SEPA review pursuant to RCW 43.21C.229)~~) will be subject to the lower
20 thresholds as set forth in Table A for 25.05.800 and Table B for 25.05.800.

21 * * *

1 Section 4. The City Council requests that the Department of Construction and Inspections
2 (SDCI) work with other city departments to produce a report to Council no later than December
3 31, 2017 that provides a comprehensive assessment of how the SEPA review process changes
4 the outcomes of development in Seattle. The report should include:

5 a) Information on how SEPA review functions in different neighborhoods, including urban
6 centers, urban villages, and other areas or corridors outside of urban villages, and in
7 different zones, including Residential Small Lot, Lowrise, Midrise, Neighborhood
8 Commercial, and Seattle Mixed;

9 b) Application of the Racial Equity Toolkit to analyze, among other things, whether the
10 infill exemption contributes to displacement, how it effects the provision of affordable
11 housing in areas where the infill exemption applies, and what impacts there are to the
12 community in contributing to discretionary decision-making by SDCI on development
13 projects;

14 c) An analysis of projects that have undergone SEPA review to determine the extent to
15 which elements of the environment are protected by other regulations and review
16 processes, and the scale below which it is uncommon for the SEPA review process to
17 result in permit conditions on the development approval;

18 d) The number of SEPA appeals of development projects, including location of projects,
19 outcome of appeal decisions, duration of process, and financial impact on City resources
20 to litigate and on cost of housing production;

21 e) A discussion of environmental benefits achieved through SEPA mitigation conditions;
22 and

1 f) Recommendations on SEPA reforms to reduce redundancies and unnecessary costs to
2 housing production and to harmonize Seattle’s SEPA Ordinance and the procedural
3 requirements of Seattle Municipal Code Chapter 23.76 with Department of Ecology
4 guidance on SEPA implementation.

5 Section 45. This ordinance shall take effect and be in force 30 days after its approval by
6 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
7 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

8 Passed by the City Council the _____ day of _____, 2016,
9 and signed by me in open session in authentication of its passage this _____ day of
10 _____, 2016.

11 _____
12 President _____ of the City Council

13 Approved by me this _____ day of _____, 2016.

14 _____
15 Edward B. Murray, Mayor

16 Filed by me this _____ day of _____, 2016.

17 _____
18 Monica Martinez Simmons, City Clerk

1 (Seal)

Substitute