

June 13, 2017

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Ketil Freeman, Council Central Staff
Subject: Council Bill 118985 – Land Use Code Interpretations

On June 20, the Planning, Land Use and Zoning (PLUZ) Committee will have an initial briefing and discussion of Council Bill (CB) 118985. CB 118985 amends sections of the Land Use Code, Title 23 of the Seattle Municipal Code (SMC), that govern procedures for Land Use Code interpretations. Interpretations are formal decisions by the Seattle Department of Construction and Inspections (SDCI) about the “meaning, application, or intent” of development regulations in the Land Use Code or regulations for Environmentally Critical Areas, Seattle Municipal Code Chapter 25.09.

This memorandum (1) provides some legislative history related to the bill, (2) describes what the bill would do, and (3) sets out next steps for PLUZ Committee deliberations.

Legislative History

In November 2016, the Council approved Statement of Legislative Intent (SLI) 142-2-A-1, which requested that SDCI review the process for requesting and issuing legal building site letters and code interpretations and update public information about the process.

Pursuant to SLI 142-2-A-1, in March 2017 SDCI issued an updated Tip on interpretations, which is attached. Tips are plain-language explanations for the public and regulated community of regulations and regulatory procedures administered by SDCI.

SDCI has also begun to evaluate options for changing the interpretation process. Options currently under evaluation include: (1) establishing that an interpretation is not a necessary step for exhausting administrative remedies; (2) decoupling interpretations from any related Master Use Permit decision; (3) making all interpretations Type II decisions, meaning that all interpretations would be appealable to the Hearing Examiner; and (4) limiting interpretations to a single subject. CB 118985 would implement the first option listed above.

What CB 118985 Would Do

The proposed legislation would amend SMC Chapters 23.76 and 23.88 to remove language providing that Land Use Code interpretations are administrative remedies that must be exhausted prior to seeking judicial review.

SMC Section 23.88.020 authorizes the SDCI Director to make interpretations. Interpretations may be sought by any person or they may be initiated by the SDCI Director. Interpretations may be requested in the context of review of a proposed project or separately. Interpretations may be appealed to the Hearing Examiner. Interpretations cost requesters \$3,150, which covers the first 10 hours of review by SDCI. SDCI charges \$315 / hour for any additional review.

SMC Section 23.88.020 provides that for issues subject to interpretation, interpretations are an administrative remedy that must be exhausted for those issues to be subject to judicial review. That provision—and the SDCI fees an interpretation entails— may have a chilling effect on those seeking redress through the Hearing Examiner and courts. Approval of the bill would mean that failure to seek an interpretation would not be an affirmative defense for the City in judicial proceedings.

CB 118985 contains an applicability section, which is intended to allow someone who has requested an interpretation to withdraw that request if SDCI has not issued the interpretation on or before the legislation's effective date.

Next Steps

The PLUZ Committee will hold a public hearing on the legislation at its regularly scheduled meeting on July 18. PLUZ will discuss and make a recommendation on the legislation in late July or August.

Attachments:

1. SDCI Tip #256 – Land Use Interpretations

cc: Kirstan Arestad, Central Staff Director

Seattle Permits

— part of a multi-departmental City of Seattle series on getting a permit

Land Use Code Interpretations

March 28, 2017

What is an interpretation?

A Land Use Code interpretation is SDCI's formal decision about the meaning, application, or intent of a provision in Seattle's Land Use Code (Title 23 of the Seattle Municipal Code (SMC)) or regulations for environmentally critical areas (SMC Chapter 25.09). Under some circumstances, as described below, you may appeal an interpretation to the Seattle Hearing Examiner. SDCI also offers "opinion letters." Opinion letters provide a project applicant or interested party advance guidance about how the code would apply to a particular proposal on a particular lot. You cannot appeal opinion letters.

What issues does a Land Use Code interpretation address?

Interpretations address development regulations in the Land Use Code or the environmentally critical areas regulations. They do not address procedural provisions, or statements of policy in the code.

Interpretations are site-specific. They do not address how a standard applies in general, but rather how it applies to a specific site or development proposal.

Interpretations fall into the following categories; each with unique timing, notice, and appeal requirements according to SMC 23.88.020.

- Interpretations that do not relate to any pending project application
- Interpretations relating to a pending project application that will not be subject to appeal before the Hearing Examiner (Type I decisions)
- Interpretations relating to a pending project application that has a discretionary component that will

be subject to appeal before the Hearing Examiner (Type II decisions)

How does the interpretation process relate to an appeal of a Type II project decision?

Your appeal of a Type II decision, such as a variance, conditional use, or SEPA (environmental) review, may challenge only how we applied the criteria for that decision, as provided in the code. This means that you cannot raise questions about how the code was applied, beyond the discretionary criteria, as a part of your appeal of the discretionary decision. In such a case, to challenge the way we applied a code standard, other than a criterion specifically listed for the discretionary decision, you need to request a Land Use Code interpretation in addition to appealing our discretionary decision. For example, compliance with development standards such as height limits or setback requirements generally is not a criterion for discretionary reviews, so questions about whether a proposed project meets standards, in general, cannot be considered by the Hearing Examiner as part of an appeal of a project decision, unless a code interpretation is requested regarding particular standards as they apply to the proposed development. An interpretation may be requested during the public comment period for a Type II project, or as part of an appeal of a Type II project.

Our final land use decisions are subject to court appeals. However, if you don't request a Land Use Code interpretation about the meaning and application of a particular code provision, or don't appeal that interpretation to the Seattle Hearing Examiner, you may not be able to raise that issue in a court appeal.

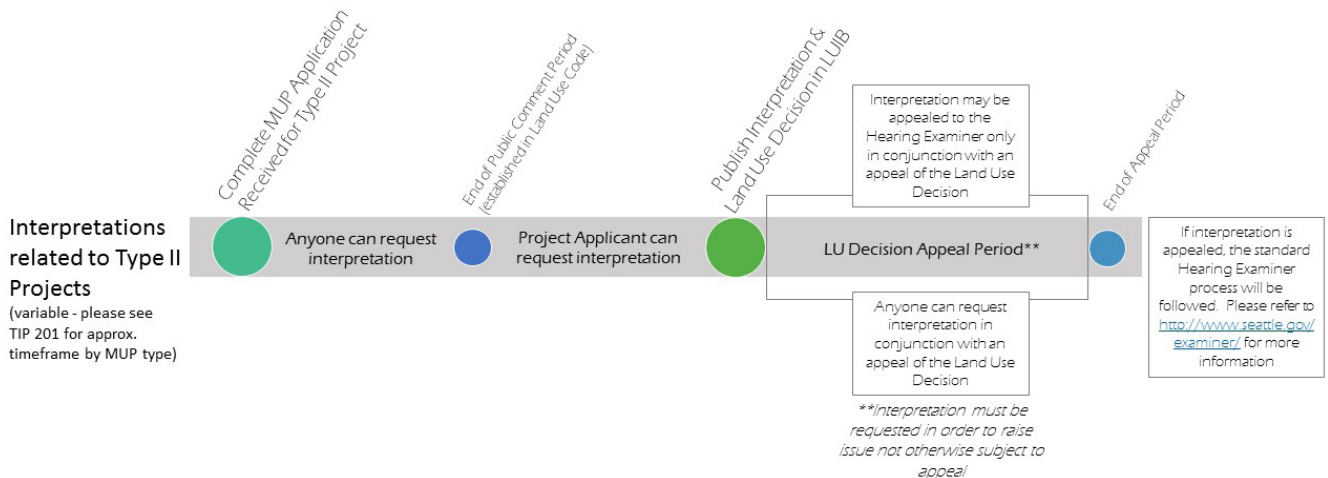
How does the timing of an interpretation relate to the timing of project review?

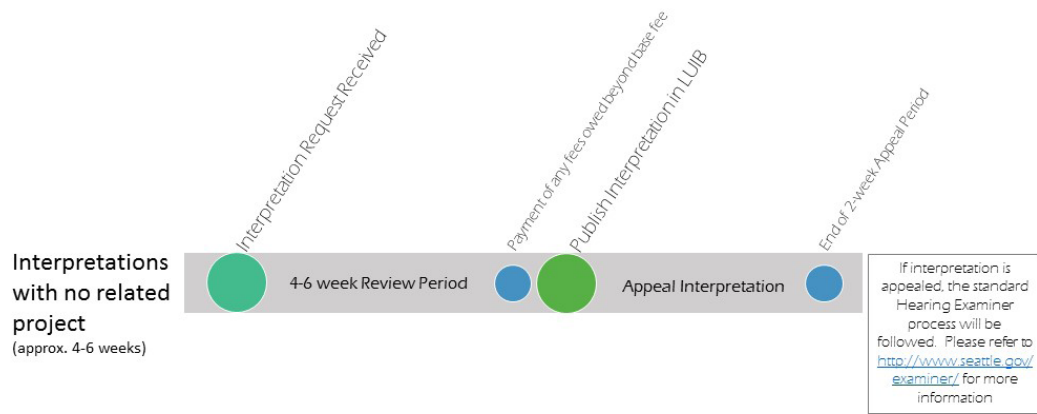
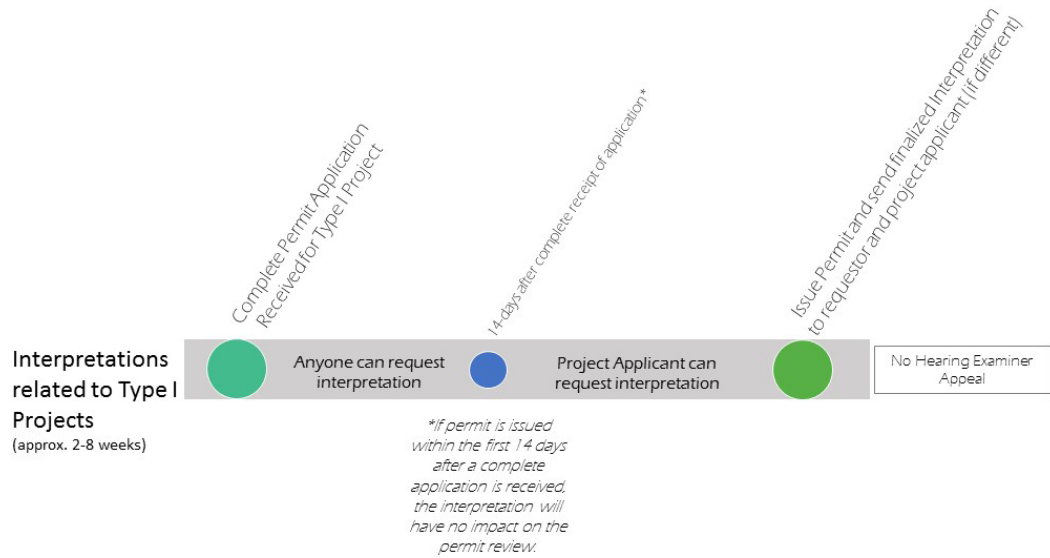
The City is required to meet specific turn-around times for project reviews according to State law. The state law does not provide exceptions to these turn-around times in cases where a project interpretation is requested. Our procedures for interpretations, including when they may



be requested and whether they may be appealed to the Hearing Examiner, are tailored to ensure that interpretation requests do not prevent us from meeting state-imposed review deadlines for related projects. As a result, interpretations relating to different types of project decisions have different procedural provisions as shown in the table and time lines below.

Type of Related Project	Timing of an Interpretation Request
No related project	Interpretation may be requested at any time, by any person
Type I: Project with no discretionary component; project not subject to appeal to the Hearing Examiner	<p>Any person may request an interpretation within 14 days of when SDCI deems the project application is complete. However, if SDCI has already issued the permit for that project, or is ready to issue the permit when you submit the interpretation request, the interpretation won't affect the project.</p> <p>The project applicant may request an interpretation more than 14 days after SDCI deems the project application complete. The applicant must agree to waive the time limits that would otherwise apply to the project review.</p>
Type II: Project with a discretionary component, such as SEPA or conditional use; project is subject to appeal to the Hearing Examiner	<p>Any person may request an interpretation during the project's public comment period.</p> <p>The project applicant may request an interpretation after the public comment period has ended. The applicant must agree to waive the time limits that would otherwise apply to the project review.</p> <p>In addition, your appeal of a Type II project decision may include a request for interpretation related to the project. However, you may not request an interpretation regarding how a proposed use has been categorized at this stage.</p>





When can an interpretation be appealed to the Seattle Hearing Examiner?

Anybody can appeal an interpretation that is unrelated to a pending project application to the Hearing Examiner. You may not appeal an interpretation to the Hearing Examiner if it is related to a Type I project, i.e. a project that has no other discretionary, appealable component, and requires no public notice. You may appeal an interpretation that is related to a Type II project, such as a project requiring a variance, conditional use approval, or SEPA review, to the Hearing Examiner only if you also appeal the related project decision. The deadline for filing an appeal is 5:00 p.m. on the date 14 days after SDCI publishes the interpretation. Below is a summary of when interpretations can be appealed.

Type of Related Project	Land Use Code Interpretation Appealable to Hearing Examiner?
No related project	Yes
Type I: Project with no discretionary component; project not subject to appeal to the Hearing Examiner	No
Type II: Project with a discretionary component, such as SEPA or conditional use, subject to appeal to the Hearing Examiner	Yes, but only in conjunction with an appeal of the related Type II project decision

What public notice is provided when an interpretation is requested or issued?

No public notice is provided when an interpretation is requested. If the interpretation request relates to a pending project application, and is submitted by a party other than the project applicant, then notice is provided to the project applicant.

When an interpretation is published, notice is provided to the person requesting the interpretation, and if the interpretation relates to a pending project application, notice is provided to the project applicant. If the interpretation was requested as a part of an appeal of a project decision, notice is provided to the parties to that appeal. If an interpretation is otherwise subject to appeal, notice of the interpretation is published in the Department's Land Use Information Bulletin.

Type of Related Project	Notice of Interpretation Request?	Notice of Issued Interpretation?
No related project	None	SDCI notifies the person requesting the interpretation and publishes it in SDCI's Land Use Information Bulletin
Type I: Project with no discretionary component; project not subject to appeal to the Hearing Examiner	Notice provided to project applicant only	SDCI only notifies the person requesting the interpretation and the project applicant
Type II: Project with a discretionary component, such as SEPA or conditional use, subject to appeal to the Hearing Examiner, if interpretation is NOT requested in conjunction with an appeal of the project decision	Notice provided to project applicant only	SDCI notifies the person requesting the interpretation and the project applicant, and publishes it in SDCI's Land Use Information Bulletin
Type II: Project with a discretionary component subject to appeal to the Hearing Examiner, where the interpretation is requested in conjunction with such an appeal	Notice provided to parties to the appeal including project applicant	SDCI notifies parties to the appeal

How long does it take SDCI to prepare a Land Use Code interpretation?

If the interpretation is related to an appealable project, SDCI publishes the interpretation at the same time as the project decision. If you're requesting the interpretation in conjunction with an appeal of a project decision, we typically negotiate the timing of the interpretation as a part of that process. If your interpretation request does not relate to a pending project application, or relates to an application for a Type I project that is not subject to appeal, we can typically publish an interpretation within six weeks after we receive the request. However, times may vary depending on the complexity of the issues.

How much does an interpretation cost?

The initial fee for an interpretation is 10 times the hourly rate set for land use review under the fee ordinance. Under the 2017 fee ordinance, that hourly rate is \$315 and the initial fee required for an interpretation is \$3,150. If you appeal an interpretation to the Hearing Examiner, we will also bill for the time we spend defending our

interpretation. We may require separate interpretations, with separate initial fees, in cases where multiple unrelated questions are raised. The amount of staff time required to prepare an interpretation varies depending on the complexity of the issues. In most cases, we do not need additional payments beyond the initial fee. (See the Fee Subtitle at www.seattle.gov/dpd/codes-rules/codes/fees for more information.)

How do I request an interpretation?

1. Complete our Miscellaneous SDCI Services Request form (www.seattle.gov/dpd/permits/forms).
2. Complete our Statement of Financial Responsibility form, committing to pay for any fees that may be required in excess of the base fee (www.seattle.gov/dpd/permits/forms).
3. Pay the initial fee when you submit your request.

4. Send us forms and payment by:

- Email:
Public Resource Center
prc@seattle.gov
We will notify you when you can pay the fee
- In Person:
Public Resources Center
20th Floor of the Seattle Municipal Tower
700 Fifth Avenue
M, W, F: 8:00 a.m. – 4:00 p.m.
- Mail:
SDCI Public Resource Center
700 Fifth Avenue, Suite 2000
P.O Box 34019
Seattle, WA 98124-4019

Your request should clearly identify the related project, the code provision subject to interpretation, and the specific question you want SDCI to address. You should submit the form and payment according to the instructions on the form. Note: If you are requesting an interpretation in conjunction with an appeal of a project decision, the interpretation request must be submitted before the end of the appeal period for that related decision. You can submit your interpretation request at the Applicant Services Center on the 20th floor of the Seattle Municipal Tower, 700 5th Avenue. The Applicant Services Center closes at 4:00 p.m. each day. If you need to submit the request after 4:00 p.m., you may submit it at the reception desk on the 19th floor of the Seattle Municipal Tower.

How can I get more information?

For additional information, please refer to the Land Use Code, Section SMC 23.88.020

If you have additional questions about the Land Use Code interpretation process after reviewing this Tip, please visit the land use coaching counter in the Applicant Services Center. The ASC is located on the 20th floor of the Seattle Municipal Tower, 700 5th Ave. Our hours are:

- Monday, Wednesday, Friday: 8:00 a.m. – 4:00 p.m.
- Tuesday, Thursday: 10:30 a.m. -4:00 p.m.

Access to Information

Links to electronic versions of SDCI **Tips, codes, and forms** are available on the "Tools & Resources" page of our website at www.seattle.gov/sdci. Paper copies of these documents are available from our Public Resource Center, located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave. in downtown Seattle, (206) 684-8467.