

CITY OF SEATTLE
ORDINANCE 126843
COUNCIL BILL 120587

AN ORDINANCE relating to environmental review; amending Section 25.05.800 of the Seattle Municipal Code to update categorical exemptions for “infill” development consistent with changes to the State Environmental Policy Act.

WHEREAS, in 2003, regulations governing the State Environmental Policy Act (SEPA) categorical exemptions for infill development was enacted by the state of Washington to encourage growth consistent with the Growth Management Act (chapter 36.70A RCW); and

WHEREAS, RCW 43.21C.229 authorizes cities planning under RCW 36.70A.040 to establish categorical exemptions from the State Environmental Policy Act (RCW 43.21C) that differ from the exemptions in RCW 43.21.C.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 2016, pursuant to the provisions of RCW 43.21C.229, The City of Seattle adopted infill development exemptions for urban centers that were higher than the categorical exemptions that the Washington State Department of Ecology (Ecology) had promulgated pursuant to RCW 43.21C.110; and

1 WHEREAS, in 2022, Ecology adopted new and higher infill development exemptions by rule
2 pursuant to RCW 43.21C.110 for urban areas, and The City of Seattle wishes to
3 recognize those limits in its SEPA regulations; and

4 WHEREAS, development in Downtown Seattle has exceeded the growth estimates adopted for
5 the Urban Center, and the current exemptions in Seattle’s regulations are unreasonably
6 low; and

7 WHEREAS, the City has the opportunity to update its regulations for Downtown Seattle to make
8 sure that development in the Downtown Urban Center does not need to undertake lengthy
9 and costly environmental review in cases where other regulations will appropriately
10 mitigate impacts of that development; NOW, THEREFORE,

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

12 Section 1. The City Council finds and declares:

13 A. Infill development categorical exemptions are authorized by the State, and have been
14 effective as a factor to encourage new development to locate within urban areas consistent with
15 the City’s Comprehensive Plan.

16 B. Environmental analysis, protection, and mitigation for impacts to elements of the
17 environment are adequately addressed through existing codes and regulations as demonstrated in
18 Attachment 1 to this ordinance.

19 C. Seattle Municipal Code subsection 25.05.800.B.7 requires that buildings that may
20 have historical significance be reviewed by the City’s Department of Neighborhoods whether or
21 not proposed development exceeds SEPA thresholds set forth elsewhere in Section 25.05.800.

22 Section 2. Section 25.05.800 of the Seattle Municipal Code, last amended by Ordinance
23 126509, is amended as follows:

1 **25.05.800 Categorical exemptions**

2 The proposed actions contained in this Section 25.05.800 are categorically exempt from
3 threshold determination and environmental impact statement requirements, subject to the rules
4 and limitations on categorical exemptions contained in Section 25.05.305.

5 A. Minor new construction; flexible thresholds

6 1. The exemptions in this subsection 25.05.800.A apply to all licenses required to
7 undertake the construction in question. To be exempt under this Section 25.05.800, the project
8 shall be equal to or smaller than the exempt level. For a specific proposal, the exempt level in
9 subsection 25.05.800.A.2 shall control. If the proposal is located in more than one city or county,
10 the lower of the agencies' adopted levels shall control, regardless of which agency is the lead
11 agency. The exemptions in this subsection 25.05.800.A apply except when the project:

- 12 a. Is undertaken wholly or partly on lands covered by water;
- 13 b. Requires a license governing discharges to water that is not exempt
14 under RCW 43.21C.0383;
- 15 c. Requires a license governing emissions to air that is not exempt under
16 RCW 43.21C.0381 or WAC 197-11-800(7) or 197-11-800(8); or
- 17 d. Requires a land use decision that is not exempt under subsection

18 25.05.800.F.

19 2. The following types of construction are exempt, except when undertaken
20 wholly or partly on lands covered by water:

- 21 a. The construction or location of residential or mixed-use development
22 containing no more than the number of dwelling units identified in Table A for 25.05.800
23 ((below)):

Table A for 25.05.800 Exemptions for residential uses			
Zone	Number of exempt dwelling units		
	Outside urban centers and urban villages	Within urban centers and urban villages where growth estimates have not been exceeded	Within urban centers and urban villages where growth estimates have been exceeded
NR and RSL	4	4	4
LR1	4	200 ¹	20
LR2	6	200 ¹	20
LR3	8	200 ¹	20
NC1, NC2, NC3, C1, and C2	4	200 ¹	20
MR, HR, and Seattle Mixed zones	20	200 ¹	20
MPC-YT	NA	30 ¹	20
Downtown zones	NA	250 ¹	((20)) 200
Industrial zones	4	4	4

Footnotes to Table A for 25.05.800
 NA = not applicable
 Urban centers and urban villages are identified in the Seattle Comprehensive Plan
¹ Pursuant to RCW 43.21C.229, new residential development or the residential portion of new mixed-use development located in an urban center or in an urban village is categorically exempt from the State Environmental Policy Act, unless the Department has determined that residential growth within the urban center or village has exceeded exemption limits for the center that the Department has established pursuant to subsection 25.05.800.A.2.i.

- 1
- 2 b. The construction of a barn, loafing shed, farm equipment storage
- 3 building, produce storage or packing structure, or similar agricultural structure, covering 10,000
- 4 square feet or less, and to be used only by the property owner or the property owner's agent in
- 5 the conduct of farming the property. This exemption does not apply to feed lots;
- 6 c. The construction of office, school, commercial, recreational, service, or
- 7 storage buildings, containing no more than the gross floor area listed in Table B for 25.05.800
- 8 ~~((below))~~:

Table B for 25.05.800

Exemptions for non-residential uses			
Zone	Exempt area of use (square feet of gross floor area)		
	Outside urban centers and hub urban villages	Within urban centers and hub urban villages where growth estimates have not been exceeded	Within urban centers and hub urban villages where growth estimates have been exceeded
NR, RSL, and LR1	4,000	4,000	4,000
LR2 and LR3	4,000	12,000 ¹ or 30,000 ²	12,000
MR, HR, NC1, NC2, and NC3	4,000	12,000 ¹ or 30,000 ²	12,000
C1, C2, and Seattle Mixed zones	12,000	12,000 ¹ or 30,000 ²	12,000
Industrial zones	12,000	12,000	12,000
MPC-YT	NA	12,000	12,000
Downtown zones	NA	((12,000¹ or) 30,000(²))	((12,000)) <u>30,000</u>

Footnotes to Table B for 25.05.800

NA = not applicable

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

¹ New non-residential 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).

² Pursuant to RCW 43.21C.229, new non-residential 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 a hub urban village is categorically exempt from SEPA, unless the Department has determined that employment growth within the urban center or village has exceeded exemption limits for the center that the Department has established pursuant to subsection 25.05.800.A.2.i.

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

4 e. Any fill or excavation of 500 cubic yards or less throughout the total
 5 lifetime of the fill or excavation; and any excavation, fill, or grading necessary for an exempt
 6 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
 7 shall be exempt;

8 f. Mixed-use construction, including but not limited to projects combining
 9 residential and commercial uses, is exempt if each use, if considered separately, is exempt under

1 the criteria of subsections 25.05.800.A.2.a through 25.05.800.A.2.d, unless the uses in
2 combination may have a probable significant adverse environmental impact in the judgment of
3 an agency with jurisdiction (see subsection 25.05.305.A.2.b);

4 g. In zones not specifically identified in this subsection 25.05.800.A, the
5 standards for the most similar zone addressed by this subsection 25.05.800.A apply;

6 h. For the purposes of this subsection 25.05.800.A, "mixed-use
7 development" means development having two or more principal uses, one of which is a
8 residential use comprising 50 percent or more of the gross floor area;

9 i. To implement the requirements of Table A for 25.05.800 and Table B
10 for 25.05.800, the Director shall establish implementation guidance by rule for how growth is
11 measured against exemption limits and how changes to thresholds will occur if exemption limits
12 are reached. The exemption limits shall consist of the growth estimates established in the
13 Comprehensive Plan for a given area, minus a "cushion" of ten percent to assure that
14 development does not exceed growth estimates without SEPA review; and

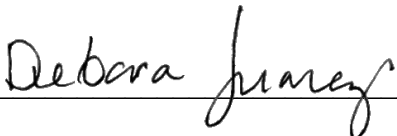
15 j. The Director shall monitor residential and employment growth and
16 periodically publish a determination of growth for each urban center and urban village.

17 Residential growth shall include, but need not be limited to, net new units that have been built
18 and net new units in projects that have received a building permit but have not received a
19 certificate of occupancy. Per implementation guidance established by rule, if the Director
20 determines that exemption limits have been reached for an urban center or urban village
21 subsequent development will be subject to the lower thresholds as set forth in Table A for
22 25.05.800 and Table B for 25.05.800.

23 * * *

1 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.


4 Passed by the City Council the 20th day of June, 2023,
5 and signed by me in open session in authentication of its passage this 20th day of
6 June, 2023.

7 
8 _____
President _____ of the City Council

9 Approved / returned unsigned / vetoed this 29th day of June, 2023.

10 
11 _____
Bruce A. Harrell, Mayor

12 Filed by me this 29th day of June, 2023.

13 
14 _____
Scheereen Dedman, City Clerk

15 (Seal)

16 Attachments:
17 Attachment 1 – Summary of environmental protections in other codes and rules for each of
18 SEPA’s elements of the environment

Summary of environmental protections in other codes and rules for each of SEPA’s elements of the environment

The bill adjusts State Environmental Policy Act (SEPA) thresholds to allow projects in Downtown Seattle to be categorically exempt from review under SEPA if they contain less than 200 residential units¹ or less than 30,000 square feet of non-residential space.² Projects of this size that include at least 40 parking spaces or are over water would still be subject to SEPA review.

Of the residential projects that applied for Master Use Permits in the last ten years in Downtown Seattle which proposed between 100 and 250 units, only one provided less than 40 parking spaces. All others were subject to SEPA. The one residential project with more than 100 units that did not include parking participated in the “[Living Building Challenge](#)” pursuant to Seattle Municipal Code (SMC) [23.40.060](#) and will exceed the City’s energy, wastewater, and other environmental requirements. Some other residential projects with fewer than 100 units proposed sufficient non-residential space to require environmental review under SEPA. The smallest projects did not exceed the threshold and therefore were not subject to SEPA. The only SEPA conditions applied to residential or mixed-use projects were related to construction impacts. The City did not impose any long-term SEPA conditions.

There were no solely non-residential projects in Downtown Seattle that included between 12,000 and 30,000 square feet of non-residential space over the last ten years. Looking at the projects with less than 100,000 square feet, most had no conditioning or mitigation under SEPA. The three that were conditioned only had conditions related to short-term construction impacts.

The following table shows how the elements of the environment that are analyzed under SEPA are addressed by other existing City, State and Federal codes and rules.

¹ The current threshold is 20 units, a threshold of 250 units would apply if Downtown Seattle had not exceeded the amount of housing growth the Comprehensive Plan estimated to occur Downtown between 2015 and 2035.

² The current threshold is 12,000 square feet of non-residential space. A threshold of 30,000 square feet would apply if Downtown Seattle had not exceeded the amount of job growth the Comprehensive Plan estimated to occur Downtown between 2015 and 2035.

Table 1

SEPA Authority by Element of the Environment (from 25.05.444)	How Addressed by Other Codes/Rules*
Air Quality	<ul style="list-style-type: none"> • Regional air quality oversight addresses policies and rules on air quality attainment status on a neighborhood or sub-area basis. Additional authority provided by Puget Sound Clean Air Agency (PSCAA), Environmental Protection Agency, Clean Air Act, and the state Department of Ecology. The energy code prohibits the use of natural gas heating in new buildings taller than three stories.
Construction Impacts - Air Quality	<ul style="list-style-type: none"> • Building code contains provisions for the removal of hazardous and combustible materials (Section 3303). • PSCAA rules and best practices apply to mitigate impacts from fugitive dust and other potentially hazardous demolition waste materials, such as lead. • PSCAA permit required for asbestos removal and includes survey and mitigation measures for dust control techniques and use of toxic air control technologies.
Construction Impacts – Noise	<ul style="list-style-type: none"> • Noise Code sets a limit of 7 PM on noisy work in most zones in or near residential areas (25.08.425), includes LR, MR, HR, NC, RC zones. • Noise Code includes daytime/nighttime noise level limits (25.08.410-425) • Major Public Project Construction Noise Variance (25.08.655)
Construction Impacts – Parking/Traffic/Streets/ Pedestrian Safety	<ul style="list-style-type: none"> • Street Use and Traffic Codes (Titles 15 & 11) contain authority to regulate: <ul style="list-style-type: none"> ○ Pedestrian safety measures, ○ Street and sidewalk closures, ○ Truck traffic timing and haul routes, and ○ Any planned use of the street for construction purposes (material, equipment storage). • Land Use Code (23.42.044) includes authority to manage construction-related parking.
Earth/Environmentally Critical Areas /Water Quality/ Drainage/ Plants and Animals	<ul style="list-style-type: none"> • Environmentally Critical Area Code includes mitigation for landslide hazards, steep slopes, unstable soils, wetlands, flood prone and fish/wildlife habitat areas (25.09). Consistent with RCW

SEPA Authority by Element of the Environment (from 25.05.444)	How Addressed by Other Codes/Rules*
	<p>Ch. 36.70A and WAC Ch. 365-190 guidance (also ref: Wash. Dept. of Commerce 2018 Critical Areas Handbook).</p> <ul style="list-style-type: none"> • Seattle’s Building and Construction codes include provisions that regulate development in seismic hazard areas. • In addition, the Stormwater, Grading & Drainage ordinances and Shoreline regulations (Chapter 23.60A) include environmental & water quality protections, to meet applicable State guidance that includes: the 2019 Stormwater Management Manual for Western Washington, and State Shoreline Master Program guidelines (WAC 173-26). Development over water is not categorically exempt, and SEPA will continue to apply to development in the Shoreline district.
Energy	<ul style="list-style-type: none"> • Energy Codes required by the City and the State mandate high levels of energy efficiency. • City Light utility system improvements, if any, are required to provide service to new development. This can include local improvements and at distances from sites if the needs warrant such improvements. • Various City policies, programs and rules address energy conservation and efficient building designs (LEED; Energy Star).
Environmental Health	<ul style="list-style-type: none"> • Federal, state and regional regulations are the primary means of mitigating risks associated with hazardous and toxic materials. • Regulations for telecommunications facilities in the Land Use Code also apply within this category.
<p>Housing</p> <p><i>SEPA authority is narrowly defined: “Compliance with legally valid City ordinance provisions relating to housing relocation, demolition and conversion shall constitute compliance with this [SEPA] housing policy.” SMC 25.05.675.1.2.c.</i></p>	<ul style="list-style-type: none"> • Land Use, housing and building maintenance, and other codes include provisions to encourage housing preservation, especially for low-income persons; as well as tenant relocation assistance, and incentives for affordable housing. • Low-income housing preservation is a high-priority for City public projects and programs, per SEPA policy (25.05.675.1.1.b.4). • “Mandatory Housing Affordability” affordable housing impact mitigation programs for commercial and residential development (Chapters 23.58B and 23.58C).

SEPA Authority by Element of the Environment (from 25.05.444)	How Addressed by Other Codes/Rules*
Historic Preservation/ Archaeological Sites	<ul style="list-style-type: none"> • Landmarks Preservation Ordinance remains in place for landmark preservation (Chapter 25.12) • Existing policy and practices are in place for SDCI to refer permit applicants to the City Historic Preservation Officer (CHPO) for potential survey and landmark nomination. These include requirements under Table A for Footnote (1) for 25.05.800.B.6. and 25.05.800.B.7 that require review by the CHPO when additions, modifications, demolition or replacement of structures in Downtown Seattle with more than 20 units or more than 4,000 square feet of non-residential space are proposed. • SDCI Director’s Rule 2-98: Clarification of State Environmental Policy Act (SEPA) Historic Preservation Policy for potential archaeologically significant sites and requirements for archeological assessments • Federal and state regulations address protection of cultural/archaeological resources (including RCW Chapters 27.34, 27.53, 27.44, 79.01 and 79.90 RCW; and WAC Chapter 25.48).
Land Use/Height, Bulk & Scale/Shadows on Open Spaces	<ul style="list-style-type: none"> • Design Review process applies at various thresholds and provides the venue for addressing these topics (Chapter 23.41). With recent adjustments, Design Review now applies to a greater range of locations and developments, which may depend on surrounding property context. In the densest Downtown zones (DOC1, DOC2 and DMC) design review is required for buildings with at least 50,000 square feet, in other Downtown zones design review is required for buildings with at least 20,000 square feet. This is equivalent to a 40 unit or smaller building in the lower-density Downtown zones or 100 unit or smaller building in the higher-density Downtown zones. • Land Use Code development standards address the scale of development and other aspects related to compatibility.
Light and Glare	<ul style="list-style-type: none"> • Land Use Code screening and landscaping, lighting directional/shielding standards provide mitigation. • Design Review can address this topic as well.
Noise	<ul style="list-style-type: none"> • Noise Control Code provides for daytime and nighttime noise limits, and authority to mitigate impacts related to exceeding noise level limits and specific noise generating activities.

SEPA Authority by Element of the Environment (from 25.05.444)	How Addressed by Other Codes/Rules*
<p>Public Services and Facilities/Utilities</p>	<ul style="list-style-type: none"> • Authority for requiring utility improvements and using building features that reduce demand for utilities is identified in rules, codes and policies and are applied during permitting reviews. These include construction codes including the Seattle Building Code, Seattle Electrical Code, Seattle Energy Code, and Seattle Fuel Gas Code (see 22.101.010); the Seattle Plumbing Code (Chapter 22.502), and the Stormwater Code (Chapter 22.800) and rules promulgated by the Seattle Department of Construction and Inspections, Seattle Public Utilities, and Seattle City light pursuant to those codes. This includes water, sewer, storm drain & electrical system improvements. • Permit applications are referred to other departments for input, if facilities or services might be affected, such as police or fire protection. • Public service and utility impact analyses to address growth impacts are addressed through area planning initiatives in conjunction with supporting area-wide SEPA reviews, as is done for subarea rezones.
<p>Public View Protection</p> <p><i>Applies to public views from designated public viewpoints, parks, scenic routes and view corridors to features such as mountains, skyline & water. Does not apply to views from private property.</i></p>	<ul style="list-style-type: none"> • Design Review can address individual development view impact consideration and mitigation. • View considerations, such as along specific streets, are commonly addressed during area planning and rezoning efforts. Commonly used approaches include height limits and upper-level setbacks incorporated into new zoning. In Downtown Seattle setbacks are required to preserve key view corridors.
<p>Traffic and Transportation</p>	<ul style="list-style-type: none"> • Land Use Code requires transportation study & mitigation (Chapter 23.52) for projects in Downtown Seattle with more than 81 residential units that are no longer subject to SEPA. • Per Section 23.52.004 citywide level-of-service standards, new development of certain size in certain locations must include action to help achieve single-occupant-vehicle reduction target, by geographic sector. • Street use permitting (15.04, 11.16) & Right of Way Improvements Manual include mitigation authority for: access point control, street/ intersection configuration, bike parking and signage.

SEPA Authority by Element of the Environment (from 25.05.444)	How Addressed by Other Codes/Rules*
	<ul style="list-style-type: none"> • Projects with 40 parking spaces or more are required to be analyzed under SEPA.

*All citations are Seattle Municipal Code, unless indicated. RCW = Revised Code of Washington. WAC = Washington Administrative Code.