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City Council
July 27, 2026
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Amendment B Version #1 to CB 121215 LEG SEPA Appeals ORD

Sponsor: Councilmember Saka

Retain SEPA Hearing Examiner appeals, but prioritize them and shorten the timeline for considering appeals

Effect: This amendment would amend Council Bill (CB) 121215 to retain opportunities for appeals of Determinations of Non-significance (DNS) and Environmental Impact Statements (EIS). It would also (1) require that the Seattle Hearing Examiner expedite review of SEPA appeals for actions that include housing-related Comprehensive Plan amendments or development regulations and (2) shorten the amount of time that the Hearing Examiner can consider an appeal from 120 days to 90 days. Over the last five years, the Hearing Examiner has considered an average of 924 cases, the vast majority of which involve citation enforcement actions. Of those actions, SEPA-only appeals have averaged four a year.

The City's SEPA regulations currently states that all appeals "associated with a Council land use decision," the Hearing Examiner should publish a determination on the merits of the appeal within 120 days. The Hearing Examiner is granted the ability to extend that time by 30 days, and if all parties agree the timeline can be further extended.

Most other appeals must be decided within 90 days of filing. Council land use decisions are granted more time given the general complexity of the environmental review and the volume of documents generally associated with the review. This amendment limits all appeals to 90 days.

This amendment would seek to reduce the amount of time appeals take, rather than remove the opportunity for appeal, by both prioritizing appeals at the Hearing Examiner and requiring that appeals be heard within 90 days.

According to the Hearing Examiner's annual report, SEPA appeals "are some of the most complex matters handled by the Hearing Examiner, as they often involve multiple parties, complicated facts, substantial controversy, several days for hearings and considerable time for research, review, and decision-writing." This amendment aims to prioritize these types of appeals over other types of cases that the Hearing Examiner receives.

Because a SEPA appeal often involves discovery, motions back and forth between the parties, multiple witnesses on both sides of the appeal, and other activities common to a contested case hearing, prioritizing the hearing may not significantly speed up appeals. For example, a hearing filed in May 2026 includes a six-month hearing schedule that includes at least four months of activities performed by the parties to the appeal, including motions to intervene, production of documents, filing of motions and replies, and development and rebuttal of witness and exhibit lists.

1. Amend the title of CB 121215 as follows:

An ordinance relating to Council land use decisions; amending Sections 3.02.090,

23.76.062, 25.05.070, 25.05.340, 25.05.455, 25.05.460. 25.05.502, and

25.05.680 of the Seattle Municipal Code to clarify processes for Council land use decisions.

2. Add a new Section 1 to CB 121215, and renumber subsequent sections, as follows:

Section 1. Section 3.02.090 of the Seattle Municipal Code, last amended by Ordinance 123899, is amended as follows:

3.02.090 Hearings in contested cases

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M. Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

N. The Hearing Examiner shall prioritize scheduling of contested case hearings regarding the adequacy of Environmental Impact Statements and Determinations of Non-Significance for actions, including new or amended Comprehensive Plans or new or amended development regulations, that would facilitate the development of housing over other cases.

3. Amend Sections 3 through 6 of Council Bill 121215 to remove references to subsection 25.05.680.F of the Seattle Municipal Code, as follows:

Section 3. Section 25.05.070 of the Seattle Municipal Code, last amended by Ordinance 125964, is amended as follows:

25.05.070 Limitations on actions during SEPA process

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B. In addition, certain DNS's require a 14-day period prior to agency action ((~~(subsection 25.05.340.B)~~)), and FEIS's require a seven day period prior to agency action ((~~(subsection 25.05.460.E)~~)). ~~DNS's and FEIS's that are exempt from administrative appeal to the Seattle~~

~~Hearing Examiner pursuant to subsection 25.05.680.F require a 30-day period prior to agency action.~~

Section 4. Section 25.05.340 of the Seattle Municipal Code, last amended by Ordinance 119096, is amended as follows:

* * *

B. When a DNS is issued for any of the proposals listed in subsection 25.05.340.B.1 ((~~of this section~~)), the requirements in this subsection shall be met. The requirements of this subsection do not apply to a DNS issued when the early review DNS process in Section 25.05.355 is used.

1. An agency shall not act upon a proposal for ((~~fourteen (~~))14((~~)~~)) days after the date of issuance of a DNS if the proposal involves:

a. Another agency with jurisdiction;

b. Demolition of any structure or facility not exempted by ((~~Section~~)) subsection 25.05.800.B.6 (exempt construction other than historic) or Section 25.05.880 (Emergencies);

c. Issuance of clearing or grading permits not exempted in Subchapter IX of these rules;

d. A DNS under ((~~Section~~)) subsection 25.05.350.B, ((~~Section~~)) subsection 25.05.350.C (mitigated DNS), or ((~~Section~~)) subsection 25.05.360.D (withdrawn DS); or

e. A Growth Management Act (GMA) action~~, except that, when a DNS is exempt from administrative appeal to the Seattle Hearing Examiner pursuant to~~

~~subsection 25.05.680.F, agencies shall not act on the underlying proposal for at least 30 days after issuance of the DNS~~.

2. The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction, the Department of Ecology, and affected tribes, the SEPA Public Information Center, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice under Section 25.05.510.

3. Any person, affected tribe, or agency may submit comments to the lead agency within 14 days of the date of issuance of the DNS.

4. The date of issue for the DNS is the date the DNS is sent to the Department of Ecology and agencies with jurisdiction and the SEPA Public Information Center and is made publicly available.

5. An agency with jurisdiction may assume lead agency status only within this 14-day period (Section 25.05.948).

6. The responsible official shall reconsider the DNS based on timely comments and may retain or modify the DNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS or supporting documents. When a DNS is modified, the lead agency shall send the modified DNS to agencies with jurisdiction.

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Section 5. Section 25.05.455 of the Seattle Municipal Code, last amended by Ordinance 114057, is amended as follows:

25.05.455 Issuance of DEIS

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G.

~~1.~~ Upon request, the lead agency may grant an extension of up to 15 days to the comment period. Agencies and the public must request any extension before the end of the comment period.

~~2. For an EIS that is exempt from administrative appeal to the Seattle Hearing Examiner pursuant to subsection 25.05.680.F, the lead agency shall extend the comment period for 15 days.~~

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Section 6. Section 25.05.460 of the Seattle Municipal Code, last amended by Ordinance 114057, is amended as follows:

25.05.460 Issuance of FEIS

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E. Agencies shall not act on a proposal for which an EIS has been required prior to seven days after issuance of the EIS~~, except that, for an EIS that is exempt from administrative appeal to the Seattle Hearing Examiner pursuant to subsection 25.05.680.F, agencies shall not act on the underlying proposal for at least 30 days after issuance of the EIS~~.

3. Amend Section 8 of Council Bill (CB) 121215, to amend subsection 25.05.680.A.3 and remove edits to subsection 25.05.680.F as follows:

Section 8. Section 25.05.680 of the Seattle Municipal Code, last amended by Ordinance 126685, is amended as follows:

25.05.680 Appeals

Appeal provisions in SEPA are found in RCW 43.21C.060, 43.21C.075, 43.21C.080, 43.21C.420, 43.21C.495, and 43.21C.501, and WAC 197-11-680. The following provisions attempt to construe and interpret the statutory and administrative rule provisions. In the event a court determines that code provisions are inconsistent with statutory provisions or administrative rule, or with the framework and policy of SEPA, the statute or rule will control. Persons considering either administrative or judicial appeal of any decision that involves SEPA are advised to read the statutory and rule sections cited above.

A. Master Use Permits and Council land use decisions

1. For proposals requiring a Master Use Permit under Chapter 23.76 for which the Seattle Department of Construction and Inspections or a non-City agency is the lead agency, SEPA appeal procedures shall be as provided in Chapter 23.76, except as described in subsection 25.05.680.A.3.

2. For proposals requiring Master Use Permits or Council land use decisions for which a City department other than the Seattle Department of Construction and Inspections is lead agency and is a project proponent or is funding a project and where the City department chooses to conduct SEPA review prior to submitting an application for the Master Use Permit or Council land use decision:

a. The following agency environmental determinations shall be subject to appeal to the Hearing Examiner by any interested person as provided in this subsection 25.05.680.A.2:

1) Determination of Nonsignificance (DNS);

2) Adequacy of the Final EIS as filed in the SEPA Public Information Center.

b. An appeal shall be commenced by filing of a notice of appeal with the Office of the Hearing Examiner no later than 5 p.m. the fourteenth day following the filing of the decision in the SEPA Public Information Center or publication of the decision in the City official newspaper, whichever is later; provided that when a 14 day DNS comment period is required pursuant to this Chapter 25.05, appeals may be filed no later than the twenty-first day following such filing or publication. The appeal notice shall set forth in a clear and concise manner the alleged errors in the decision. Upon timely notice of appeal the Hearing Examiner shall set a date for hearing and send notice to the parties. Filing fees for appeals to the Hearing Examiner are established in Section 3.02.125.

3. For all appeals associated with Master Use Permits ((~~that do not require a~~)) or Council land use ((~~decision~~)) decisions, the Hearing Examiner shall complete the appeal process, including a determination on the merits within 90 days of the date the appeal was filed. ((~~For all appeals associated with a Council land use decision, the Hearing Examiner shall complete the appeal process, including a determination on the merits within 120 days of the date the appeal was filed.~~)) The Hearing Examiner may extend the deadline by 30 days upon written notice and explanation of the need to extend the deadline to the parties. The Hearing Examiner may further extend the deadline only upon the consent of all parties.

4. Failure to complete the hearing process within the times stated in this Section 25.05.680 shall not terminate the jurisdiction of the Hearing Examiner nor create any basis for damages.

B. Decisions not related to Master Use Permits or Council land use decisions

1. The following agency decisions on proposals not requiring a Master Use Permit shall be subject to appeal to the Hearing Examiner by any interested person as provided in this subsection 25.05.680.B:

a. Determination of Nonsignificance;

b. Adequacy of the final EIS as filed in the SEPA Public Information Center.

Notice of all decisions described in this subsection 25.05.680.B.1 shall be filed promptly by the responsible official in the City's SEPA Public Information Center.

2. An appeal shall be commenced by the filing of a notice of appeal with the office of the Hearing Examiner no later than the fifteenth day following the filing of the decision in the SEPA Public Information Center or publication of the decision in the City official newspaper, whichever is later; provided that when a 14 day DNS comment period is required pursuant to this Chapter 25.05, appeals may be filed no later than the twenty-first day following such filing or publication. The appeal notice shall set forth in a clear and concise manner the alleged errors in the decision.

3. Upon timely notice of appeal the Hearing Examiner shall set a date for hearing and send notice to the parties. ((~~For project actions, the~~)) The Hearing Examiner shall complete the appeal process, including a determination on the merits of

the appeal within 90 days of the date the appeal was filed. ((~~For nonproject actions, the Hearing Examiner shall complete the appeal process, including a determination on the merits of the appeal within 120 days of the date the appeal was filed.~~)) The Hearing Examiner may extend the deadline by 30 days upon written notice and explanation of the need to extend the deadline to the parties. The Hearing Examiner may further extend the deadline only upon the consent of all parties. Failure to complete the hearing process within the times stated in this section shall not terminate the jurisdiction of the Hearing Examiner.

4. Filing fees for appeals to the Hearing Examiner are established in Section 3.02.125.

5. Appeals shall be considered de novo and limited to the issues cited in the notice of appeal. Appeals must be based on the procedures of this Chapter 25.05 and the specific environmental policies in Section 25.05.675. The determination appealed from shall be accorded substantial weight and the burden of establishing the contrary shall be upon the appealing party. The Hearing Examiner shall have authority to affirm or reverse the administrative decisions below, to remand cases to the appropriate department with directions for further proceedings, and to grant other appropriate relief in the circumstances.

6. The Hearing Examiner is authorized to promulgate rules and procedures to implement the provisions of this Section 25.05. The rules shall be promulgated pursuant to Chapter 3.02.

7. If the agency has made a decision on a proposed action, the Hearing Examiner shall consolidate any allowed appeals of procedural and substantive

determinations under SEPA with any hearing or appeal on the underlying City action. For example, an appeal of the adequacy of an EIS must be consolidated with a hearing or appeal on the agency's decision or recommendation on the proposed action, if both proceedings are allowed by ordinance.

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~~F. ((RCW 36.70A.070, 36.70A.600 and 43.21C.495 exempt certain Council land use actions from administrative or judicial appeals, except as provided in subsection 25.05.680.G. Environmental documents and Council land use actions intended to be exempt from SEPA appeals pursuant to RCW 43.21C.495 should so state.))~~ ~~There is no administrative appeal to the Hearing Examiner of a SEPA threshold determination or the adequacy of an EIS associated with any proposed Comprehensive Plan or development regulation, whether new or amended.~~