

August 28, 2024

MEMORANDUM

To: Land Use Committee
From: Ketil Freeman, Analyst
Subject: Council Bill 120824 – Downtown Activation Plan: Design Review Exemption

On September 4, 2024, the Land Use Committee (Committee) will have an initial briefing and hold a public hearing on [Council Bill \(CB\) 120824](#). Among other things, CB 120824 would exempt certain projects located in the Downtown, South Lake Union, and Uptown urban centers and parts of the adjacent the First Hill / Capitol Hill urban center and Duwamish Manufacturing and Industrial Center from Design Review while affording those projects some of the same benefits available through Design Review.

This memorandum: (1) provides background on the Design Review program, ongoing review of the program, and changes required by [Engrossed Substitute House Bill \(ESHB\) 1293](#); (2) describes what CB 120824 would do; and (3) provides preliminary policy considerations.

Background

Design Review Program

Called Early Project Implementation at its inception in 1993, the Design Review Program has three primary goals: (1) encouraging better siting and design of private development projects, (2) providing flexibility in application of physical development standards, and (3) improving public engagement with developers earlier in the design process.¹ Generally, Design Review is required for most larger new development in Multifamily, Commercial, Seattle Mixed, and Downtown zones. Design Review is not required in Neighborhood Residential and most Industrial zones.²

There are three types of design review: Streamlined Design Review (SDR), Administrative Design Review (ADR), and Full Design Review (FDR). The type of Design Review required depends on the size of the lot, location, and gross floor area of development. Because most projects that could benefit from the proposed exemption in CB 120824 are of a scale that would require FDR, descriptions of the Design Review process in this memo are of FDR.

Under FDR, development teams must provide early outreach to near neighbors, present project details before a board and the public at one or more Early Design Guidance (EDG) meetings prior to permit application, and present again before a board and the public at one or more recommendation meetings. A board consists of six members appointed by the Mayor and

¹ See [Ordinance 116909](#) and [Seattle Municipal Code \(SMC\) Section 23.41.002](#).

² For more information on the Design Review Program see [Design Review - Program - SDCI | seattle.gov](#) and [SMC Chapter 23.41](#).

Council to represent development, design, business, and other specified interests.³ Board meetings are subject to the Open Public Meetings Act.

At the EDG meeting, a board hears comment from the public and prioritizes applicable guidelines from citywide or neighborhood-specific [design guidelines](#) that have been approved by ordinance by the Council and Mayor.⁴ At the recommendation meeting, a board reviews a project for consistency with prioritized guidelines and makes a recommendation to the Seattle Department of Construction and Inspection’s Director (Director), including a recommendation on any modifications to development standards, called “departures,” sought by the applicant. Departures can be granted if a proposal better meets the intent of design guidelines. This is distinct from most other waivers or modifications in the Code, which can typically only be granted based on a showing of property-related hardship or other property, or use, related special circumstance.

An FDR land use decision is a Type II decision, meaning that it is a discretionary decision by the Director that can be appealed to the City Hearing Examiner. Because design review projects are reviewed for compliance with adopted design guidelines, projects that are also subject to State Environmental Policy Act (SEPA) review are afforded a deferential standard on some claims in SEPA appeals, meaning that the Hearing Examiner is more likely to uphold an affirmative recommendation by the Director.⁵

Subject to some limitations, the Director is required to make compliance with any recommended condition by a board mandatory, if four or more members agree.⁶ A recent review of the program found that FDR can take as long as about two years, with approximately 16 months of that time in active review by the City and the remainder with the applicant.⁷

To address the added time associated with FDR, projects are allowed to vest to development standards in place at the time of EDG, prior to permit application, provided that the permit application is made within 90 days of the EDG meeting.⁸ When a project “vests” it secures the legal right to develop to development standards in place at the time of vesting. By contrast, other projects requiring land use approval that are not subject to design review vest towards the end of land use permit review at issuance of a Master Use Permit (MUP) decision.⁹

³ [SMC Section 23.41.008.A – F.](#)

⁴ For an example of recently approved neighborhood-specific design guidelines see [Ordinance 126683](#) (2022) approving design guidelines for Crown Hill.

⁵ [SMC Section 25.05.675.G.](#)

⁶ [SMC Section 23.41.014.F.](#)

⁷ See response to SLI SDCI-004-A-001. Appendix D: Permit Times Report by SDCI Staff. Available at: [Seattle SDCI - 2024 Statement of Legislative Intent Memo and Final Report to Council](#)

⁸ [SMC Section 23.76.026.C.](#)

Ongoing Program Review and ESHB 1293

In November 2021, as part of the 2022 Adopted Budget the Council approved [Statement of Legislative Intent \(SLI\) SDCI-004-A-001](#), which requested that the Director report on Design Review program outcomes, process improvements, and equity. SDCI convened a stakeholder group, which met from May of 2022 through January of 2023.¹⁰ The [response to the SLI](#), which contains a consultant report dated March 2023, was provided to the Council on July 16, 2024.

Among other things, the report identifies program improvements that “were generally well-supported by stakeholders and staff,” which include, but are not limited to:

- Improving capacity building in identified equity areas to enhance engagement with design review;
- Rewriting design guidelines for clarity and creating targeted design guidelines in equity areas that have been developed with the community;
- Increasing program predictability; and
- Re-evaluating the EDG process.

At the state level, in 2023 the legislature passed and the governor signed ESHB 1293, codified at [RCW 36.70A.630](#). ESHB 1293 requires that design review programs for jurisdictions planning under the Growth Management Act (GMA):

- Must have clear and objective guidelines,
- Cannot result in a reduction in development capacity from otherwise applicable development standards, and
- Cannot include more than one public meeting.

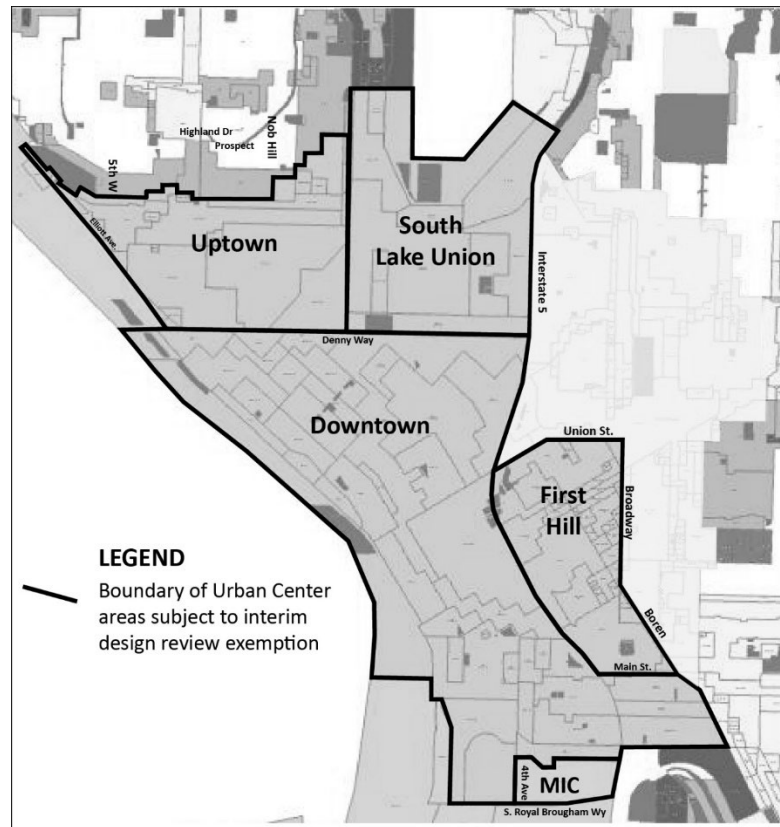
The City must come into compliance with these requirements six months after the next required Comprehensive Plan update. The GMA requires the City to update its Comprehensive Plan by the end of this year, although the current schedule contemplates passage of the required update in the summer of 2025. Using the earlier and more conservative date, the City may be required to either suspend its Design Review program or implement a new program that complies with ESHB 1293 by June of 2025.

What CB 120824 Would Do

CB 120824 would exempt hotel, residential, and research and development laboratory projects located in the Downtown, South Lake Union, and Uptown urban centers and parts of the adjacent the First Hill / Capitol Hill urban center and Duwamish Manufacturing and Industrial Center from Design Review while affording those projects some of the same benefits available through Design Review.

¹⁰ Materials from the stakeholder process and recordings of stakeholder meetings are available at [Design Review Program Analysis - SDCI | seattle.gov](#).

Eligible exemption areas are shown on the accompanying map from the bill. Historic Districts would not be included. In addition to those areas shown on the map, eligible projects could include those located in expansion areas for the Uptown Urban Center and Duwamish Manufacturing and Industrial Center. A policy decision on those expansion areas has not been made by the Council. The earliest such a decision would be made is the Summer of 2025 with adoption of the periodic Comprehensive Plan update.



Eligible projects would be able to receive waivers or modifications from development standards, including modification to development standards that can result in additional leasable floor area. Additionally, projects would vest upon filing a letter, prior to application, establishing that the project would be eligible for the design review exemption provided by the bill. This is like vesting currently afforded through the early design guidance process.

The decision to modify development standards would be a Type I decision, meaning that it would be an administrative decision made by the Director without an opportunity for appeal to the Hearing Examiner. The decision to waive or modify development standards would be based on the sole criterion of whether the waiver would result in more being built. Specifically, the Director would be required to grant the waiver if it “would result in an increased number of dwelling units, lodging rooms, or increased floor area for of a research and development laboratory use, being constructed.”¹¹

Public notice of application and opportunity for comment would be similar to what is required for discretionary, Type II land use decision. However, the early outreach required for FDR and notice of decision would not be required. If passed, the proposed exemption would expire three years from its effective date.

¹¹ Council Bill (CB) 120824, page 5 at line 6.

Key differences between FDR and the exemption process proposed by CB 120824 are summarized in the table below:

Standard	Full Design Review	CB 120825
Development Standard Waivers, Decision-maker and Vesting		
Availability of development standard waivers	Yes	Yes
Decision Maker	SDCI Director based on a recommendation by an appointed board. A board recommendation can be binding on the Director if four or more board members agree.	SDCI Director
Criteria for Approval	Consistency with prioritized design guidelines that are approved by ordinance.	More dwelling units, lodging rooms, or increased floor area of a research and development laboratory use.
Vesting	At filing of a complete application for EDG, provided that a MUP application is filed within 90 days of EDG meeting.	At filing of an eligibility letter provided that a MUP application is filed within 90 days.
Public Outreach and Notice		
Required Community Outreach Prior to Application	Yes ¹²	No
Required Public Meetings	Yes	No
Notice of Application	Mailed notice and large sign	Mailed notice and large sign
Notice of Decision	Written notice and publication in the Land Use Information Bulletin	No
Type of Decision and Due Process Safeguards		
Decision Type	Type II, discretionary decision	Type I, administrative decision
Due Process Safeguards	Opportunity for appeal to the City Hearing Examiner and potential subsequent appeal to King County Superior Court	No Hearing Examiner appeal, potential appeal to King County Superior Court

Preliminary Policy Considerations

CB 120824 would authorize the SDCI Director to administratively grant waivers or modifications of development standards that would otherwise only be available, on a project basis, through a

¹² Specialized early community outreach is required in identified equity areas, which overlap with much of the exemption area proposed by CB 120824. See [SDCI and DON Joint Director’s Rule 4-2018 and 1-2018](#).

discretionary decision in Design Review or, on a zone-wide basis, by a legislative decision to establish new development standards applicable to all future projects in that zone.

It is unclear what problem CB 120824 seeks to solve. The Director's Report notes, "[t]he proposal is intended to help promote more housing and jobs to be produced at lower permit cost and a shorter time in permit review." Greater downtown, the general planning geography subject to the proposal, is not capacity constrained. The City's [development capacity dashboard](#), which was last updated in 2022, indicates that greater downtown has zoned capacity for approximately 110,000 additional jobs and 41,000 additional housing units. That capacity is likely to increase with future Comprehensive Plan changes and areawide rezones.

Assuming that Design Review is a barrier to more housing and jobs, the purpose of promoting more housing and jobs and lowering permit costs and review times could be accomplished simply by making Design Review optional for those projects not seeking departures from development standards.

Preliminary issues are identified and discussed below. Additional issues may be identified through the public hearing and ongoing Council review.

Ripeness for Council Deliberation

In 2025 the Council will be considering Comprehensive Plan changes that may modify downtown planning geographies and provide the policy basis for future area-wide rezones that will likely increase residential and employment development capacity in the Downtown urban center and adjacent urban centers. Future implementing areawide rezones and changes to development standards will likely follow in 2026. Those planning processes will also be informed by a future Federal Transit Administration record of decision for Sound Transit.

While it is unclear whether and how the bill is related to any future changes to the Design Review program required by ESHB 1293 or identified in the response to the Design Review SLI, the City will nevertheless need to either suspend the Design Review program or implement a replacement to comply with ESHB 1293. Conservatively, that will need to happen no later than June 30, 2025. The interim provisions of the bill are proposed to lapse in late 2027.

Council could defer action on any downtown design review exemptions until one or all of these planning processes are complete.

Delegation to the SDCI Director and Public Engagement

CB 120824 proposes that the Council provide a broad delegation of authority to the SDCI Director to grant waivers or modifications to development standards based on the single criterion of more floor area in lodging, residential, or research and development use. Decisions by the Director based on that delegation would be purely administrative, subject to less public visibility than is currently afforded through Design Review, and could not be appealed to the

City Hearing Examiner. All land use decisions may be appealed to the Superior Court through the Land Use Petition Act. However, access to that pathway to remedy an abuse of discretion is more costly and requires greater appellant sophistication.

By contrast, under FDR, delegation of the decision to grant waivers or modifications are informed by a recommendation from an appointed board. That recommendation is based on design guidelines that have been developed through an often neighborhood-specific planning process and approved by ordinance. Potential abuse of discretion by the board or SDCI Director is protected against by public visibility into the decision-making process and the opportunity for appeal to the City Hearing Examiner.

The Council could narrow the delegation to the SDCI Director by limiting the scope of waivers and circumstances under which they could be granted and / or providing additional public participation or procedural requirements to guard against abuse of discretion.

Vesting

CB 120824 would allow eligible projects to vest prior to permit application by filing a letter establishing their eligibility, provided that a permit application is made within 90 days. This is similar to the vesting provisions available through Design Review that are intended to mitigate the risk to the applicant of a regulatory change during the sometimes-lengthy FDR period. The risk to applicants associated with a lengthy design review process is obviated by two factors in the bill: (1) the Design Review exemption itself, which eliminates the time associated with public meeting requirements and deliberations by a board, and (2), for projects seeking waivers or modification of development standards, the proposal that the Director's decision not be appealable to the Hearing Examiner.

Council could eliminate the favorable vesting and have eligible projects vest as all other projects not subject to Design Review do, which is with a MUP decision or with filing of a complete building permit application.

Applicability to Industrial Innovation Zones

After initial publication of a SEPA decision on the bill, SDCI issued an addendum and further SEPA analysis to add an area zoned Industrial Innovation (II 85-240) between Royal Brougham and the International District. This is the area identified with "MIC" for Manufacturing Industrial Center on the map from the bill. Ownership in the area includes City-owned parcels managed by the Department of Finance and Administrative Services; a development entity associated with Alexandria, a Real Estate Investment Trust that specializes in biotech facility development; and a development entity associated with Seattle-based developer Urban

Visions. That area was rezoned from Industrial Commercial to Industrial Innovation through the City's industrial lands work in 2023.¹³

Design Review is not required in Industrial Innovation zones. Since passage of the industrial lands bills, the only industrial zones where Design Review is required are Industrial Commercial zones located outside of MICs. Because Design review is not required in the II 85-240 zone, absent some future regulatory change, development in that zone could not benefit from the waivers or modifications available to development that might otherwise be subject to Design Review.

Council could remove that area from the map of eligible areas until such a time as there is a proposal to modify the zone designation or other applicable development standards to make projects subject to Design Review.

Next Steps

The Committee will hold a public hearing on September 4, 2024. A vote on a Committee recommendation could occur at the next regularly scheduled Committee meeting on September 18, 2024.

cc: Ben Noble, Director
Yolanda Ho, Deputy Director
Lish Whitson, Supervising Analyst

¹³ [Ordinance 126862](#) established new industrial zone designations and development standards. [Ordinance 126863](#) rezoned land in industrial areas.