

Director's Report and Recommendation

SEPA Appeals Ordinance

Introduction and Proposal

This proposal, [Council Bill 121215](#), amends the Land Use Code and the City's State Environmental Policy Act Regulations (SMC Chapter 25.05) to streamline requirements for Type V legislative actions. Type V actions are land use approvals decided by the City Council for non-project proposals such as land use code text amendments and area-wide rezones.

The bill:

- 1) Exempts environmental threshold determinations and EISs for actions involving new or amended development regulations, or new or amended Comprehensive Plans, from appeals to the Seattle Hearing Examiner.
- 2) Exempts Council-generated Type V land use amendment proposals from requiring a Director's Report to be written for Council-generated legislation; but provides an option for Councilmembers to request a report be written.
- 3) Deletes unneeded cross-referencing code language.

The subject of this report is Council Bill 121215, which amends 23.76.050, 23.76.062, and 25.05.680 of the Seattle Municipal Code.

Background

Washington's State Environmental Policy Act (SEPA) defines how environmental review is required for development actions, and also for "non-project" proposals such as adopting regulatory updates. Since its inception in the early 1970s, SEPA's purpose has been to inform decision makers about the environmental impact consequences of proposed actions.

If required, a SEPA environmental review evaluating a proposed action is written and a responsible official then reaches a conclusion about whether significant adverse impacts from an action would be probable or not. The official then issues either a Determination of Significance (DS)¹ or Determination of Non-Significance (DNS) as a public notice. Typically, following a DNS notice is a 14-day public comment period; and in Seattle's case, a concurrent

¹ In the case of a DS, a full Environmental Impact Statement (EIS) must be scoped, then prepared and issued in Draft EIS and Final EIS form before an action can proceed to decision-making.

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21-day appeal period, with the possibility of an appeal being filed, which is reviewed by the Seattle Hearing Examiner. The Hearing Examiner process is described as an “administrative appeal process.”

SEPA environmental review for non-project actions in Seattle covers a wide range of environmental topics and is usually written by City staff. The SEPA checklist questions for non-project actions are asked in way that allows for relatively brief “programmatic level” responses about possible long-term adverse impacts. These are summarized below.

Would a proposed action:

- Adversely affect soils or steep slopes?
- Cause more air pollution, increase water pollution, stormwater discharges, or increase noise?
- Adversely affect plants, animals, or fish?
- Adversely affect environmentally sensitive areas, habitats, farmland, floodplains, or areas with historic or cultural resources?
- Deplete energy or natural resources?
- Increase demand on transportation systems, or public services and utilities?
- Cause adverse effects on land use patterns such as incompatible land uses?

In many cases, it is easy to conclude that a narrowly written regulatory code amendment may have no real potential to cause adverse environmental impacts. Many code changes are minor adjustments, only affecting a few situations and places, with little or no probability for causing adverse physical impacts.

But an analyst may also consider whether a more extensive analysis is needed for a broader proposal like a new land use plan or substantial changes to development standards. This can involve thinking in more depth about what overall adverse environmental impacts could occur due to future growth that is affected by the regulatory changes – ‘where, when, and how much?’ – and interpreting whether the overall long-term cumulative harmful impacts could be significant.

This illustrates that fulfilling a SEPA review is often a routine procedural step but sometimes can require more in-depth analysis to justify its conclusions.

Analysis

SEPA APPEALS

This legislative proposal retains the requirement for non-project actions to undergo SEPA environmental review in advance of a City Council decision-making process. Such analyses would continue to be written in advance of sending code amendments and Comprehensive Plan adoption legislation to the City Council, and the decision makers would receive the SEPA analyses for their consideration.

The proposal seeks to eliminate an upfront administrative appeal process (before legislative decision-making) in order to provide more efficient and predictable timeframes for City decision-making to occur for certain non-project actions. The administrative appeal step can add significant amounts of time and uncertainty into the legislative process for code amendments and Comprehensive Plan adoption. And yet it is not a productive step or conducive to supporting dialogue between the public and decision-makers during the legislative process.

Other appeal steps would continue to be available: Superior Court, or Growth Management Hearings Board (GMHB)

The King County Superior Court and GMHB currently are venues for possible appeals of the sufficiency of SEPA environmental documentation, and they would remain so if the proposal is adopted. The current proposal is to streamline the process by removing one of the two current layers of appeals, thereby improving legislative timeliness and predictability.

SEPA laws allow jurisdictions to have no administrative appeal process

State law allows for but does not require local jurisdictions to have an administrative appeal process for SEPA determinations, including for non-project proposals. See RCW 43.21.C.075 and WAC 197-11-680. Jurisdictions can decide if they would like to have this kind of appeal process, which is often performed by a Hearing Examiner.

Jurisdictions with and without administrative SEPA appeals are shown below.

With Administrative SEPA Appeals for non-project actions	Without Administrative SEPA Appeals for non-project actions
• Snohomish County • Pierce County • Kent • Spokane	• King County • Bellevue • Everett • Tacoma

	• Vancouver
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This means that providing an administrative appeal process is a choice made by a jurisdiction about a process for hearing public objections to proposed actions. By definition, having the administrative appeal process means that the jurisdiction is subject to two layers of appeals: one within the City, and one at subsequent judicial levels.

Administrative appeals of SEPA for non-project proposals are not effective or timely process steps

The administrative appeal process gives a chance for objectors to a proposal to be heard about their reasons for objecting. The grounds for objection could be many, but the most common reason for appeal is that the SEPA analysis and determination is insufficient or faulty, and/or procedural errors have been made. These are evaluated case-by-case according to the details of the situation.

It is reasonable to interpret whether the administrative appeal process has proven to be productive in terms of reversing inadequate SEPA determinations. Opinions may vary about whether the appeal process as a whole is worthwhile, but the appeals involving code amendments and non-project actions have a low record of success in reversing the City's determinations. The table below shows findings from non-project action appeals between 2016 and 2026. In only three of 28 cases (11%) did the administrative appeal process result in remands to the City to address deficiencies. In 19 of 28 cases (68%), the appeal was either dismissed or withdrawn before completing the process.

Result of Appeal	Average Time for Appeal (days)	Range (days)	Number of Appeals*
DNS was remanded and an EIS was required	190	190	1
DNS was reversed, and a new Determination was required	343	343	1
FEIS was affirmed in part and remanded in part	374	374	1
Appeal considered, and the lead agency's decision was affirmed	150	81 – 231	6
Appeal was dismissed	69	11 – 204	17

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Appeal was withdrawn	52	5 – 98	2
All appeals	151		28

* Appeals of environmental decisions related to Council land use actions, other SEPA appeals not included.
When multiple appeals of the same decision were consolidated, they are counted as one appeal.

The appeal processes tend to take a long time to resolve.

- In 9 cases where the appeal was heard, it took approximately 5 to 12 months to resolve the appeal.
- In 19 cases where the appeal was dismissed or withdrawn, it took approximately two months to complete the process.

The SEPA environmental review should be just one part of the public dialogue about environmental values

Seattle's legislative process is always ongoing, and individual legislative proposals often attract vigorous participation and heightened public interest. Participants bring forward their questions, critiques, or endorsements of proposals, in ways that tend to focus on the most important public values at stake. For land use and development-related subjects, the discussions and decisions often revolve around interpreting the public's values about environmental protection, and how to manage growth and change.

Despite its relevance to environmental impact evaluation, placing SEPA determinations and appeals early in the process – before consideration of legislation by the Council – can constrict later dialogue about environmental values, by forcing opponents of a proposal to frame their objections within the legal context of SEPA. This tends to have a stifling or delaying effect on having meaningful public dialogue about environmental values. The primary focus of early environmental appeal processes becomes whether the City has provided certain impact analyses and phrased them in proper ways, and whether that analysis has sufficiently covered the bases. This is a legalistic approach.

Then, if a SEPA review is found to be sufficient after a Hearing Examiner appeal process, it may imply that environmental impacts have been resolved and are no longer a compelling topic to influence public decision-making during the legislative process.

SEPA documentation will still be provided, and more dialogue about environmental values and impacts is encouraged

Given that SEPA analyses will still be provided to decision makers for the legislative process, the interpretation of SEPA environmental impacts will still be available and can be the subject of public discussion and debate. At the same time, advocates for or against a legislative proposal will have the chance to freely express their thoughts about the full spectrum of environmental values and priorities as they wish.

This will encourage a dialogue that is not constricted by SEPA's legal and environmental impact methodologies. It will encourage an "all of the above" robust approach to legislative decision making where all opinions about environmental values and outcomes can be expressed. This will continue to include the ability to express opinions about a SEPA analysis' insufficiency.

To the extent that opposition remains about SEPA insufficiency, those objections could still be taken up at a later date by legal actions in the Superior Court or GMHB venues.

The legislative process benefit, as intended by this proposal, is to eliminate the administrative appeal step that can delay or prevent a proposal from reaching the City's decision-making process by up to a year in some cases. Rather than provide two opportunities for appeals, the proposal would instead rely on the other existing court and hearing board appeal opportunities in the post-decision period.

The City's SEPA analysis will still need to be thorough and can be challenged for sufficiency

The proposed approach moves away from forcing opponents at an early date to express their opposition on grounds of perceived inadequate City SEPA analysis. But this legislative proposal does not alter the standards by which adequacy of SEPA analysis is measured. This means the need for sufficiency of SEPA analysis remains important and challengeable, which encourages SEPA analysts to strive for providing adequate review and disclosure of potential environmental impacts.

An alternative perspective about the Hearing Examiner administrative appeal process

Because the administrative appeal process has been a longstanding feature of Seattle's system, many persons are likely to attach a high value to this process and will wish to continue it without change.

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These opinions may be grounded in terms of the purpose of SEPA to ensure that decision-makers are given sufficient information upfront about possible environmental impacts of an action. This could inform the decision-makers in their choice, to either support, reject, or approve with conditions a proposed action.

From this perspective, the administrative appeal process is a safeguard that, prior to legislative decisions, ensures that the environmental impact analyses are written to be reasonably thorough and accurate in representing their findings.

The administrative appeal gives objectors an impartial venue to present their reasoning as to why a SEPA environmental analysis is deficient or inaccurate. Some appellants may also perceive the appeal process as giving them leverage to delay a decision-making process, or to seek concessions or changes made to a proposed action.

CLARIFYING DIRECTOR'S REPORT REQUIREMENTS FOR PROPOSALS GENERATED BY THE COUNCIL

CB 121215 proposes to make Director's Reports for Council-generated legislation voluntary, and provide any Councilmember with the option of requesting a report.

- This reflects an opinion that some Council-generated legislation may be small and simple changes that do not necessarily need an accompanying report to explain them.
- Other Council-generated legislation may be complex enough to warrant explanation in a Director's Report, and such a report can be written whenever a Councilmember requests.

The proposal does not affect the requirements for Executive-generated legislation and any quasi-judicial actions.

The current Land Use Code requires Director's Reports for Council land use decisions, as well as other kinds of land use decisions. These are decisions typically originated by SDCI or in some cases the Office of Planning and Community Development (OPCD). The code also includes a description of the required contents of reports.

Prior to 2025, the Council did not request or receive Director's Reports for Council-generated legislation. No State law requires Directors Reports, but the City has chosen to require them in many cases, as a way of summarizing and interpreting the contents of legislative proposals.

In 2025, Council-generated legislation was overturned in part because a Director's Report was not prepared. This set of facts tends to support the provision of a Director's Report when it is warranted to better inform the public and decision-makers.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The proposal relates to a few goals and policies of the One Seattle Comprehensive Plan. These generally relate to achieving a good balance in defining regulatory standards and practices that will best support achieving the Comprehensive Plan's vision while limiting impacts to the community.

This includes support for affordable housing outcomes, equitable forms of development, and reducing regulatory barriers in order to support those outcomes.

LU G1 *Zoning and development standards encourage and shape growth and development to:*

- *Implement the vision contained in this Plan.*
- *Create housing that works for households of all types and income levels.*
- *Create spaces for the diverse needs of businesses and institutions.*
- *Encourage high-quality, well-designed, and sustainable buildings.*
- *Protect and enhance the natural environment.*
- *Mitigate the impacts of new construction.*

LU 1.5 *Seek to balance the benefits of regulating land use and development with the impacts to property owners and the cost of housing and non-residential space.*

LU 3.6 *Identify uses that support equitable development and take steps to remove regulatory barriers to and increase the feasibility of those uses in neighborhoods throughout Seattle.*

Public outreach

A City Council public hearing is required for the legislation, and the City Council has received significant amounts of public comments on the proposal both for and against the legislation. In particular, opponents are concerned that the legislation will preclude the identification and mitigation of environmental impacts of land use legislation. Proponents see greater value in removing a regulatory hurdle to adopting legislation that may have significant environmental benefits, in particular legislation that would allow more housing in the City's urban neighborhoods.

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Recommendation

The SDCI Director recommends the City Council adopt the proposed legislation to allow for more timely review of legislative land use regulations. The Director recommends that the City monitor the outcomes of the legislation, and if the result is an increase in the quantity of SEPA decisions that are appealed to the Courts, the Director would recommend considering restoring administrative appeals consistent with State Law.