

June 26, 2023

MEMORANDUM

To: Land Use Committee
From: Ketil Freeman, Analyst
Subject: Council Bill 120581 – Temporary Design Review Exemptions and Modifications

On June 28, 2023, the Land Use Committee (Committee) will hold a public hearing and may vote on Council Bill (CB) 120581, which would enact temporary exemptions and modifications to Design Review for a one-year period. The Committee received a briefing from the Seattle Department of Construction and Inspections (SDCI) on the bill at its meeting on June 14.

This memo (1) provides some background on Design Review and the Council’s ongoing review of the program, (2) describes what CB 120581 would do, and (3) identifies potential issues with the proposed bill.

Background

Initially called Early Project Implementation, the [Design Review Program](#) (Program) was established in 1993 for three purposes: (1) to encourage better design and site planning, (2) to provide flexibility for developers in application of development standards, and (3) to “improve communication and mutual understanding among developers, neighborhoods, and the City early and throughout the development review process.”¹ Those purposes are codified in the Land Use Code.²

Generally, projects above established square footage thresholds are required to participate in the Program. The Program has three levels of review: Streamlined Design Review, Administrative Design Review, and Full Design Review. Projects subject to Full Design Review are reviewed by a Design Review Board with members appointed by the Council and the Mayor. All Design Review projects require public notice and community outreach.

Under the Program developers may seek departures from otherwise applicable development standards, which can increase leasable floor area, if they can demonstrate that those departures help a project better meet citywide or neighborhood-specific [design guidelines](#).³

¹ [Ordinance 116909](#).

² See [Seattle Municipal Code \(SMC\) 23.41.002](#).

³ Design guidelines are approved by ordinance. The Council most recently adopted neighborhood-specific design guidelines for Crown Hill through [Ordinance 126883](#) in November 2022.

Evaluation of Design Review

The 2022 Adopted Budget included [Statement of Legislative Intent \(SLI\) SDCI-004-A-001](#), which requested that SDCI convene a stakeholder group and provide a report to Council on Program outcomes. The SLI requested a report with the following:

1. Program outcomes since the Program was modified in 2017, including review times by design review type and project complexity;
2. An analysis of departures sought through the program that quantifies the number and percentage of projects, by design review and project type, seeking departures, identification of departures sought, and whether those departures were granted;
3. An analysis of whether the Program increases housing costs;
4. A review of national best practices for design review programs with significant public participation components; and
5. Recommendations for how the Program should be modified to address the findings of the stakeholder group.

SDCI convened stakeholder meetings from May 2022 until January 2023. In June 2022, SDCI and the Office of Planning and Community Development (OPCD) published a [Design Review Departures and Adjustments Summary Report](#). In January 2023, SDCI published a [Permit Timelines Summary Report](#), [Assessment of Potential Housing Price Impacts](#), and [Design Review in Other Cities Report](#). A consultant has prepared proposed recommendations for Program changes, but those recommendations have not been formally transmitted to the Council.

Racial Equity Toolkit

The SLI also requested a Racial Equity Toolkit (RET) analysis of the Program. A consultant, Paradigm Shift Seattle, conducted interviews with stakeholders, findings of which are set out in a [Stakeholder Interview Report for Design Review Statement of Legislative Intent](#).

While the consultant did not a complete full RET, the report contains recommendations for the process of reviewing the Program that are excerpted below:

- The Design Review program is one of many steps to building and development in Seattle. If the experience of Design Review is to become more equitable, the whole planning, permitting, building, and development process needs to change to become more equitable.
- Slow down the process of reviewing and making changes to the current Design Review program. It is clear the program needs to evolve and it will take the right people, openness, and time to ensure that change happens responsibly, and is replaced with a process that centers racial equity and community members.
- Gather more feedback from more voices, specifically BIPOC voices that are directly impacted by Design Review, about their experiences with racial equity and inequity in

Design Review before changes are made to Design Review. While the stakeholder group was diverse and interviews were conducted, there were varying levels of ability to speak to racial inequity and equity in Design Review. Additionally, because of ongoing changes to this process stakeholders had fewer opportunities for input.

- There are multiple necessary stakeholders involved in Design Review. Changes in the Design Review program need to address all of their needs, while at the same time centering the needs of BIPOC residents. If these needs are not addressed in a new iteration of Design Review, then those needs should be addressed elsewhere within the planning, permitting, building, and development process.
- Prioritize those most impacted by inequitable building design to understand the challenges and next steps for Design Review. We offer that the most marginalized in this context are working class/poor, disabled, queer and trans, BIPOC families and people.
- Design Review is currently the only space for community input. We caution against doing away with Design Review, or replacing it with technical Design Review, without adequately and thoroughly addressing and systematizing where community members have the opportunity to have their voices heard in the planning, permitting, building, and development process.
- Changing Design Review alone will not fix the housing crisis we are experiencing. Historical and structural understandings of how systems of oppression impact development, affordable housing, and homelessness is needed, as well as, policy and legislation that encourages developers to build more affordable housing, and more housing that keeps families in their current neighborhoods.⁴

Changes to State Law

In its last session the legislature passed [Engrossed Substitute House Bill \(ESHB\) 1293](#) related to the Growth Management Act (GMA) and design review. Among other things, ESHB 1293 limits public meetings associated with design review and requires that design guidelines contain objective review standards.

Jurisdictions with design review programs must revise their programs to comply with the bill six months after the date prescribed by the GMA for the next periodic Comprehensive Plan update. Seattle's next required periodic update must be completed by June 2025.

What CB 120581 Would Do

CB 120581 would, for a one-year period, modify the Program, as follows:

- *Affordable Housing Projects* - Exempt affordable housing projects from Design Review, including public notice and outreach, and allow the SDCI Director as a Type I administrative decision to grant departures from all the development standards

⁴ [Stakeholder Interview Report for Design Review Statement of Legislative Intent](#), p.10.

otherwise available through Design Review without reference to approved design guidelines provided that the departures would result in additional housing units. Those additional units would not need to be rent and income restricted.

- Mandatory Housing Affordability – Residential (MHA-R) Performance Projects - Exempt projects subject to MHA-R that provide MHA units on-site from Design Review, including public notice and outreach, and allow the SDCI Director as a Type I administrative decision to grant departures from all the development standards otherwise available through Design Review without reference to approved design guidelines provided that the departures would result in additional housing units. Those additional units would not need to be rent and income restricted.
- Administrative Design Review – Allow all projects with residential uses that are otherwise subject to Full Design Review to elect to go through Administrative Design Review.⁵
- Work Plan – Approve the following timeline to develop permanent changes to the Program:

Outreach on proposed permanent legislation	January 2, 2024 – February 12, 2024
Draft permanent legislation and conduct SEPA review on draft permanent legislation	February 12, 2024 – April 15, 2024
Mayor Transmits Legislation to Council	April 17, 2024
Council Deliberations and Public Hearing on Proposed Legislation	May 2024
Legislation Effective	By August 12, 2024

SDCI has indicated that the interim changes are intended to inform a future recommendation to the Council on permanent changes to the Program.

Issue Identification

It is unclear what problem CB 120581 seeks to address. The primary focus of the bill appears to be expediting permitting of residential projects otherwise subject to Design Review by exempting those projects or allowing them to be reviewed under Administrative Design Review.

With very limited exceptions, all commercial, multifamily, and downtown zones where the Program applies allow residential uses and are subject to MHA requirements. Consequently, CB 120581 provides an avenue, on an interim basis, for any project with residential uses that is eligible as an affordable housing project or chooses to perform under MHA the opportunity to receive the benefit of flexibility in the application of development standards available through

⁵ SDCI's [Permit Timelines Summary Report](#) indicate that the average calendar time from application to permit issuance for a project subject to Full Design Review is 739 days. For projects subject to Administrative Design Review, the average calendar time is 641 days.

Program without meeting the other purposes of the Program, specifically better design and public engagement. All other projects with residential uses could avail themselves of administrative design review.

There is a discrepancy between CB 120581 and CB 120591 about the scope of departures available to affordable housing projects that are otherwise exempt from Design Review. That issue and additional issues are identified in the table below.

Issue	Discussion
<p>1. <i>Reconciling CB 120581 and CB 120591 and clarifying the effect of CB 120581.</i></p>	<p>As introduced, a provision of CB 120581 and CB 120591 conflict. Additionally, staff has identified some areas where clarifications would address potential unintended consequences. The Chair may offer an amendment to address these.</p> <p>CB 120581 conflicts with CB 120591, which would make omnibus Land Use Code changes to how affordable housing is regulated on a permanent basis. Specifically, CB 120591 would exempt eligible affordable housing projects from design review but limit the authority of the SDCI Director to waive development standards and prohibit waivers that increase the height, bulk, and scale of a project. The Executive intends that the broader suite of development standard departures be available to affordable housing developments on an interim basis.</p> <p>CB 120581 would extend the authority of the SDCI Director to grant departures from development standards for projects performing under MHA even if those projects were not otherwise subject to Design Review, such as smaller townhouse and multifamily projects that are below Program thresholds. The Executive intends that this exemption only apply to projects performing under MHA that are also otherwise subject to Design Review.</p> <p>CB 120581 would exempt projects subject to MHA-R from the Program provided that those projects provide at least one affordable unit required by MHA on-site. Under MHA-R a developer can choose to either provide units on-site (performance) or make an in-lieu payment. Performance requirements vary by MHA suffix and location. Outside of downtown MHA performance requirements range from</p>

Issue	Discussion
	<p>between 5 percent and 11 percent of units in a project.⁶ The Executive intends that the Design Review exemption apply when a developer chooses to fully perform under MHA and that the one-unit minimum performance is intended to address the circumstances of applicability of MHA requirements to smaller projects.</p>
<p>2. <i>Should the Council enact temporary modifications to the Design Review program or wait for the recommendation from SDCI requested through SLI SDCI-004-A-001?</i></p>	<p>The work requested by the Council through SLI SDCI-004-A-001 is largely complete. SDCI has developed the information requested by Council and has a recommendation from a consultant. However, because that recommendation has not been formally transmitted to the Council, it is unclear whether that recommendation is reflected in the current proposal.</p> <p>Further, as highlighted in the <i>Stakeholder Interview Report for Design Review Statement of Legislative Intent</i>. Residents are interested in having City-facilitated opportunities for engagement with developers building projects in their neighborhoods. The proposed legislation does not offer other alternatives for communities to engage with developers in-lieu of Design Review.</p>
<p>3. <i>For exempt affordable housing and MHA performance projects, should the Council delegate broad authority to the SDCI Director to grant departures from development standards, including those that increase the height, bulk and scale of a project, based solely on the criterion that a project provide additional housing units (not necessarily rent or income restricted), without regard to how the projects align with citywide or</i></p>	<p>CB 120581 would delegate authority to the SDCI Director to grant departures from the full suite of development standards available through the Program for exempt affordable housing and MHA performance projects, if it would result in the construction of additional residential units. Those units would not have to be income and rent restricted. Additionally, there would be no requirement for the SDCI Director to consider citywide or neighborhood design guidelines when granting departures from development standards.</p> <p>For market rate residential and commercial projects, Council’s current delegation of authority to the SDCI Director to grant development standards departures is informed by citywide and neighborhood design guidelines that are developed through an extensive public process and approved by ordinance. For projects subject to Full</p>

⁶ See [SMC 23.58C.050](#).

Issue	Discussion
<p><i>neighborhood-specific design guidelines?</i></p>	<p>Design Review, a departure decision is further informed by a recommendation from a Design Review Board.</p> <p>The SDCI Director currently has authority to grant departures from specified development standards for permanent supportive housing and affordable rental projects. However, those departures cannot result in a larger building than can otherwise be permitted and must also result in more units that are rent and income restricted.⁷</p>
<p>4. <i>For exempt affordable housing and MHA performance projects, should the Council authorize the SDCI Director to grant departures from development standards, including those that increase the height, bulk and scale of a project, as an administrative decision without the opportunity for public comment or appeal to the Hearing Examiner?</i></p>	<p>CB 120581 would authorize the SDCI Director, as a Type I decision, to grant departures from development standards for exempt affordable housing and MHA performance projects, including those that might result in additional height, bulk and scale of a building.</p> <p>Type I decisions are administrative decisions that do not require public notice or the opportunity for appeal to the Hearing Examiner.⁸ Similar land use decisions where the SDCI Director can modify development standards, such as variances, administrative conditional uses, and special exceptions, are Type II decisions requiring public notice and the opportunity for an appeal to the Hearing Examiner.</p>

cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Yolanda Ho, Supervising Analyst

⁷ [SMC 23.42.057.B](#) and [SMC 23.41.004.D](#).

⁸ See [SMC 23.76.004](#) for decision types and [SMC 23.76.012](#) for notice requirements.