

Amendment 4: Provide for shorter reviews of some appeals

Councilmember Pacheco

Council Bill 119600 would add new deadlines for the length of Seattle Hearing Examiner consideration of SEPA appeals. Councilmembers have received comments from a member of the public with extensive experience hearing SEPA appeals of project-level actions, who has recommended that the appeal deadline be shortened to 60 days. This amendment would shorten the appeal deadline for most project actions to 90 days and maintain the limit for nonproject actions, which are often more complicated at 120 days.

Average length of project actions between 2009 and 2019 was 101 days, with a median of 85 days. The average length of nonproject action appeals was 117 days, with a median of 105 days.

Amend Section 10 of Council Bill 119600, as follows:

Section 10. Section 25.05.680 of the Seattle Municipal Code, last amended by Ordinance 124919, 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.____, 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~~) land use decisions

1. For proposals requiring a Master Use Permit under Chapter 23.76(~~, Procedures for Master Use Permits and Council Land Use Decisions,~~) 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~~) 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~~) 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~~ Council land use decision~~s~~, the Hearing Examiner shall complete the appeal process, including a determination on the merits within ~~120~~ 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 ~~this~~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 ~~these~~ deadlines 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 or create any basis for damages.

B. Decisions ((~~Not Related~~)) not related to Master Use Permits or Council ((~~Land Use Decisions~~)) 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 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 ~~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 ~~this 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 ~~these~~ ~~deadlines~~ 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.

~~((3-))~~ 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. (~~Within 15 days after the hearing, the Hearing Examiner shall file and transmit to the parties written findings of fact, conclusions of law, and a decision.~~)

~~((4-))~~ 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.

~~((5-))~~ 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.

* * *