



Legislation Text

File #: CB 118963, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to land use and zoning; amending Section 23.76.006 of the Seattle Municipal Code to clarify that a land use decision to waive or modify structure width or setbacks for a youth service center, and integrated SEPA decisions, are Type II decisions that may be appealed to the City Hearing Examiner.

WHEREAS, in 2014, the Seattle City Council adopted Ordinance 124610, adding subsection 23.51A.004.B.6 to the Seattle Municipal Code and permitting youth service centers under certain circumstances. That regulation identifies a decision to waive or modify structure width or setbacks for a youth service center (“youth service center decision”) as a Type II land use decision; and

WHEREAS, as part of Ordinance 124610, the Council intended that any youth service center decision be subject to an open record administrative appeal to the Hearing Examiner; and

WHEREAS, the fiscal note and supporting letter to Ordinance 124610 suggested that youth service center decisions would be subject to an administrative appeal to the Hearing Examiner; and

WHEREAS, in Seattle Hearing Examiner Cause No. MUP-17-001, the Hearing Examiner found that she lacked jurisdiction to hear an administrative appeal of a youth service center decision because SMC 23.76.006.C.2 does not identify youth service center decisions as a Type II land use decision; and

WHEREAS, to clarify the Council’s intent and to correct the oversight when the Council mistakenly failed to make a conforming amendment to SMC 23.76.006.C.2, the Council wants to explicitly add youth service center decisions to the list of Type II decisions so they are clearly appealable to the Hearing

Examiner; and

WHEREAS, there is a current controversy whether the Hearing Examiner has jurisdiction over an appeal of a youth service center decision; and

WHEREAS, this ordinance is necessary to ensure that courts and other decision-makers understand the Council intended and continues to intend that youth service center decisions are Type II land use decisions subject to an open record appeal to the Hearing Examiner; and

WHEREAS, the Council intends that this curative ordinance shall apply retroactively to the effective date of Ordinance 124610, and in particular to any pending appeal of a youth service center decision filed after that effective date; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subsection 23.76.006.C of the Seattle Municipal Code, which was last amended by the ordinance introduced as Council Bill 118940, is amended as follows:

23.76.006 Master Use Permits required

* * *

C. The following are Type II decisions:

1. The following procedural environmental decisions for Master Use Permits and for building, demolition, grading, and other construction permits are subject to appeal to the Hearing Examiner and are not subject to further appeal to the City Council (supplemental procedures for environmental review are established in Chapter 25.05, Environmental Policies and Procedures):

- a. Determination of Non-significance (DNS), including mitigated DNS;
- b. Determination that a final Environmental Impact Statement (EIS) is adequate; and
- c. Determination of Significance based solely on historic and cultural preservation.

2. The following decisions are subject to appeal to the Hearing Examiner (except shoreline

decisions and related environmental determinations that are appealable to the Shorelines Hearings Board):

a. Establishment or change of use for temporary uses more than four weeks not otherwise permitted in the zone or not meeting development standards, including the establishment of temporary uses and facilities to construct a light rail transit system for so long as is necessary to construct the system as provided in subsection 23.42.040.F, but excepting temporary relocation of police and fire stations for 24 months or less;

b. Short subdivisions;

c. Variances, provided that the decision on variances sought as part of a Council land use decision shall be made by the Council pursuant to Section 23.76.036;

d. Special exceptions, provided that the decision on special exceptions sought as part of a Council land use decision shall be made by the Council pursuant to Section 23.76.036;

e. Design review decisions, except for streamlined design review decisions pursuant to Section 23.41.018 if no development standard departures are requested pursuant to Section 23.41.012, and except for design review decisions in a MPC zone pursuant to Section 23.41.020 if no development standard departures are requested pursuant to Section 23.41.012;

f. Administrative conditional uses, provided that the decision on administrative conditional uses sought as part of a Council land use decision shall be made by the Council pursuant to Section 23.76.036;

g. The following shoreline decisions, provided that these decisions shall be made by the Council pursuant to Section 23.76.036 when they are sought as part of a Council land use decision (supplemental procedures for shoreline decisions are established in Chapter 23.60A):

1) Shoreline substantial development permits;

2) Shoreline variances; and

3) Shoreline conditional uses;

h. Major Phased Developments;

i. Determination of project consistency with a planned action ordinance, only if the project requires another Type II decision;

j. Establishment of light rail transit facilities necessary to operate and maintain a light rail transit system, in accordance with the provisions of Section 23.80.004;

k. Downtown planned community developments;

l. Establishment of temporary uses for transitional encampments, except transitional encampment interim uses provided for in subsection 23.76.006.B.2;

m. Decision to waive or modify development standards relating to structure width or setbacks for a youth service center pursuant to subsection 23.51A.004.B.6;

n. Determination of requirements according to subsections 23.58B.025.A.4 and 23.58C.030.A.3;

~~((n-))~~ o. Except for projects determined to be consistent with a planned action ordinance, decisions to approve, condition, or deny based on SEPA policies if such decisions are integrated with the decisions listed in subsections 23.76.006.C.2.a. through 23.76.006.C.2.m~~((t))~~; provided that, for decisions listed in subsections 23.76.006.C.2.c, 23.76.006.C.2.d, 23.76.006.C.2.f, and 23.76.006.C.2.g that are made by the Council, integrated decisions to approve, condition, or deny based on SEPA policies are made by the Council pursuant to Section 23.76.036; and

~~((o-))~~ p. Determination of public benefit for combined lot development.

Section 2. Retroactivity. This ordinance applies retroactively to April 1, 2015, the effective date of Ordinance 124610.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if

not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2017, and signed by me in open session in authentication of its passage this _____ day of _____, 2017.

President _____ of the City Council

Approved by me this _____ day of _____, 2017.

Edward B. Murray, Mayor

Filed by me this _____ day of _____, 2017.

Monica Martinez Simmons, City Clerk

(Seal)