



Legislation Text

File #: CB 118753, Version: 2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to land use and zoning; amending Sections 25.05.675 and 25.05.800 of the Seattle Municipal Code to clarify and update references to the Comprehensive Plan and restore the categorical exemptions for State Environmental Policy Act review of proposed “infill” development.

WHEREAS, in 2003, the law governing infill development categorical exemptions (RCW 43.21C.229) was

enacted by the state of Washington to encourage growth consistent with the Growth Management Act;

and

WHEREAS, RCW 43.21C.229 authorizes cities planning under RCW 36.70A.040 to establish categorical

exemptions from RCW 43.21C (the State Environmental Policy Act) that differ from the exemptions in

RCW 43.21C.110(1)(a); and

WHEREAS, under RCW 43.21C.229, the infill development categorical exemptions are allowed to be applied

by local governments within an urban growth area, when the environmental impacts of such exemptions

have been considered, when the City’s comprehensive plan has received environmental review in the

form of an environmental impact statement, and where current density and intensity for growth areas are

lower than called for in the City’s comprehensive plan; and

WHEREAS, in 2012, The City of Seattle adopted infill development categorical exemptions for Urban Centers

and Urban Villages that contain a Station Area Overlay District where the density and intensity for

growth areas were lower than those called for in the City’s comprehensive plan; and

WHEREAS, in 2015, The City of Seattle removed infill development categorical exemptions pending further

analysis to be completed as part of Seattle 2035 planning process to develop growth estimates for Urban

Centers and Villages for the 2015-2035 planning horizon; and

WHEREAS, in 2016, the Office of Planning and Community Development completed its Seattle 2035 planning process and associated environmental impact statement for Council consideration and the City Council adopted “Seattle 2035”, the updated Comprehensive Plan for the planning horizon 2015-2035 including adoption of growth estimates for Urban Centers and Villages; and

WHEREAS, the amendments proposed in this bill are intended to update references to the Comprehensive Plan in Chapter 25.05 of the Seattle Municipal Code, the City’s Environmental Policies and Procedures, and restore the infill development categorical exemptions for development in Urban Centers only, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Findings.

A. The Mayor and City Council find that infill development categorical exemptions are authorized by the State, and have been effective as a factor that encourages new development to locate within urban centers consistent with the City’s Comprehensive Plan. This pattern of growth favoring centers and villages is leading to greater efficiencies of residential living and activity patterns that encourage greater use of mass transit and enliven individual neighborhoods and the City. As such, the use of infill categorical exemption levels should be re-authorized to continue to support these positive trends. This kind of efficiency will be increasingly important as Seattle will continue to need to accommodate new residents and employees, and will continue to need to encourage diversity of housing options located near mass transit systems and a variety of transportation choices.

B. The Mayor and the City Council find that these efficiencies are due, in part, to increased certainty for developers about the timeline for development and project delivery. Increasing infill development categorical exemptions is a recommendation of the Housing Affordability and Livability Agenda Advisory Committee, and the Mayor and City Council find that the infill development categorical exemption is an incentive and

regulatory change pursuant to RCW 36.70A.540 for the purposes of implementing the Mandatory Housing Affordability Program codified in 23.58C of the Seattle Municipal Code.

B. The Mayor and City Council find that State Environmental Policy Act (SEPA) environmental review should be maintained for the categories of development actions where significant levels of adverse environmental impacts are likely. In Seattle's context as the core and largest city of the metropolitan area, it is already highly urbanized, and it can support more growth, particularly in places where the City's planning policies prefer for growth to occur such as Urban Centers and near major transit system stations and hubs. In these settings, the overall potential for significant adverse impacts of development within Urban Centers is generally likely only at higher levels of development than are represented by the City's current SEPA categorical exemption levels. Thus, the infill development categorical exemption levels should be re-set in those areas at appropriate threshold levels for environmental review, and to eliminate layers of development review where they will not be productive. In other areas of Seattle, SEPA environmental review categorical exemption levels should remain at their current levels.

C. The Mayor and City Council find that the City's codes have evolved in recent decades such that there is generally less need to employ SEPA, because other City codes and requirements effectively mitigate environmental impacts. Relevant policies and codes include: environmental critical areas; shoreline, grading and drainage, and stormwater regulations; and design review, land use/zoning code, noise code, transportation mitigation programs, energy code, building code, and historic and cultural preservation policies and practices. These codes and processes are periodically updated, generally moving in the direction of greater protections. As one example, Seattle's shoreline master program regulations - Chapter 23.60A of the Seattle Municipal Code - were recently updated with greater protections that comply with State requirements. The Seattle Department of Construction and Inspections (SDCI) has prepared a summary of environmental protections contained in existing codes and rules that correspond to elements of the environment to be evaluated pursuant to SEPA, which is located in Table 1 of the SDCI Director's Report. Therefore, it is reasonably concluded that

development impacts in the affected areas will continue to be adequately addressed by the development regulations and other applicable requirements of City codes, policies, or plans, and other local, state, or federal rules or laws.

Section 2. Subsections 25.05.675.G and 25.05.675.J of the Seattle Municipal Code, which section was last amended by Ordinance 124895, are amended as follows:

25.05.675 Specific environmental policies

* * *

G. Height, ~~((Bulk and Scale.))~~ bulk, and scale

1. Policy ~~((Background.))~~ background

a. The purpose of the City's adopted land use regulations is to provide for smooth transition between industrial, commercial, and residential areas, to preserve the character of individual ~~((city))~~ City neighborhoods, and to reinforce natural topography by controlling the height, bulk, and scale of development.

b. However, the City's land use regulations cannot anticipate or address all substantial adverse impacts resulting from incongruous height, bulk, and scale. For example, unanticipated adverse impacts may occur when a project is located on a site with unusual topographic features or on a site which is substantially larger than the prevalent platting pattern in an area. Similarly, the mapping of the City's zoning designations cannot always provide a reasonable transition in height, bulk, and scale between development in adjacent zones.

2. Policies ~~(())~~

a. It is the City's policy that the height, bulk, and scale of development projects should be reasonably compatible with the general character of development anticipated by the goals and policies set forth in ~~((Section B of the land use element of the Seattle Comprehensive Plan regarding Land Use Categories, the shoreline goals and policies set forth in Section D-4 of the land use element of the Seattle Comprehensive~~

~~Plan;~~) the Land Use Element, Growth Strategy Element, and Shoreline Element of the Seattle Comprehensive Plan; the procedures and locational criteria for shoreline environment redesignations set forth in ~~((SMC))~~ Sections 23.60A.060 and 23.60A.220 ~~((§))~~ ; and the adopted land use regulations for the area in which they are located, and to provide for a reasonable transition between areas of less intensive zoning and more intensive zoning.

b. Subject to the overview policy set forth in ~~((SMC))~~ Section 25.05.665, the ~~((decision-maker))~~ decisionmaker may condition or deny a project to mitigate the adverse impacts of substantially incompatible height, bulk, and scale. Mitigating measures may include but are not limited to:

~~((i.))~~ 1) Limiting the height of the development;

~~((ii.))~~ 2) Modifying the bulk of the development;

~~((iii.))~~ 3) Modifying the development's facade including but not limited to color and finish material;

~~((iv.))~~ 4) Reducing the number or size of accessory structures or relocating accessory structures including but not limited to towers, railings, and ~~((antennae))~~ antennas;

~~((v.))~~ 5) Repositioning the development on the site; and

~~((vi.))~~ 6) Modifying or requiring setbacks, screening, landscaping, or other techniques to offset the appearance of incompatible height, bulk, and scale.

c. The Citywide design guidelines (and any Council-approved ~~((§))~~ neighborhood design guidelines) are intended to mitigate the same adverse height, bulk, and scale impacts addressed in these policies. A project that is approved pursuant to the design review process is presumed to comply with these height, bulk, and scale policies. This presumption may be rebutted only by clear and convincing evidence that height, bulk, and scale impacts documented through environmental review have not been adequately mitigated. Any additional mitigation imposed by the decisionmaker pursuant to these height, bulk, and scale policies on projects that have undergone design review shall comply with design guidelines applicable to the project.

* * *

J. Land ~~((Use.))~~ use

1. Policy ~~((Background.))~~ background

a. The City has adopted land use regulations that are designed, in part, to minimize or prevent impacts resulting from incompatible land use. However, the adopted Land Use Code (Title 23) cannot identify or anticipate all possible uses and all potential land use impacts. For example, adverse cumulative land use impacts may result when a particular use or uses permitted under ~~((the Zoning Code))~~ Title 23 occur in an area to such an extent that they foreclose opportunities for higher-priority, preferred uses called for in ~~((Section B of the land use element of the Comprehensive Plan and the shoreline goals and policies set forth in section D-4 of the land use element))~~ the Land Use Element, Growth Strategy Element, and Shoreline Element of the Seattle Comprehensive Plan.

b. Density-related impacts of development are addressed under the policies set forth in subsections 25.05.675.G (height, bulk, and scale), 25.05.675.M (parking), 25.05.675.R (traffic and transportation) and 25.05.675.O (public services and facilities) ~~((of this section))~~ and are not addressed under this policy.

2. Policies ~~(())~~

a. It is the City's policy to ensure that proposed uses in development projects are reasonably compatible with surrounding uses and are consistent with any applicable, adopted City land use regulations, the goals and policies set forth in ~~((Section B of the land use element of the Seattle Comprehensive Plan regarding Land Use Categories, and the shoreline goals and policies set forth in section D-4 of the land use element))~~ the Land Use Element, Growth Strategy Element, and Shoreline Element of the Seattle Comprehensive Plan for the area in which the project is located.

b. Subject to the overview policy set forth in ~~((SMC))~~ Section 25.05.665, the decisionmaker may condition or deny any project to mitigate adverse land use impacts resulting from a

proposed project or to achieve consistency with the applicable City land use regulations ((§)) ; the goals and policies set forth in ((Section B of the land use element of the Seattle Comprehensive Plan regarding Land Use Categories, the shoreline goals and policies set forth in Section D-4 of the land use element of the Seattle Comprehensive Plan,)) the Land Use Element, Growth Strategy Element, and Shoreline Element of the Seattle Comprehensive Plan; the procedures and locational criteria for shoreline environment redesignations set forth in ((SMC)) Sections 23.60A.060 and 23.60A.220, respectively ((§)) ; and the environmentally critical areas policies.

* * *

Section 3. Section 25.05.800 of the Seattle Municipal Code, last amended by Ordinance 124885, is amended as follows:

Subchapter IX Categorical Exemptions

25.05.800 Categorical exemptions

The proposed actions contained in this Section 25.05.800 are categorically exempt from threshold determination and ((EIS)) environmental impact statement requirements, subject to the rules and limitations on categorical exemptions contained in Section 25.05.305.

A. Minor new construction; flexible thresholds

1. The exemptions in this subsection 25.05.800.A apply to all licenses required to undertake the construction in question. To be exempt under this Section 25.05.800, the project shall be equal to or smaller than the exempt level. For a specific proposal, the exempt level in subsection 25.05.800.A.2 shall control. If the proposal is located in more than one city or county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. The exemptions in this subsection 25.05.800.A apply except when the project:

- a. Is undertaken wholly or partly on lands covered by water;
- b. Requires a license governing discharges to water that is not exempt under RCW

43.21C.0383;

c. Requires a license governing emissions to air that is not exempt under RCW

43.21C.0381 or WAC 197-11-800(7) or 197-11-800(8); or

d. Requires a land use decision that is not exempt under subsection 25.05.800.F.

2. The following types of construction are exempt, except when undertaken wholly or partly on lands covered by water or unless undertaken in environmentally critical areas listed in subsection 25.05.908.A:

a. The construction or location of residential or mixed-use development containing no more than the number of dwelling units identified in Table A for 25.05.800;

Table A for 25.05.800 Exemptions for residential uses			
Zone	Residential uses		
	Number of exempt dwelling units		
	Outside of urban centers (and urban villages containing SAODs))	Within urban centers where growth estimates have not been exceeded	Within urban centers (and urban villages containing SAODs) where growth estimates have been exceeded
SF, RSL	4	4	4
LR1	4	200 ¹	20
LR2	6	200 ¹	20
LR3	8	200 ¹	20
NC1, NC2, NC3, C1, C2	4	200 ¹	20
MR, HR, SM, SM-SLU, SM-D, SM-U, SM-NR	20	200 ¹	20
MPC-YT	NA	30 ¹	20
Downtown zones	NA	250 ¹	20
Industrial zones	4	4	4

Footnotes to Table A for 25.05.800: ((SAOD = Station Area Overlay District)) NA = not applicable Urban centers ((and urban villages)) are identified in the Seattle Comprehensive Plan ¹ Pursuant to RCW 43.21C.229, new residential development or the residential portion of new mixed-use development located in an urban center is categorically exempt from the State Environmental Policy Act, unless the Department has determined that residential growth within the urban center has exceeded exemption limits for the center that the Department has established pursuant to subsection 25.05.800.A.2.i.

b. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet or less, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption does not apply to feed lots;

c. The construction of office, school, commercial, recreational, service, or storage buildings, containing no more than the gross floor area listed in Table B for 25.05.800 below:

Table B for 25.05.800 Exemptions for ((non-residential)) <u>nonresidential</u> uses			
Zone	((Non-residential)) <u>Nonresidential</u> uses		
	Exempt area of use (square feet of gross floor area)		
	Outside of urban centers ((and urban villages containing SAODs))	Within urban centers where growth estimates have been exceeded	Within urban centers ((and urban villages containing SAODs,)) where growth estimates have been exceeded
SF, RSL, LR1	4,000	4,000	4,000
LR2, LR3	4,000	12,000 ¹ or 30,000	12,000
MR, HR, NC1, NC2, NC3	4,000	12,000 ¹ or 30,000	12,000
C1, C2, SM ₂ , SM-SLU, SM-D, <u>SM-U</u> , SM-NR	12,000	12,000 ¹ or 30,000	12,000
Industrial zones	12,000	12,000	12,000
MPC-YT	NA	12,000	12,000
Downtown zones	NA	12,000 ¹ or 30,000	12,000

Footnotes to Table B for 25.05.800: ~~((SAOD = Station Area Overlay District))~~ NA = not applicable Urban centers ~~((and urban villages))~~ are identified in the Seattle Comprehensive Plan ¹ New nonresidential development that is not part of a mixed-use development and that does not exceed 12,000 square feet in size is categorically exempt from the State Environmental Policy Act (SEPA). Pursuant to RCW 43.21C.229, new nonresidential development that does not exceed 30,000 square feet and that is part of a mixed-use development located in an urban center is categorically exempt from SEPA, unless the Department has determined that employment growth within the urban center has exceeded exemption limits for the center that the Department has established pursuant to subsection 25.05.800.A.2.i.

d. The construction of a parking lot designed for 40 or fewer automobiles, as well as the addition of spaces to existing lots up to a total of 40 spaces;

e. Any fill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any excavation, fill, or grading necessary for an exempt project in subsections 25.05.800.A.2.a, 25.05.800.A.2.b, 25.05.800.A.2.c, or 25.05.800.A.2.d shall be exempt ~~((=))~~ ;

f. Mixed-use construction, including but not limited to projects combining residential and commercial uses, is exempt if each use, if considered separately, is exempt under the criteria of subsections 25.05.800.A.2.a through 25.05.800.A.2.d, unless the uses in combination may have a probable significant adverse environmental impact in the judgment of an agency with jurisdiction (see subsection 25.05.305.A.2.b);

g. In zones not specifically identified in this subsection 25.05.800.A, the standards for the most similar zone addressed by this subsection 25.05.800.A apply ~~((=))~~ ;

h. For the purposes of this subsection 25.05.800.A, “mixed-use development” means development having two or more principal uses, one of which is a residential use comprising 50 percent or more of the gross floor area;

i. To implement the requirements of Table A for 25.05.800 and Table B for 25.05.800, the Director shall establish implementation guidance ~~((exemption limits))~~ by rule for how growth is measured against exemption limits and how changes to thresholds will occur if exemption limits are reached. ~~((each urban center and each urban village containing a SAOD to assure that proposed development that could cause~~

growth targets in Appendix A of the Comprehensive Plan's Urban Village Element to be exceeded is subject to SEPA review.) The exemption limits shall ~~((contain))~~ consist of the growth estimates established in the Comprehensive Plan for a given area, minus a "cushion" of ten percent to assure that development does not exceed growth ~~((targets))~~ estimates without SEPA review ~~((;))~~ ; ~~((provided that the cushion shall be at least 10 percent of the residential or employment growth targets established in the Comprehensive Plan;))~~ and

j. The Director shall monitor residential and employment growth and periodically publish ~~((quarterly))~~ a determination of growth for each urban center ~~((and urban village containing an SAOD))~~. Residential growth shall include, but need not be limited to, net new units that have been built and net new units in projects that have received a building permit but have not received a certificate of occupancy. ~~((H))~~ Per implementation guidance established by rule, if the Director determines that exemption limits have been reached for an urban center ~~((, or for an urban village containing an SAOD,))~~ subsequent development ~~((is not categorically exempt from SEPA review pursuant to RCW 43.21C.229))~~ will be subject to the lower thresholds as set forth in Table A for 25.05.800 and Table B for 25.05.800.

* * *

Section 4. The City Council requests that the Department of Construction and Inspections (SDCI) work with other city departments to produce a report to Council no later than December 31, 2017 that provides a comprehensive assessment of how the SEPA review process changes the outcomes of development in Seattle. The report should include:

- a) Information on how SEPA review functions in different neighborhoods, including urban centers, urban villages, and other areas or corridors outside of urban villages, and in different zones, including Residential Small Lot, Lowrise, Midrise, Neighborhood Commercial, and Seattle Mixed;
- b) Application of the Racial Equity Toolkit to analyze, among other things, whether the infill exemption contributes to displacement, how it effects the provision of affordable housing in areas where the infill

exemption applies, and what impacts there are to the community in contributing to discretionary decision-making by SDCI on development projects;

- c) An analysis of projects that have undergone SEPA review to determine the extent to which elements of the environment are protected by other regulations and review processes, and the scale below which it is uncommon for the SEPA review process to result in permit conditions on the development approval;
- d) The number of SEPA appeals of development projects, including location of projects, outcome of appeal decisions, duration of process, and financial impact on City resources to litigate and on cost of housing production;
- e) A discussion of environmental benefits achieved through SEPA mitigation conditions; and
- f) Recommendations on SEPA reforms to reduce redundancies and unnecessary costs to housing production and to harmonize Seattle’s SEPA Ordinance and the procedural requirements of Seattle Municipal Code Chapter 23.76 with Department of Ecology guidance on SEPA implementation.

Section 5. 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 _____, 2016, and signed by me in open session in authentication of its passage this _____ day of _____, 2016.

President _____ of the City Council

Approved by me this _____ day of _____, 2016.

Edward B. Murray, Mayor

Filed by me this _____ day of _____, 2016.

Monica Martinez Simmons, City Clerk

(Seal)