CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to environmental review; amending Sections 3.02.110, 25.05.035, 25.05.055, 25.05.070, 25.05.100, 25.05.440, 25.05.448, 25.05.545, 25.05.680, 25.05.800, 25.05.900, and 25.05.914 of the Seattle Municipal Code to clarify timelines and the content of administrative appeals, to authorize the development of Director's Rules to clarify the content of environmental documents, and to make corrections and technical amendments.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Findings

A. The Mayor and City Council find that the State authorizes categorical exemptions for infill development, which have been effective as a factor that encourages new development to locate within urban centers and urban villages 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 maximum categorical exemption level for infill development should be authorized to continue to support these positive trends. This kind of efficiency will be increasingly important as Seattle continues to accommodate new residents and employees and to encourage diversity of housing options located near mass transit systems and a variety of transportation choices.

B. The Mayor and 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 Chapter 23.58C of the Seattle Municipal Code.

C. 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 near major transit system stations and hubs and denser mixed-use communities. In these settings, the overall potential for significant adverse impacts of development 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.

D. 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 City policies and codes include environmental critical areas; shoreline, grading and drainage, and stormwater regulations; design review; land use 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 Attachment 1 to this ordinance. Therefore, it is reasonable to conclude 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. Section 3.02.110 of the Seattle Municipal Code, last amended by Ordinance 124567, is amended as follows:

3.02.110 Office of Hearing Examiner((.))

* * *

E. The Hearing Examiner is authorized from time to time to appoint Hearing Examiners Pro Tempore to serve on a day-to-day basis during the absence, unavailability, incapacity, or disqualification of the Hearing Examiner or to enable the Hearing Examiner to meet statutory deadlines. All regulations and rules that apply to the Hearing Examiner and Deputy Hearing Examiner, including those related to disqualification or recusal, shall also apply to any Hearing Examiners Pro Tempore.

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Section 3. Section 25.05.035 of the Seattle Municipal Code, last amended by Ordinance 114057, is amended as follows:

25.05.035 Rules and departmental procedures((.))

A. The Mayor is authorized to promulgate rules pursuant to ((~~the Administrative Code (~~))Chapter 3.02((~~)~~)), consistent with this ((~~chapter~~)) Chapter 25.05, to facilitate the application of this ((~~chapter~~)) Chapter 25.05 to City departments and operations.

B. The Director of the Seattle Department of Construction and Inspections is authorized to promulgate rules pursuant to Chapter 3.02 to provide uniform standards for the analysis of the elements of the environment contained in Section 25.05.444. For elements of the environment where another city department or departments have subject matter expertise, SDCI shall consult with the relevant department and the Director shall issue a joint Director's Rule with the Director of such department, as appropriate. All City departments and any applicants seeking City approval shall follow such rules to analyze environmental impacts of project and

nonproject actions. The rules may have different standards for nonproject and project actions and for environmental checklists and environmental impact statements. All such rules shall be consistent with this Chapter 25.05, WAC 197-11, and SEPA and shall be kept on file at the SEPA Public Information Center.

C. All departments subject to the provisions of this ((~~chapter~~)) Chapter 25.05 are authorized and directed to develop and promulgate such supplementary procedures as they deem appropriate for implementing the provisions of this ((~~chapter~~)) Chapter 25.05 within each department. All such supplemental procedures shall be consistent with this ((~~chapter~~)) Chapter 25.05, WAC 197-11, and ((~~the State Environmental Policy Act,~~)) SEPA and shall be kept on file at the SEPA Public Information Center.

Section 4. Section 25.05.055 of the Seattle Municipal Code, which section was last amended by Ordinance 119096, is amended as follows:

25.05.055 Timing of the SEPA process((~~,~~))

* * *

D. Applicant ((~~Review at Conceptual Stage.~~)) review at conceptual stage. In general, procedures contemplate environmental review and preparation of EIS's on private proposals at the conceptual stage rather than the final detailed design stage.

1. If an agency's only action is a decision on a building permit or other license that requires detailed project plans and specifications, agencies shall provide applicants with the opportunity for environmental review under SEPA prior to requiring applicants to submit such detailed project plans and specifications.

2. Agencies may specify the amount of detail needed from applicants for such early environmental review, consistent with Sections 25.05.035, 25.05.100, and 25.05.335, in their SEPA or permit procedures. For master use permits, see Section 23.76.010.

3. This subsection 25.05.055.D does not preclude agencies or applicants from preliminary discussions or exploration of ideas and options prior to commencing formal environmental review.

* * *

Section 5. Section 25.05.070 of the Seattle Municipal Code, last amended by Ordinance 124919, is amended as follows:

25.05.070 Limitations on actions during SEPA process((.))

A. Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:

1. Have an adverse environmental impact; or

2. Limit the choice of reasonable alternatives.

B. In addition, certain DNS's require a 14-day period prior to agency action (subsection 25.05.340.B), and FEIS's require a seven day period prior to agency action (subsection 25.05.460.E).

C. In preparing environmental documents, there may be a need to conduct studies that may cause nonsignificant environmental impacts. If such activity is not exempt under ((~~Section~~)) subsection 25.05.800.R (information collection and research), the activity may nonetheless proceed if a checklist is prepared and appropriate mitigation measures taken.

D. This ((~~section~~)) Section 25.05.070 does not preclude developing plans or designs, issuing requests for proposals (RFPs), securing options, or performing other work necessary to develop an application for a proposal, as long as such activities are consistent with subsection 25.05.070.A.

((~~E. No final authorization of any permit shall be granted until expiration of the time period for filing an appeal in accordance with Section 25.05.680, or if an appeal is filed, until the fifth day following termination of the appeal. If, on or before the fifth day following termination of an appeal, a party of record files with the Director of the Seattle Department of Construction and Inspections, a written notice of intent to seek judicial review of the City's action, no direct modification of the physical environment shall begin or be authorized until the thirty-first day following termination of the appeal or until a court has disposed of any requests for preliminary injunctive relief, whichever occurs first. Where substantial injury to a party would result from a~~

~~delay of construction, demolition, grading, or other direct modification of the physical environment, the official or body hearing the appeal shall grant an expedited hearing, in which case shorter notice less than 20 days prior to the hearing may be given as permitted by subsection 3.02.090.A.~~))

Section 6. Section 25.05.100 of the Seattle Municipal Code, last amended by Ordinance 114057, is amended as follows:

25.05.100 Information required of applicants((.))

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C. Environmental Impact Statements. The responsible official may require an applicant to provide relevant information that is not in the possession of the lead agency. Although an agency may include additional analysis not required under SEPA in an EIS (((~~Sections~~)) subsections 25.05.440.H ((~~G~~)), 25.05.448.D, and 25.05.640), the agency shall not require the applicant to furnish such information, under these rules. An applicant shall not be required to provide information requested of a consulted agency until the agency has responded or the time allowed for the consulted agency's response has elapsed, whichever is earlier. Preparation of an EIS by the applicant is in Section 25.05.420.

Section 7. Section 25.05.440 of the Seattle Municipal Code, last amended by Ordinance 114057, is amended as follows:

25.05.440 EIS contents((~~.~~))

An EIS shall contain the following, in the style and format prescribed in ((~~the preceding sections~~)) Sections 25.05.425 and 25.05.430.

* * *

E. Affected ((~~Environment, Significant Impacts, and Mitigation Measures.~~)) environment, significant impacts, and mitigation measures

1. This section of the EIS shall describe the existing environment that will be affected by the proposal, analyze significant impacts of alternatives including the proposed action, and discuss reasonable

mitigation measures that would significantly mitigate these impacts. Elements of the environment that are not significantly affected need not be discussed. Separate sections are not required for each subject (see ((~~Section~~)) subsection 25.05.430.C).

2. General requirements for this section of the EIS((~~.~~))

a. This section shall be written in a nontechnical manner ((~~which is~~)) easily understandable to lay persons whenever possible, with the discussion commensurate with the importance of the impacts. Only significant impacts must be discussed; other impacts may be discussed.

b. Although the lead agency should discuss the affected environment, environmental impacts, and other mitigation measures together for each element of the environment where there is a significant impact, the responsible official shall have the flexibility to organize this section in any manner useful to decisionmakers and the public (see ((~~Section~~)) subsection 25.05.430 C).

c. This subsection is not intended to duplicate the analysis in subsection ((~~E~~)) 25.05.440.D and shall avoid doing so to the fullest extent possible.

3. This section of the EIS shall:

a. Succinctly describe the principal features of the environment that would be affected, or created, by the alternatives including the proposal under consideration. Inventories of species should be avoided, although rare, threatened, or endangered species should be indicated;

b. Describe and discuss significant impacts that will narrow the range or degree of beneficial uses of the environment or pose long-term risks to human health or the environment, such as storage, handling, or disposal of toxic or hazardous material;

c. Clearly indicate those mitigation measures (not described in the previous section as part of the proposal or alternatives), if any, that could be implemented or might be required, as well as those, if any, that agencies or applicants are committed to implement;

d. Indicate what the intended environmental benefits of mitigation measures are for

significant impacts, and may discuss their technical feasibility and economic practicability, if there is concern about whether a mitigation measure is capable of being accomplished. The EIS need not analyze mitigation measures in detail unless they involve substantial changes to the proposal causing significant adverse impacts, or new information regarding significant impacts, and those measures will not be subsequently analyzed under SEPA (see ((~~Section~~)) subsection 25.05.660.B). An EIS may briefly mention nonsignificant impacts or mitigation measures to satisfy other environmental review laws or requirements covered in the same document (((~~Section~~)) subsection 25.05.402.H and Section 25.05.640);

e. Summarize significant adverse impacts that cannot or will not be mitigated.

4. This section shall incorporate, when appropriate:

a. A summary of existing plans (for example: land use and shoreline plans) and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them;

b. Energy requirements and conservation potential of various alternatives and mitigation measures, including more efficient use of energy, such as insulating, as well as the use of alternate and renewable energy resources;

c. Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;

d. Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

5. Significant impacts on both the natural environment and the built environment must be analyzed, if relevant (Section 25.05.444). This involves impacts upon and the quality of the physical surroundings, whether they are in wild, rural, or urban areas. Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire, and police protection, that may result from a proposal. EIS's shall also discuss significant environmental impacts upon land and shoreline use, which includes housing, physical blight, and significant impacts of projected population on environmental resources,

as specified by RCW 43.21C.110(1)(d) and (f), and as listed in Section 25.05.444.

((~~6. Analysis~~)) F. Additional non-environmental analysis of economic issues. Additional analysis of the following non-environmental social, cultural, and economic issues shall be included in every EIS, pursuant to WAC 197-11-440(8) and subsection 25.05.440.H, unless eliminated by the scoping process (Section 25.05.408):

((~~a.~~)) 1. Economic factors, including but not limited to employment, public investment, and taxation where appropriate, provided that this ((~~section~~)) subsection 25.05.440.F.1 shall not authorize the City to require disclosure of financial information relating to the private applicant or the private applicant's proposal;

((~~b.~~)) 2. Regional, City, and neighborhood goals, objectives, and policies adopted or recognized by the appropriate local governmental authority prior to the time the proposal is initiated;

((~~c.~~)) 3. The level of detail used in discussing these additional elements should be proportionate to the impacts the proposal may have if approved. Analysis of the potential economic impacts related to individual businesses is not required.

((~~F~~)) G. Appendices. Comment letters and responses shall be circulated with the FEIS as specified by Section 25.05.560. Technical reports and supporting documents need not be circulated with an EIS ((~~Sections~~)) subsections 25.05.425.D and 25.05.440.A.11), but shall be readily available to agencies and the public during the comment period.

((~~G~~)) H. Additional ((~~Analysis~~)) analysis. The lead agency may at its option include, in an EIS or appendix, the analysis of any impact relevant to the agency's decision, whether or not environmental. The inclusion of such analysis may be based upon comments received during the scoping process. The provision for combining documents may be used (Section 25.05.640). The EIS shall comply with the format requirements of this ((~~subchapter~~)) Subchapter IV. The decision whether to include such information and the adequacy of any such additional analysis, including the additional analysis required by subsection 25.05.550.F, shall not be used in determining whether an EIS meets the requirements of SEPA and is not subject to appeal.

Section 8. Section 25.05.448 of the Seattle Municipal Code, last amended by Ordinance 114057, is amended as follows:

25.05.448 Relationship of EIS to other considerations((.))

A. SEPA contemplates that the general welfare, social, economic, and other requirements and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions. However, the environmental impact statement is not required to evaluate and document all of the possible effects and considerations of a decision or to contain the balancing judgments that must ultimately be made by the decisionmakers. Rather, an environmental impact statement analyzes environmental impacts and must be used by agency decisionmakers, along with other relevant considerations or documents, in making final decisions on a proposal. The EIS provides a basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA, because it provides information on the environmental costs and impacts. SEPA does not require that an EIS be an agency's only decisionmaking document.

B. The term "socioeconomic" is not used in ((~~the statute~~)) SEPA or in these ((~~rules~~))regulations because the term does not have a uniform meaning and has caused a great deal of uncertainty. Areas of urban environmental concern ((~~which~~)) that must be considered are specified in RCW 43.21C.110(1)(f), the environmental checklist (Section 25.05.960), and Sections 25.05.440 and 25.05.444. (((~~See Section 25.05.440 E6.~~)))

C. Examples of information that are not required to be discussed in an EIS are: ((~~Methods~~)) methods of financing proposals, economic competition, profits and personal income and wages, and social policy analysis such as fiscal and welfare policies and nonconstruction aspects of education and communications. EIS's may include whether housing is low, middle, or high income.

D. Agencies have the option to combine EIS's with other documents or to include additional analyses in EIS's, that will assist in making decisions (((~~Sections~~)) subsection 25.05.440.H ((~~G~~)) and Section 25.05.640). Agencies may use the scoping process to help identify issues of public concern ((~~to citizens~~)).

Section 9. Section 25.05.545 of the Seattle Municipal Code, last amended by Ordinance 114057, is amended as follows:

25.05.545 Effect of no comment((.))

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B. Other ((~~Agencies and the Public~~)) agencies and the public. Lack of comment by other agencies or members of the public on environmental documents, within the time periods specified by these rules, shall be construed as lack of objection to the environmental analysis, if the requirements of Section 25.05.510 (public notice) are met. Other agencies and the public shall comment in the manner specified in Section 25.05.550. Each commenting citizen need not raise all possible issues independently. Appeals to the Hearing Examiner are considered de novo; the only limitation is that the issues on appeal shall be limited to those cited in the notice of appeal in accordance with subsection 25.06.680.B.5. (((~~See Section 25.05.680 B3.~~)))

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.495, 43.21C.500, 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, the Hearing Examiner shall complete the appeal process, including a determination on the merits within 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 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 the

deadline 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 nor 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 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 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 the deadline 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.

C. Judicial ((~~Appeals~~)) appeals

1. SEPA authorizes judicial appeals of both procedural and substantive compliance with SEPA.

2. When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA (SEPA issues) and those ((~~which~~)) that do not (non-SEPA issues). If there is a time limit established by statute or ordinance for appealing the underlying governmental action, then appeals (or portions thereof) raising SEPA issues must be filed within such time period. If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is

used, appeals must be commenced within the time period specified by RCW 43.21C.080.

3. If the proposal requires more than one governmental decision that will be supported by the same SEPA documents, then RCW 43.21C.080 still only allows one judicial appeal of procedural compliance with SEPA, which must be commenced within the applicable time to appeal the first governmental decision.

4. If there is no time limit established by statute or ordinance for appeal, and the notice of action provisions are not used, then SEPA provides no time limit for judicial appeals. Appeal times may still be limited, however, by general statutes of limitation or the common law.

5. For the purposes of this subsection 25.05.680.C, "a time limit established by statute or ordinance" does not include time limits established by the general statutes of limitation in chapter 4.16 RCW.

D. RCW 43.21C.420 bars certain SEPA appeals if the City has elected to adopt optional elements of the City's Comprehensive Plan or development regulations pursuant to RCW 43.21C.420. Unless an ordinance enacting or amending the Comprehensive Plan or development regulations expressly recites that it is being adopted pursuant to the authority of RCW 43.21C.420, RCW 43.21C.420 does not affect the availability of appeals. If RCW 43.21C.420 applies to a non-project EIS as described in RCW 43.21C.420, then unless the City Council by ordinance establishes a different time frame for submitting a complete application for purposes of RCW 43.21C.420 (5) with respect to that EIS, the time frame is 24 hours following the date of issuance of the final EIS.

E. Official ((~~Notice of the Date and Place for Commencing a Judicial Appeal~~)) notice of the date and place for commencing a judicial appeal

1. Official notice of the date and place for commencing an appeal must be given if there is a time limit established by statute or ordinance for commencing an appeal of the underlying governmental action. The notice shall include the time limit for commencing an appeal, the statute or ordinance establishing the time limit, and where an appeal may be filed.

2. Notice is given by:

a. Delivery of written notice to the applicant, all parties to any administrative appeal, and all persons who have requested notice of decisions with respect to the particular proposal in question; and

b. Following the agency's normal methods of notice for the type of governmental action taken.

3. Written notice containing the information required by subsection 25.05.680.E.1 may be appended to the permit, decision documents, or SEPA compliance documents or may be printed separately.

4. Official notices required by this ((~~subparagraph~~)) subsection 25.05.680.E shall not be given prior to final agency action.

F. RCW 36.70A.600 and 43.21C.495 exempt certain Council land use actions from administrative or judicial appeals if the Council land use action is adopted by April 1, 2021. Environmental documents and Council land use actions intended to be exempt from SEPA appeals pursuant to RCW 43.21C.495 should so state.

G. RCW 43.21C.500 exempts residential and mixed-use development from SEPA appeals on the basis of the evaluation of or impacts to transportation elements of the environment, so long as the project does not present significant adverse impacts to the state-owned transportation system as determined by the Washington State Department of Transportation and the project is:

1. Consistent with:

a. A locally adopted transportation plan; or

b. The transportation element of the Comprehensive Plan; and

2. A project for which:

a. Traffic or parking impact fees are imposed pursuant to RCW 82.02.050 through 82.02.090; or

b. Traffic or parking impacts are expressly mitigated by an ordinance, or ordinances, of general application.

3. For purposes of this subsection 25.05.680.G, "impacts to transportation elements of the environment" include: impacts to transportation systems; vehicular traffic; waterborne, rail, and air traffic; parking; movement or circulation of people or goods; and traffic hazards.

H. Appeals are limited to procedural and substantive compliance with SEPA. Appeals of substantive compliance shall be limited to the specific environmental policies contained in Section 25.05.675.

Section 11. Section 25.05.800 of the Seattle Municipal Code, last amended by Ordinance 125792, is amended as follows:

25.05.800 Categorical exemptions

The proposed actions contained in this Section 25.05.800 are categorically exempt from threshold determination and 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:

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 below:

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	**Within urban centers and urban villages where growth estimates have not been exceeded**	**Within urban centers an urban villages where gro estimates have been exce**
SF and RSL	4	4	4
LR1	4	200[1]	20
LR2	6	200[1]	20
LR3	8	200[1]	20
NC1, NC2, NC3, C1, and	4	200[1]	20
MR, HR, and Seattle Mixe zones	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 NA = not applicable Urban centers and urban villages are identified i Comprehensive Plan [1] Pursuant to RCW 43.21C.229, new residential development or the residential porti use development located in an urban center or in an urban village is categorically exempt from the State E Policy Act, unless the Department has determined that residential growth within the urban center or villag exemption limits for the center that the Department has established pursuant to subsection 25.05.800.A.2.			

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 the property owner's 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 uses			
Zone	**Non-residential uses**		
	Exempt area of use (square feet of gross floor area)		
	Outside ((of)) urban centers and hub urban villages	**Within urban centers an urban villages where gro estimates have not been exceeded**	**Within urban centers an hub urban villages wher growth estimates have b exceeded**
SF, RSL, and LR1	4,000	4,000	4,000
LR2 and LR3	4,000	12,000[1] or 30,000[2]	12,000
MR, HR, NC1, NC2, and NC3	4,000	12,000 [1] or 30,000[2]	12,000
C1, C2, and Seattle Mixed zones	12,000	12,000 [1] or 30,000[2]	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[2]	12,000
Footnotes to Table B for 25.05.800 NA = not applicable Urban centers and urban villages are identified in the Seattle Comprehensive Plan [1] New non-residential 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). [2] Pursuant to RCW 43.21C.229, new non-residential development that does not exceed 30,000 square feet and that is part of a mixed-use development located in an urban center or in a hub urban village is categorically exempt from SEPA, unless the Department has determined that employment growth within the urban center or village 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 by rule for how growth is measured against exemption limits and how changes to thresholds will occur if exemption limits are reached. The exemption limits shall 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 estimates without SEPA review; and

j. The Director shall monitor residential and employment growth and periodically publish a determination of growth for each urban center and urban village. 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. Per implementation guidance established by rule, if the Director determines that exemption limits have been reached for an urban center or urban village subsequent development will be subject to the lower thresholds as set forth in Table A for 25.05.800 and Table B for 25.05.800.

* * *

U. ((~~Reserved~~)) The following nonproject actions are exempt:

1. Amendments to development regulations that are required to ensure consistency with the City's Comprehensive Plan if the Comprehensive Plan was previously subjected to environmental review pursuant to this Chapter 25.05 and the impacts associated with the proposed regulation were specifically addressed in the environmental review for the Comprehensive Plan;

2. Amendments to development regulations that are required to ensure consistency with the shoreline master program, Chapter 23.60A, where the shoreline master program was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

3. Amendments to development regulations that, upon implementation of a project action, will provide increased environmental protection, limited to the following:

a. Increased protections for critical areas, such as enhanced buffers or setbacks;

b. Increased vegetation retention or decreased impervious surface areas in shoreline jurisdiction; and

c. Increased vegetation retention or decreased impervious surface areas in critical areas;

4. Amendments to the technical codes contained in Title 22 to ensure consistency with minimum standards contained in state law.

* * *

Section 12. Section 25.05.910 of the Seattle Municipal Code, which section was last amended by Ordinance 119096, is amended as follows:

25.05.910 Designation of responsible department and responsible official where City is lead agency((~~.~~))

(((~~See WAC 197-11-910.~~)))

A. For each proposal where the City is the lead agency, the responsible department shall be designated prior to designation of the responsible official.

B. In designating the responsible department:

1. The first department receiving or initiating a proposal ((~~which~~)) that involves a major action, and for which the City is the lead agency, shall determine the responsible department for that proposal((~~;~~)) .

2. If that department determines that another department is the responsible department, it shall immediately notify such department of its determination((~~;~~)) .

3. When a department determines that it is the responsible department, it shall immediately notify all other departments with jurisdiction over the proposal((~~;~~)) .

4. Except for the Legislative Department, the responsible department for all proposals initiated by a department shall be the department making the proposal. In the event that two (((~~2~~))) or more departments share in the initiation of a proposal, the departments shall by agreement determine which department will assume the status of responsible department((~~;~~)) .

5. When the proposal will involve both private and public construction activity, it shall be characterized as either a private or a public project for the purposes of responsible department designation, depending upon whether the primary sponsor or initiator of the project is a department or from the private sector. Any project in which department and private interests are too intertwined to make this characterization shall be considered a public project.

6. For proposals for private projects which require licenses from more than one (((~~1~~))) department, the responsible department shall be the department with responsibility for making the final recommendation or report on the first major action of the proposal or the first action ((~~which~~)) that would result in irreversible commitment to the proposal; or in the event these conditions do not apply, the responsible department shall be the department whose action, license, or licenses will have the greatest effect on the environment((~~;~~)) .

7. Nothing in this ((~~section~~)) Section 25.05.910 shall prohibit a department from assuming the role of responsible department as the result of an agreement among all departments with jurisdiction((~~;~~)) .

8. ((~~In the event that~~)) When the departments with jurisdiction are unable to determine which department is the responsible department under this ((~~subchapter~~)) Subchapter X, any department with jurisdiction may petition the Mayor for such determination. The petition shall clearly describe the proposal in question and include a list of all licenses and approvals required for the proposal. The petition shall be filed with the Mayor within ((~~fifteen (~~))15((~~)~~)) days after receipt by the petitioning department of the determination to which it objects. Within ((~~fifteen (~~))15((~~)~~)) days of receipt of a petition, the Mayor shall designate the responsible department.

9. When the Legislative Department initiates a proposal, it may assume the status of responsible official, or may request that another department assume the status of responsible official.

* * *

Section 13. Section 25.05.914 of the Seattle Municipal Code, last amended by Ordinance 124919, is amended as follows:

25.05.914 SEPA costs and fees.

(((~~(See WAC 197-11-914).~~)))

A. For the purpose of reimbursing the City for necessary costs and expenses related to its compliance with the SEPA rules and this ((~~chapter~~)) Chapter 25.05 in connection with private projects, the following schedule of fees, in addition to those otherwise provided by ordinance, is established:

1. For a threshold determination which requires information in addition to that contained in or accompanying the environmental checklist, a fee in an amount equal to the actual costs and expenses incurred by the City in conducting any studies or investigations necessary to provide such information; provided that the fee shall not be less than $20 nor more than $500;

2. For all private projects requiring an EIS for which the City is the lead agency and for which the responsible official determines that the EIS shall be prepared by employees of the City, or that the City will contract directly with a consultant or consultants for the preparation of an EIS, a fee in an amount equal to the

actual costs and expenses incurred by the City in preparing the EIS. Such fee shall also apply when the applicant prepares the EIS, and the responsible official determines that substantial rewriting or reassessing of impacts must be performed by employees of the City to insure compliance with the provisions of the SEPA ((~~Guidelines~~)) Rules and this ((~~subchapter~~)) Subchapter X.

3. When the responsible official is the Director of ((~~Planning and Development~~)) the Seattle Department of Construction and Inspections, fees shall be paid as described in ((~~the Permit Fee Ordinance (SMC Chapter 22.900)~~)) Chapter 22.900C.

Section 14. 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 _____, 2019, and signed by me in open session in authentication of its passage this _____ day of _____, 2019.

_____

President _____ of the City Council

Approved by me this _____ day of _____, 2019.

_____

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment 1 - Summary of environmental protections in other codes/rules compared to a full list of topics addressed by environmental review pursuant to the SEPA