

Director's Report and Recommendations Code Amendments – Jobs Initiative/Regulatory Reform

INTRODUCTION

The recovery from the recession has been slow in Seattle as well as across the nation. To help residents, businesses and property owners, the City has taken many steps to help get people back to work. Mayor McGinn published the Seattle Jobs Plan in August 2010. Further, to state its intent and guide future action, the City Council adopted Resolution 31282 in March, 2011. The resolution contains guiding principles for strengthening and growing Seattle's economy and creating jobs. Those principles include:

- Quality of life;
- Resilient and sustainable local economy;
- Collaboration and civic leadership;
- Hospitable and responsive business climate; and
- Infrastructure investment.

In keeping with those principles, a group of business, environmental, and neighborhood leaders met to develop proposals for regulatory reform that will support sustainability and economic development in particular. They presented their proposals to the Mayor in a letter in June, 2011. The letter in part states that:

“The group shares those principles (from Resolution 31282) and believes that sustainable choices can also help foster economic renewal, especially as part of long-term regulatory reform.”

In response to the group's ideas for immediate changes to get people back to work and jump-start development by simplifying regulations, amendments to the Land Use Code (Title 23) and Environmental Policies and Procedures (Chapter 25.05) are proposed as summarized below:

Encourage Home-Based Businesses

- Allow property owners to conduct home-based businesses in legal principal or accessory structures, including in accessory dwelling units (ADUs), as long as impacts are avoided on other properties.
- Allow structure alterations in keeping with zone standards.
- Allow advertising on the internet, but continue with the current practice of requiring customer visits by appointment only.
- Allow up to 2 non-resident employees (currently limited to one).

Expand Options for Accessory Dwelling Units (ADUs)

- Allow detached ADUs on through lots (lots that front two streets), in locations most comparable to rear yards.

- Allow more flexibility for the height of detached ADUs.
- Clarify that ADUs are allowed with various housing types (including townhouses, rowhouses and at ground-level in housing in NC zones).

Concentrate Street-Level Commercial Uses in Pedestrian (P)-Zones

- Focus street-level commercial use requirement in Pedestrian (P) zones, to support walkable districts, while increasing development flexibility at the street level elsewhere.
- Allow greater flexibility on approximately 80% of Commercial (C) & Neighborhood Commercial (NC) zoned frontage on arterials throughout the city, compared with the current requirement for predominantly commercial uses on all arterial frontages.
- Maintain current street-level standards for new development, which apply depending on use, such as transparency and 13-foot ceiling height requirements for nonresidential and live-work uses, and setback or height separation of residential floor levels from the sidewalk for residential uses.

Allow Small Commercial Uses in Certain Multifamily Zones

- Allow ground-floor commercial uses in Lowrise 2 and 3 zones that are within urban centers or station area overlays (with the same permitted uses, signage as in Midrise and Highrise zones).
- Apply 2,500 square foot limit to all non-residential uses including grocery/drug stores.
- Limit outdoor seating to 10 PM.
- Clarify development standards (such as setbacks) for newly allowed non-residential uses in mixed-use and single-purpose commercial development in LR zones.
- Allow ground-floor commercial uses in all Midrise zones (no longer limited to locations within 800 feet of a neighborhood commercial zone).

Expand Temporary Uses

- Extend maximum length of temporary use permits from 6 months to up to 18 months (to be consistent with building code time period), and convert these reviews to a non-appealable Type 1 permit (rather than Type 2 appealable permit).

Reduce and Eliminate Some Parking Requirements

- Extend no-minimum-parking requirements for residential and non-residential uses (currently applicable to urban centers, the Station Area Overlay District, and residential uses in Urban Villages) to all other areas where frequent transit service is available within ¼ mile.
- Define minimum parking requirements for major institutions that are the same as other nonresidential uses in urban centers.

Change Environmental (SEPA) Review Thresholds

- Encourage infill residential and mixed-use growth in urban centers & the Station Area Overlay District by increasing environmental review thresholds to 200 dwelling units (250 in the Downtown Urban Center), and 75,000 sq. ft. for commercial uses in mixed-use development.
- Codify conditioning authority for transportation analysis and mitigation in the Land Use Code.

Miscellaneous

- Correction of inadvertent errors and omissions from recent ordinances, addressing topics including rental housing demolition provisions, parking for multifamily development for the elderly, and the listing of certain Master Use Permit decision types.

BACKGROUND

The City has already amended the Land Use Code several times since 2007 to help improve the local economy. This includes legislation:

- Extending the life of Master Use Permits;
- Permitting active uses on vacant and underused lots;
- Allowing temporary park and ride lots for light rail parking; and
- Allowing mobile food vending.

The current proposal is consistent with these other efforts. The desired outcomes of this proposal are to reinforce and improve Seattle's greatest assets and create a community that is more vibrant, in terms of:

- An invigorated and sustainable economy that encourages innovation;
- An open environment that fully supports investment and entrepreneurship;
- Safe, walkable, and livable neighborhoods;
- Land use rules that support accessible and efficient transit systems;
- A wide array of desirable and affordable housing options; and
- A high-quality sustainable natural environment.

This proposal sensibly reinforces the City's intent to grow economically over the long term and it helps people weather the current difficult economy in three important ways:

1) Helps get people back to work - encourages entrepreneurship and new business development:

The proposal helps people who are unemployed to re-enter the workforce by working from their own home or other structures on their single family zoned property. In addition, the economy is evolving toward creating new enterprises that begin as sole proprietors or small partnerships and grow into large employers over time. The proposal is to make the home occupation rules more flexible to accommodate these startups and encourage their growth within appropriate limits for a business that is still incidental to the residential use. Also, enabling temporary uses for other small business ventures such as "pop-up" retail, and other commercial uses in certain multifamily zones in urban centers and the Station Area Overlay District, will encourage economic growth and help enliven intended growth centers that are already supported by transportation investments.

2) *Promotes flexibility in the Land Use Code to foster innovation, improve efficiency and eliminates unnecessary reviews:*

By allowing more diverse mixes of uses in multifamily zones, and otherwise providing more flexibility and choice for developers in how to design their buildings in commercial zones, the proposal would encourage new building investments that are more innovative, efficient and in line with today's needs. By focusing environmental review according to the State Environmental Policy Act (SEPA) only on projects that have the potential to adversely impact the environment, we will further encourage new growth and infill development in urban centers and Station Area Overlay District where it is best able to be accommodated. In these areas the City would continue to make use of the other detailed codes and processes already in place to mitigate impacts, and benefit from other recent programmatic SEPA impact studies that effectively fulfill environmental review purposes.

3) *Jumpstarts new housing opportunities - encourages new investment in affordable housing:*

The proposal enables attached and detached accessory dwelling units to be built in a greater variety of residential lots across the city, in some cases with a more flexible height envelope. This will encourage development of housing that is more affordable, providing more options for households while continuing to promote development that is a good fit in neighborhoods, and jobs in the community.

ANALYSIS

Encourage Home-Based Businesses

The proposal updates rules addressing home-based businesses to recognize and encourage the emerging trend of small business startups in the home that will grow and meaningfully contribute to area employment and economic growth. Home-based businesses are permitted as an accessory use subject to the standards of Section 23.42.050 in the Land Use Code and the standards of the applicable zone. Home-based businesses are currently allowed wherever residential use is permitted (for example in single-family and multifamily zones and for the residential portion of mixed-use development in commercial and downtown zones).

The amendments would allow more flexibility for home-based businesses, as follows:

- Allow them to be located in any legal structure on a property (currently home occupations are only allowed in the main home or in an accessory dwelling unit);
- Allow additions and alterations to structures, as long as the standards of the applicable zone are met;
- Allow them to advertise the location of a home-based business, on the internet for example, but retain existing limitations on exterior identifying signs (no advertising is currently allowed, even on the internet); and
- Allow up to two non-resident employees (one is currently allowed).

The proposal to allow advertising is essential to attracting customers and growing a business in the local and broader marketplace. In many cases, customers may be served electronically without a need to visit the business location. Allowing the business to employ up to two non-residents will give flexibility for a business to grow a limited amount, while it also strengthens our local economy by supporting city residents' livelihoods. These elements will help foster a more predictable and supportive environment for small businesses to start and grow in homes.

Home-based businesses will continue to be required to avoid creating spillover effects on adjacent properties such as odors, dust, smoke, light/glare, excessive noise, substantial traffic or other similar impacts to adjacent properties. Overall, the several proposed code clarifications will reasonably enhance the ability for home businesses to start and operate while also making the standards easier to use and enforce.

Expand Options for Accessory Dwelling Units (ADUs)

The proposal would improve the Land Use Code's flexibility to accommodate accessory dwelling units, thus providing more opportunity for affordable housing to be creatively built across the city. The amendments would:

- Allow backyard cottages (detached accessory dwelling units) on "through lots" – those with opposite ends bordering on two streets — in the yard that is most like a rear yard;
- Adjust height limits for backyard cottages, which overly restrict height particularly when there is a sloping back yard; and
- Clarify that certain multifamily housing types such as rowhouses and townhouses may include accessory dwellings within them (one per each principal dwelling regardless of the kind of lot) or in an accessory structure, to provide additional housing options.

The proposal adds "through lots" as eligible for construction of backyard cottages. While they typically can be categorized as having "front" and "back" yards based on surrounding development patterns, the current land use code classifies both yards as "front" yards. The proposal is to allow a cottage to be located in the yard that functions most like a rear yard.

Another proposed change would remove a limitation on the height of a backyard cottage to be no more than 15 feet higher than the height of the primary house. Heights for backyard cottages would still be limited to 15 to 23 feet, depending upon the width of the lot and the roof type. The current limitation tied to the height of the primary house penalizes the siting of cottages on lots where the rear yard slopes up from where the primary house is located. In addition, many existing primary houses are lower than the 30 feet allowed in the zone, which leads to an overly restrictive height limit for backyard cottages. Review of DPD's 2011 annual report on backyard cottage development indicates that the more restrictive height limit provision is of limited use because most cottages are generally built in scale with the existing houses, even when the cottage is built above a garage.

In addition, the proposal would clarify the code's definitions of townhouses and rowhouses to allow for an ADU to be present, one for each principal dwelling unit of such a structure. Amendments are necessary to properly authorize them on all kinds of lots, including those in "unit lot subdivisions."

While these changes would each affect only a relatively modest range of situations, they will provide more flexibility to encourage and achieve more affordable housing choices to serve households at many income levels.

Concentrate Street-level Commercial Uses in Pedestrian (P) Zones

The City has designated numerous (approximately 40) pedestrian "P" zone overlay districts that have significant value as current or future pedestrian-friendly environments. These areas are neighborhood commercial centers where ground-floor commercial uses and pedestrian-oriented development standards (transparency requirements, blank wall limits, etc.) are required to help maintain active street fronts. Consistent with neighborhood plans, the predominant commercial use requirements at street-level would also continue to apply within the Bitter Lake and Lake City Urban Villages (per adopted neighborhood plans), and would continue in NC1 zones, and in commercial zones with height limits of 85 feet or higher.

The proposal provides more flexibility in ground-floor uses in non-pedestrian designated commercial areas. The proposed removal of the restrictive ground-floor use rules (requiring commercial uses along 80% of a property's street-level facades) will benefit approximately 82% of the city's commercial-zoned property frontage along arterials. This should increase the economic feasibility and attractiveness of many properties for infill residential development or more varied mixes of residential and commercial uses, where the market for commercial uses currently is limited. Currently, the ground-floor commercial use requirement applies extensively across the city, regardless of a property's economic viability for such uses. The effect in some neighborhoods has been commercial spaces that sit vacant or underused. The proposal allows more flexibility to respond to the market and the specifics of a particular location, and will also improve economic feasibility to develop by allowing for more cost-efficient and space-efficient building designs (also helped in some locations by no minimum parking requirements).

Development standards for street-level uses in new development, including those that apply to commercial uses, live-work spaces, and residential uses in non-pedestrian-designated commercial zones, will continue to apply, ensuring visually interesting and engaging streetscapes.

Allow Small Commercial Uses in Certain Multifamily Zones

The proposal would promote mixed-use development in certain Lowrise 2 and Lowrise 3 (LR2 and LR3) zones in urban centers and the Station Area Overlay District by allowing small commercial uses to locate at the ground floor of buildings. This would be similar to the current allowances in Midrise (MR) and Highrise (HR) zones. The proposal is intended to continue to emphasize the residential character, but allow greater flexibility for a mixing of uses, adding to

the vibrancy of areas where future growth and infill development is anticipated. This would facilitate improved access to goods and services without the need to drive.

The amendments would allow more flexibility for commercial uses to be located in multifamily zones as follows:

- Allow compatible commercial uses at street-level in LR2 and LR3 zones in urban centers and the Station Area Overlay District: retail sales and service, business support services, office, restaurant, medical services, food processing, and craft work and live-work uses.
- Allow commercial uses in MR zones throughout the city (current provisions limit commercial uses to MR zoned lots that are within 800 feet of a neighborhood commercial zone); and
- Apply a maximum size per business establishment of 2,500 square feet, and a limitation against outdoor uses after 10 PM.

The proposal expands upon Seattle's longstanding use of zoning to encourage mixed-use communities with an active pedestrian orientation, particularly in areas well served by transit. While the neighborhood commercial zones (and to a lesser extent, MR and HR zones) have been the primary places for mixed-use development, LR2 and LR3 zones can also contribute to the evolution of preferred growth centers, including light rail station areas, into more interesting and active places that are also supportive of and conducive to small businesses and entrepreneurship. Ideally, the added flexibility to design innovative new forms of mixed-use development will foster the near-term construction of varied new developments, small and large, that will provide exciting new living and shopping opportunities.

Expand Temporary Uses

Business startups and micro-businesses are playing an increasingly important role in today's economy. The City's rules are evolving, but are not currently flexible enough to easily accommodate events and temporary uses that would add to the community and would support entrepreneurial opportunities. Adjustments that would ease the process of obtaining temporary use permits would foster opportunities for those wishing to create and promote new products and services. Such changes would provide greater flexibility in permitting, while still providing for DPD review to help ensure that such activities fit in with their surroundings. Reviews will continue to use the same criteria that require protection of the safety and welfare of the public and adjacent properties (see Section 23.42.040 of the Land Use Code).

The amendments would allow more flexibility for small businesses as follows:

- Allow for a simpler non-appealable (Type I) permit for temporary uses, lasting up to 18 months (currently these temporary use permits are appealable [Type II] and have a maximum term of six months).

Providing for longer temporary use permits would empower individuals to try a business venture, starting small, perhaps filling a niche that is not well-served. This, in combination with the

proposal to allow small commercial activities in Lowrise 2 and 3 (LR2 and LR3) zones within urban centers and Station Area Overlay District, could result in the creation of newly enlivened districts within these areas where denser growth and vital neighborhoods are already encouraged by the City's growth policies.

Reduce and Eliminate Some Parking Requirements

The amendments would allow more flexibility for developers to provide parking, in amounts tailored to the intended users of new development, as follows:

- Extend no-minimum-parking requirements for residential and non-residential uses (currently applicable to urban centers, the Station Area Overlay District, and residential uses in Urban Villages) to all other areas where frequent transit service is available within ¼ mile.
- Similar to other uses, extend a no-minimum-parking requirement to Major Institution properties located in urban centers or Station Area Overlay District.

The proposed reductions in minimum parking levels would recognize the benefits provided by improved transit service for residents to move around the city conveniently, especially in those areas where transit service is frequent. As trends toward less automobile ownership continue over time, more residents will fulfill their needs with local services and/or will travel via transit to urban centers and villages, and there will be less demand for large quantities of parking for residences, businesses and places of employment. National survey data shows that automobiles are owned and used less frequently by younger households, as well as in households in Seattle's growth areas (U.S. Census, 2000) and in areas well served by transit.

Due to these trends, the City's minimum parking requirements should be reduced and made more flexible to allow parking provision as the market demands. These efficiencies will also be instrumental in encouraging new development. Due to the high costs of constructing new parking spaces (up to roughly \$30,000-\$40,000 per space) and the challenges it poses in designing new buildings on in-city properties, the proposal will provide significant added flexibility and cost savings in future development, thereby encouraging new development and investment.

Major Institutions located in urban centers or the Station Area Overlay District are also proposed to be able to determine the most appropriate parking requirement based on the needs of their employees and clients, and in light of frequent transit service in these areas. Particularly where land and institutional development opportunities are already constrained by their property and their master plan, a Major Institution in an urban center should not be required to provide additional parking that will not be needed, will be increasingly expensive to provide within new development sites, and may result in the need to further expand institution boundaries. These Major Institutions are subject to transportation management program (TMP) requirements, which are already effective in influencing the travel choices of institutional employees. The institutions' Master Plans do not include commitments to specific predefined amounts of parking to serve future development projects, so no conflicts with Master Plans are likely. Taken together, the ability to provide less parking based on anticipated need rather than a set code requirement,

continued TMP expectations, parking pricing for on-street and off-street parking, continuation of current on-street parking control methods (including metering and residential parking zones), and availability of alternative means of transportation, will be effective in preventing significant spillover parking.

Change Environmental (SEPA) Review Thresholds

The State Environmental Policy Act (SEPA) review threshold (“categorical exemption” level) is the level above which significant adverse environmental impacts are considered possible, which means that a SEPA determination must be made. In the past, Seattle and other jurisdictions counted on SEPA authority to address topics for which codes did not provide sufficient protections.

As the City’s codes have evolved in recent decades, there is less need to employ SEPA authority because other codes effectively mitigate the potential for significant adverse impacts. Relevant policies and codes include: comprehensive plan policies, environmental critical areas rules, shoreline rules, grading and drainage codes, stormwater regulations, parking codes, design review, land use/zoning code, noise codes, transportation mitigation programs, energy code, building code and historic preservation policies.

In addition, Seattle’s planning efforts are increasingly emphasizing actions that promote infill development in designated growth centers, as favored by growth management objectives in the Comprehensive Plan. In recent years, the State Legislature also has produced a number of bills to streamline SEPA review, adopting legislation in 2003 that allows exemption of infill residential and mixed-use development in urban growth areas from SEPA review. Seattle’s urban centers and station areas (at a minimum) meet the criteria for this exemption opportunity, and raising SEPA thresholds, as was more modestly done in 2008, is warranted.

The proposal is to exempt from SEPA residential and mixed-use developments up to 200-250 dwelling units in urban centers and Station Areas. Similarly, the proposal is to exempt non-residential space up to 75,000 square feet in size when part of a mixed-use development. These threshold levels would reorient SEPA review to continue to identify sizes of projects that might realistically generate significant adverse environmental impacts, thus creating a need for a SEPA evaluation and possible impact-mitigating measures. The proposal would represent a better interpretation of where such impacts are possible in urban center and station areas where the City’s comprehensive plan policies and strategies already encourage the most growth to occur. The SEPA thresholds would be as shown in the following tables.

**Proposed SEPA Categorical Exemption Levels
 (Revisions shown in strike and underline)**

| Exemptions for Residential Uses | | |
|----------------------------------------|------------------------------------------|-------------------------------------|
| Zone | Number of Exempt Dwelling Units | |
| | Outside of Urban Centers and SAOD | Within Urban Centers or SAOD |
| SF, RSL | 4 | 4 |
| LR1 | 4 | ((6)) <u>200</u> |
| LR2 | 6 | ((30)) <u>200</u> |
| LR3 | 8 | ((30)) <u>200</u> |
| NC1, NC2, NC3, C1, C2 | 4 | ((30)) <u>200</u> |
| MR, HR, SM | 20 | ((30)) <u>200</u> |
| Downtown zones | Not Applicable | ((80)) <u>250</u> |
| Industrial zones | 4 | 4 |

SAOD = Station Area Overlay Districts.

| Exemptions for Non-Residential Uses | | |
|--------------------------------------------|-----------------------------------------------------------------|----------------------------------------------|
| Zone | Exempt Area of Use (square feet of gross floor area) | |
| | Outside of Urban Centers and SAOD | Within Urban Centers or SAOD |
| SF, RSL, LR1 | 4,000 | 4,000 |
| <u>LR2, LR3</u> | 4,000 | ((4,000)) <u>12,000 or 75,000</u> |
| MR, HR, NC1, NC2, NC3 | 4,000 | 12,000 <u>or 75,000</u> |
| C1, C2, SM zones | 12,000 | 12,000 <u>or 75,000</u> |
| <u>Industrial zones</u> | <u>12,000</u> | <u>12,000</u> |
| Downtown zones | Not Applicable | 12,000 <u>or 75,000</u> |

SAOD = Station Area Overlay Districts.

Research of Seattle development from 1995-2010 confirms that permitting decisions have used SEPA's impact mitigation authority primarily for modestly-defined mitigation purposes or have referenced other construction noise and transportation code requirements. Review of extensive numbers of residential and mixed-use development projects shows that controls on construction

activities were the most frequent topic of mitigation measures, but that other categories of long-term environmental impacts were only incidentally or rarely identified as warranting mitigation, within the range of project sizes that are affected by this proposal.

The research also indicates that approximately 35 to 40 development projects per year could benefit from the proposed SEPA threshold levels. This is interpreted to be the mid-range of development project sizes in Seattle – the proposed thresholds would still be required for the largest developments. These changes would likely provide an incentive for infill development within these growth areas, due to a reduction in permitting costs, times and uncertainty risks. Such projects would still be subject to Design Review processes in nearly every case, which would continue to be the best venue to effectively address design-related concerns.

Transportation impacts are the most apparent type of impact evaluation that could warrant continued review, due to the potential for individual future developments' contributions to add to local traffic congestion, and the possible need for future conditioning. As a result, the proposal includes the codification of the City's ability to continue to require a transportation study (for a certain size category of development projects) that would examine traffic generation and other non-automobile transportation factors. These new rules would continue to allow conditioning of future developments to mitigate identified adverse effects, and would continue to allow an applicant to voluntarily participate in traffic mitigation payment programs that currently apply in the Northgate and South Lake Union areas.

Another reason for the SEPA thresholds to be adjusted is that Seattle has also expanded its efforts to more comprehensively evaluate the impacts of future growth at a subarea level, which provides a broader and more thorough perspective on the effects of growth. Examples from the past 10 years include environmental impact statements for broad rezones of Downtown and South Downtown, Northgate and South Lake Union. These evaluations provide a more holistic perspective on growth impacts and fit better with current local and regional growth management perspectives that are advanced by our Comprehensive Plan because they support efficient development permitting that aids in directing growth toward urban centers.

Miscellaneous

Correct Inadvertent Errors and Omissions

Various minor amendments are included to restore Code language that was inadvertently omitted in recent ordinances. They would restore details relevant to protections controlling demolition of rental housing, as well as parking for multifamily development for the elderly, and consistency in description of certain master use permit decision types, thus improving the code's accuracy and consistency.

RECOMMENDATION

The DPD Director recommends adoption of the proposed amendments. This proposal would help further the principles presented in City Council Resolution 31282 that are shared by a group of business, environmental, and neighborhood leaders who met to develop this proposal for regulatory reform. This will help support sustainability and economic development consistent with growth strategies in the City's Comprehensive Plan.

The proposed code amendments are anticipated to be instrumental in spurring innovation, getting people back to work, helping to jump-start housing development by simplifying regulations, and lowering hurdles for families who need jobs in these economic times. The proposals are intended to expand housing production and result in a greater variety of affordable housing opportunities, by simplifying rules, increasing flexibility, and significantly improving the cost, efficiency, and ease of new development.