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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of:

SEATTLE FOR GROWTH and SEATTLE
MOBILITY COALITION

From a Determination of Nonsignificance issued
by the Seattle City Council.

Hearing Examiner Files:

W-18-012
W-18-013

DECLARATION OF COURTNEY A.
KAYLOR IN SUPPORT OF SEATTLE
MOBILITY COALITION'S
SUPPLEMENTAL POST-HEARING
BRIEF

I, Courtney A. Kaylor, declare as follows:

1. I am one of the attorneys for appellant Seattle Mobility Coalition. I am competent to testify and make this declaration based on my personal knowledge.

2. Attached to this declaration are true and correct copies of the following documents:

Exhibit A: Seattle City Council Sustainability and Transportation Committee Agenda, August 6, 2019

Exhibit B: Staff Presentation to the Sustainability and Transportation Committee, August 6, 2019, pp. 40-41.

Exhibit C: Seattle Impact Fee Study, August 2019, Cover, p. 17, Appendix A.

1 Exhibit D: Central Staff Memorandum on State Environmental Policy Act Reform,
2 August 3, 2019 (without Attachments).

3 Exhibit E: CB 119600, pp. 1, 20 (with relevant provision highlighted).

4 I declare under penalty of perjury that the foregoing is true and correct. Executed this
5 6th day of September 2019, at Seattle, Washington.

7
8 
9 Courtney A. Kaylor

EXHIBIT A



SEATTLE CITY COUNCIL

Sustainability and Transportation Committee

Agenda - Revised

Tuesday, August 6, 2019

2:00 PM

Council Chamber, City Hall
600 4th Avenue
Seattle, WA 98104

Mike O'Brien, Chair
Abel Pacheco, Vice-Chair
Kshama Sawant, Member
Bruce Harrell, Alternate

Chair Info: 206-684-8800; mike.obrien@seattle.gov

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Council Chamber Listen Line: 206-684-8566

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SEATTLE CITY COUNCIL
Sustainability and Transportation Committee
Agenda - Revised
August 6, 2019 - 2:00 PM

Meeting Location:

Council Chamber, City Hall, 600 4th Avenue, Seattle, WA 98104

Committee Website:

<http://www.seattle.gov/council/committees/transportation>

This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

Please Note: Times listed are estimated

A. Call To Order

B. Approval of the Agenda

C. Chair's Report

D. Public Comment

(8 minutes)

E. Items of Business

1. [Appt 01389](#) **Appointment of Samuel Ferrara as member, Levy to Move Seattle Oversight Committee, for a term to December 31, 2022.**

Attachments: [Appointment Packet](#)

Briefing, Discussion, and Possible Vote

Presenter: Rachel McCaffery, Seattle Department of Transportation

2. [Res 31895](#) **A RESOLUTION relating to a Green New Deal for Seattle; establishing goals, identifying actions necessary to meet these goals, affirming the federal Green New Deal resolution, and calling for the federal government to enact policies to advance a Green New Deal.**

Supporting

Documents: [Summary and Fiscal Note](#)

Briefing, Discussion, and Possible Vote

Presenters: Debolina Banerjee, Puget Sound Sage; Nancy Huizar, Got Green; Jess Wallach, 350 Seattle; Lavanya Madhusudan, Legislative Aide for Councilmember O'Brien; Yolanda Ho, Council Central Staff

3. [CB 119604](#) **AN ORDINANCE relating to the Green New Deal for Seattle; establishing the Green New Deal Oversight Board; providing compensation for those who incur a financial hardship by their participation on the Board; requesting that the Office of Sustainability and Environment create an interdepartmental team to advance the Green New Deal for Seattle; amending Section 3.14.970 of the Seattle Municipal Code; and adding a new Section 3.14.979 to the Seattle Municipal Code.**

Supporting

Documents: [Summary and Fiscal Note](#)

[Central Staff Memo](#)

Briefing and Discussion

Presenters: Debolina Banerjee, Puget Sound Sage; Nancy Huizar, Got Green; Jess Wallach, 350 Seattle; Lavanya Madhusudan, Legislative Aide for Councilmember O'Brien; Yolanda Ho, Council Central Staff

4. **Annual Update on the Transportation Equity Program**

Supporting Documents: [Presentation](#)

Briefing and Discussion

Presenters: Candida Lorenzana, Naomi Doerner, and Annya Pintak, Seattle Department of Transportation

5. [CB 119602](#) **AN ORDINANCE relating to the financing of the Center City Streetcar Connector project; authorizing the loan of funds in the amount of \$9,000,000 for design of the streetcar; amending Ordinance 125724, which adopted the 2019 Budget, including the 2019-2024 Capital Improvement Program (CIP); changing appropriations to the Seattle Department of Transportation; and revising project allocations and spending plans for certain projects in the 2019-2024 CIP.**

Supporting Documents: [Summary and Fiscal Note](#)
[Summary Att 1 – Revised Center City Streetcar CIP Page](#)
[Central Staff Memo](#)

Briefing, Discussion, and Possible Vote

Presenter: Eric Tweit, Seattle Department of Transportation

6. **Move Seattle Levy Oversight Committee Quarterly Update**

Supporting Documents: [Presentation](#)
[Quarterly Report](#)

Briefing and Discussion

Presenters: Sam Zimbabwe, Director, Lorelai Williams, and Rachel McCaffery, Seattle Department of Transportation

7. **Transportation Impact Fee Briefing**

Supporting Documents: [Transportation Capital Funding Review Presentation](#)
[Seattle Impact Fee Rate Study](#)

Briefing and Discussion

Presenters: Kendra Breiland, Fehr & Peers; Kevin Ramsey and Sherrie Hsu, BERK Consulting; Ketil Freeman, Council Central Staff

F. Adjournment

EXHIBIT B

Transportation Impact Fee Implementation

Three Steps:

Step 1 - Comprehensive Plan Amendments

- Incorporate a list of projects eligible for impact fee expenditures into the Comprehensive Plan
- SEPA threshold determination appealed to the City Hearing Examiner
- Hearing Examiner decision on appeal expected by mid-August

Step 2 – Fee Schedule and Program

- Policy and regulatory decision on a fee schedule, exemptions, and other procedural requirements

Step 3 – Budget Amendments

- Amendments to the proposed 2020 budget to appropriate anticipated revenue and authorize expenditures

Next Steps - Contingent on Hearing Examiner Decision

- **August – September**
 - Committee discussion and action on Comprehensive Plan amendment legislation and
 - Discussion and potential action on implementing regulations
- **September - October**
 - Discussion of potential amendments to the Mayor's proposed budget based on an impact fee program
- **November**
 - Potential Full Council action on Comprehensive Plan amendments, implementing regulations, and associated budget amendments

EXHIBIT C



August 2019

Seattle Impact Fee Study



FEHR & PEERS

DRAFT

SCHEDULE OF RATES

The proposed impact fee rates are shown in **Appendix A**. In the fee schedule, fees are shown as dollars per unit of development for various land use categories. The impact fee program is flexible in that if a use does not fit into one of the ITE land use categories, an impact fee can be calculated based on the development's projected PM peak hour person trip generation and multiplied by the cost per trip as shown on page 15. In addition to land uses that are not listed in the impact fee schedule, detailed trip generation studies are also generally used for mixed-use developments where some of the person trips would be expected to stay on-site. ITE, the Transportation Research Board (TRB), and the United States Environmental Protection Agency (US EPA) all have recommended methods to calculate the number of internal project trips associated with mixed use development. Methods like the ITE calculate vehicle trips and the same ratio of vehicle-to-person trips that can be calculated from the impact fee rate schedule.

TRANSPORTATION IMPACT FEE (TIF) REDUCTIONS

While it is fairly straightforward to translate reduced vehicle trips to a lower vehicle-based TIF, the transition to person trips and a multimodal TIF required a slightly different approach because a multimodal TIF does not distinguish between modes. The following sections describe how differences in urban form, transit availability, and mix of uses influence travel behavior. The end of this section outlines the recommended options for applying TIF reductions to UCs, UVs, and areas near light rail stations.

NOT ALL PERSON TRIPS HAVE THE SAME IMPACT

As noted above, mode neutral (person trip) TIF programs do not inherently account for the differential impact that trips have on the transportation system based on travel mode (e.g., walking trips require far less infrastructure and public investment compared to drive alone trips). In fact, this is the fundamental justification for why vehicle-based TIF programs allow for a fee reduction for areas/developments that generate fewer vehicle trips. For a person trip-based TIF program, however, there are a variety of ways to measure this differential impact. In a mature city like Seattle where roadway expansion is difficult, expensive, and often infeasible, one simple way to assess the differential impact of trips by different modes is through their use of physical space. Different modes have varying footprints on the City's transportation system, which is described below and illustrated in **Figure 3**. This approach is modeled after a similar approach developed and adopted by the City of Portland, Oregon.



EXHIBIT D

August 3, 2019

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Lish Whitson, Council Central Staff
Subject: State Environmental Policy Act (SEPA) reform (Council Bill 119600)

On Wednesday, August 7, 2019, the Planning, Land Use and Zoning Committee (PLUZ) will receive a briefing on [Council Bill 119600](#), which would make changes to the City's regulations regarding the State Environmental Policy Act (SEPA). In April, the Washington State Legislature passed [Engrossed 2nd Substitute House Bill \(E2SHB\) 1923](#), which exempts specified planning activities from SEPA appeals. For these exemptions to take effect, the City's SEPA regulations (Seattle Municipal Code (SMC) Chapter [25.05](#)) must be made consistent with the new law.

As the Council considers changes to SEPA regulations to incorporate the provisions of E2SHB 1923, there is an opportunity for the Council to consider additional changes to (1) further conform with State Law, (2) provide clarity regarding the length of appeals to the City's Hearing Examiner, and (3) provide for consistency of environmental analysis.

This memorandum describes:

- (1) Relevant components of SEPA,
- (2) Changes to Washington State SEPA regulations that have not yet been incorporated into the City's regulations, and
- (3) Other improvements to the City's SEPA process consistent with [SMC 25.05.030](#) to "Find ways to make the SEPA process more useful to decision makers and the public; promote certainty regarding the requirements of the act; reduce paperwork and the accumulation of extraneous background data; and emphasize important environmental impacts and alternatives...".

Background

Washington State's SEPA regulations¹ require review of proposed governmental actions to identify the potential for significant adverse environmental impacts. The goal of SEPA analysis is to provide information to decision-makers regarding the potential environmental impacts of the proposals that they review. The City's SEPA regulations in SMC 25.05 augment and interpret the State's regulations. Many State SEPA regulations are incorporated by reference. Where the City provides more specific or stringent requirements, those stricter requirements apply.

The first step in environmental review is to determine whether a proposed governmental action is subject to SEPA. WAC [197-11-800](#) contains a broad list of actions that are categorically

¹ Washington State's SEPA regulations are contained in RCW [Chapter 43.21C](#) and WAC [Chapter 197-11](#).

[exempt](#) from SEPA review. These exemptions are repeated in SMC [25.05.800](#). Additional exemptions are listed in RCW 43.21C, but not all exemptions listed in the WAC and RCW are carried forward into the City's SEPA regulations. If the State allows an exemption, but it is not clearly exempt by the SMC, the action is not exempt from City SEPA review. For these exemptions to apply in Seattle, the SMC needs to be amended to explicitly incorporate them.

For projects that are not exempt from SEPA, SEPA rules require the completion of a [SEPA Checklist](#) to identify whether there is the possibility of significant adverse impacts from a proposal. The SEPA regulations identify the specific areas of the environment that must be reviewed for possible significant impacts. Analysis of other issues is permitted but not required.

A lead agency² reviews the checklist and issues a threshold determination. If the lead agency identifies the possibility of significant adverse impacts, a Determination of Significance (DS) is issued and an Environmental Impact Statement (EIS) must be prepared. If there is not a likelihood of significant adverse impacts, or if significant adverse impacts can be mitigated, the lead agency issues a Determination of Nonsignificance (DNS), and the environmental review is considered finished.

After the publication of the DNS or Final EIS, anyone affected by the proposed action may appeal the lead agency's decision. That appeal is considered by the Seattle Hearing Examiner, who – after a hearing on the determination – must decide “to affirm or reverse the administrative decisions..., to remand cases to the appropriate department with directions for further proceedings, and to grant other appropriate relief in the circumstances.” (SMC [25.05.680](#) B.3.)

Over the last ten years, the Hearing Examiner has received 58 appeals of SEPA decisions. Out of these 58 appeals, the lead agency's decision was affirmed 44 times. SEPA appeal hearings have ranged from 33 days to 392 days (see Attachment 1). The shortest appeal process was regarding a DNS for development of a single building with one appellant where only one issue was raised. The longest appeal process was for the EIS for the Mandatory Housing Affordability legislation, which included multiple appellants who raised concerns regarding most SEPA issues. The average length of an appeal has been 124 days. The median length of an appeal has been 104 days.

Recent changes to the Revised Code of Washington

The Washington State Legislature recently passed two laws regarding SEPA that are not currently reflected in the City's SEPA statute. In 2012, the state passed [Senate Bill \(SB\) 6406](#), which exempts certain [nonproject](#) actions from SEPA review if an action is consistent with the City's Comprehensive Plan or likely to improve the environment. In addition, it allows the City

² The lead agency is the agency with main responsibility for complying with SEPA's requirements. It is generally either the lead proponent of a City project, or the lead reviewer of an application for City approval.

to exempt development that is consistent with the City's Comprehensive Plan from SEPA review. In 2019, the State passed E2SHB 1923, which exempts the environmental review of some nonproject actions from SEPA appeals.

SB 6406 (2012)

In 2012, SB 6406 added a new section to RCW 43.21C, the State's SEPA statute. This section [43.21C.450](#) exempts the following nonproject actions from SEPA:

1. Amendments to development regulations to ensure consistency with the City's adopted Comprehensive Plan;
2. Amendments to development regulations to ensure consistency with the City's shoreline master program;
3. Amendments to development regulations that will provide increased environmental protection, limited to the following:
 - a. Increased protections for critical areas;
 - b. Increased vegetation retention or decreased impervious surface areas in shoreline areas;
 - c. Increased vegetation or decreased impervious surface in critical areas;
4. Amendments to technical codes to ensure consistency with minimum standards in State Law.

SB 6406 also amended [RCW 43.21C.229](#) in order to support infill development pursuant to Comprehensive Plans. RCW 43.21C.229 allows the City to exempt development from SEPA review if the "current density and intensity of use in the area is lower than called for in the goals and policies of the... comprehensive plan". In 2017, the Council adopted [Ordinance 125287](#), which applied these exemptions in Urban Centers for:

1. Residential buildings with 200 or fewer units,
2. Commercial space up to 12,000 square feet in a stand-alone commercial structure, or
3. Commercial space up to 30,000 square feet in a mixed-use development.

The Council decided to delay adoption of these provisions in urban villages until after the Council's review of the Mandatory Housing Affordability legislation. Applying these exemptions to urban villages was a recommendation of the Housing Affordability and Livability Agenda.

Under RCW 43.21C.229, the City can choose to apply this statute when:

1. Residential, mixed-use or commercial development is planned for an area where the current density and intensity of use in the area is lower than called for in the Comprehensive Plan.
2. The City can show that specific impacts of development are adequately addressed by the City's development regulations or other applicable laws.

3. The Comprehensive Plan was subject to environmental review.

Attachment 2 to this memo provides an inventory of environmental protections in the codes and rules compared to a full list of topics addressed by environmental review pursuant to the SEPA. The City's Comprehensive Plan was reviewed under a [Final Environmental Impact Statement](#). The Comprehensive Plan provides estimates of residential and employment growth in Urban Centers and Hub Urban Villages and estimates of residential growth in Residential Urban Villages. Attachment 3 provides the most recent available data regarding current and planned development compared to these estimates.

E2SHB 1923 (2019)

E2SHB 1923 was adopted this past spring and went into effect on July 28, 2019. It exempts the following types of governmental actions from SEPA appeals if acted on by the City by April 1, 2021:

1. Upzoning 500+ acres that include a commuter or light rail station;
2. Upzoning 250+ acres with frequent transit service;
3. Allowing duplexes, triplexes and courtyard apartments in single-family zoned lots;
4. Allowing ADUs in single-family zones on lots that meet size requirements;
5. Adopting a subarea plan;
6. Adopting a planned action ordinance (like Yesler Terrace);
7. Increasing categorical exemptions that encourage urban infill development;
8. Adopting a form-based code;
9. Allowing duplexes on each corner lot within all single-family zoned areas; and
10. Allowing for subdivision of lots into smaller parcels.

In addition, HB 1923 eliminates appeals based on transportation impacts for residential and mixed-use projects that are consistent with adopted transportation plans. This only applies if traffic or parking impact fees are imposed or traffic or parking impacts are expressly mitigated by the City's ordinances.

If the City decides to adopt these provisions into the SMC, environmental review will be required for these types of proposals, but no appeals would be permitted.

Other issues related to the City's SEPA Regulations

Over the years, the City has identified several other issues with the City's SEPA regulations relating to the SEPA process and appeals. These include:

1. Contradictory direction regarding when permits should be issued after an appeal, with clear direction in SMC [Section 23.76.028](#), and confusing direction provided in [SMC Section 25.05.070.E](#).

2. Lack of clarity regarding whether analysis of non-environmental issues are subject to appeal if they are analyzed in an EIS (even though not required to be analyzed under Washington State Law ([SMC 25.05.440.G](#))).
3. Interpretations that the City's regulations regarding analysis of social, cultural and economic issues require analysis of potential economic impacts of a proposal on particular businesses affected by the proposal ([SMC 25.05.440.E](#)).
4. Lack of specific direction regarding how to analyze impacts pursuant to the City's SEPA policies. Other jurisdictions, such as the [City of New York](#), provide detailed directions on how to analyze each element of the environment, providing clarity and consistency of environmental analysis across project and nonproject actions.
5. Lack of clarity regarding whether the Legislative Department can act as a lead agency for an environmental review.
6. Lack of clarity in the code regarding when appeal hearings will occur and the length of time that the appeal process will take.

Council Bill 119600

Council Bill 119600 would make several changes to the City's SEPA regulations (Chapter 25.05) to align the City's SEPA regulations with the recent changes to State Law described above. The bill would also provide more predictability regarding timelines for Hearing Examiner appeals, encourage consistency in the content of environmental documents, and clarify or delete confusing or conflicting sections of the City's SEPA regulations. Key changes in the bill include:

- Incorporation of SEPA exemptions for nonproject actions under RCW 43.21C.450;
- Incorporation of SEPA exemptions for multifamily, mixed use and commercial development in urban villages up to the limits currently provided for urban centers under RCW 43.21C.229;
- Incorporation of the waivers of appeals allowed under E2SHB 1923 (2019);³
- A time limit on the length of SEPA appeals in front of the Hearing Examiner, limiting appeals to 120 days, 150 days with notice to all parties, or longer if all parties agree;
- Permission for the Director of the Seattle Department of Construction and Inspections (SDCI) to promulgate rules to provide uniform standards for preparing environmental documents;
- Clarification that additional non-environmental analysis of economic issues, when included in an environmental document, is not subject to appeal;
- Clarification that analysis of the potential economic impacts related to individual businesses is not required under SEPA; and
- Clarification that the Legislative Department may act as lead agency or may delegate lead agency status to another City agency, at its discretion.

³ At the time of this memo, E2SHB 1923 has not yet been codified, but is likely to be codified by September 2019. If approved, the bill will need to be amended to include references to the new sections of the RCW adopted by E2SHB 1923.

Next Steps

Following the August 7 discussion of Council Bill 119600, the PLUZ Committee will continue its discussion of this Bill at its September 4 meeting and will hold a public hearing on September 9 at 5:30 in the Seattle City Council Chambers. A vote in committee could occur as early as September 11. Because State Law requires a 60-day comment period, the earliest the City Council can vote on this legislation is October 7.

Attachments:

1. Number of days between the filing of a SEPA appeal and the Hearing Examiner's decision on the appeal
2. Summary of environmental protections in other codes/rules compared to a full list of topics addressed by environmental review pursuant to the SEPA
3. Urban Center and Village Growth compared to Comprehensive Plan estimates

cc: Kirstan Arestad, Central Staff Director
Aly Pennucci, Supervising Analyst

EXHIBIT E



Legislation Text

File #: CB 119600, Version: 1

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

- 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