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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE**

**ENDING THE PRISON INDUSTRIAL
COMPLEX (EPIC), ET AL**

Hearing Examiner File No.:
MUP-17-001

From a decision by the Director, Department
of Construction and Inspections, on a Master
Use Permit

DCI Project No. 3020845

**DECLARATION OF SEATTLE CITY
COUNCILMEMBER MICHAEL
O'BRIEN IN SUPPORT OF
APPELLANTS' MOTION FOR
RECONSIDERATION**

I declare under penalty of perjury under the laws of the State of Washington that the
following is true and correct:

1. I am a member of the Seattle City Council where I represent District 6, Northwest
Seattle.
2. I have served as a councilmember for the city of Seattle since 2010. Currently, I
am in my third term which began in 2016 and ends in 2019.

1 3. During my second term in office, I was the Chair of the Planning, Land Use and
2 Sustainability Committee. I now serve as the Vice-Chair of the Planning, Land Use and Zoning
3 Committee during my third term.

4 4. On October 13, 2014 the Council passed certain amendments to SMC
5 27.53A.004 regarding the proposed King County development for the new Children and Family
6 Justice Center (CFJC). *See* Ordinance Number 124610; *see also* Council Bill Number 118202. I
7 served as chair of the committee and sponsor of the Ordinance.

8 5. The Ordinance explicitly states, among other things, that “the development
9 standards for institutions in Section 23.45.570 apply, and subsections 23.45.570.D and
10 23.45.570.F relating to structure width and setbacks may be waived or modified by the Director
11 as a Type II decision.”

12 6. For purposes of this Ordinance, the Department of Construction and Inspection
13 Director’s decision was categorized as Type II so that it would be eligible for review under
14 appeal by a Hearing Examiner.

15 7. Attached as Exhibit 1 to this declaration is a true and correct copy of the staff
16 report created as part of the legislative process related to the Ordinance.

17 8. Attached as Exhibit 2 to this declaration is a true and correct copy of the fiscal
18 note related to the Ordinance that was created as part of the legislative process related to the
19 Ordinance.

20 9. The Council and I relied upon the information contained within Exhibit 1 and 2
21 when considering and voting upon the Ordinance.
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1 10. The legislative history on this point described in the staff report and fiscal note
2 accurately reflects the City Council’s and the Planning, Land Use and Sustainability
3 Committee’s and my intent to provide an avenue for appellate review by a Hearing Examiner
4 when a waiver or modification of standards was granted or denied by the Director.

5 11. The Council and I understood when passing the Ordinance that there was
6 considerable public interest in the development of the new King County facility and that
7 decisions related to construction of a new youth detention center were particularly
8 controversial.

9 12. Given this public controversy, a right to appeal the City’s land use decisions to
10 the Hearing Examiner is a crucial piece of the Ordinance.

11 13. The failure to add explicit language to SMC 23.76.006.C regarding the waiver
12 and modifications of standards to youth services centers was an inadvertent legislative drafting
13 error. The absence of such language in SMC 23.76.006.C does not reflect the actual legislative
14 intent in passing the Ordinance.

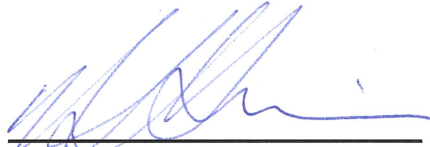
15 14. Decisions to waive or modify standards as related to CFJC are appealable Type
16 II decisions and were meant to be understood as such when Ordinance Number 124610 was
17 codified.

18 15. Unfortunately, legislative drafting errors sometimes occur, particularly when
19 addressing complicated statutory schemes like those contained in Seattle Land Use Code. Such
20 obvious unintentional errors should not render otherwise clear legislative actions invalid.

21 16. The Council intended to grant interested stakeholders the right to appeal the
22 Director’s MUP decisions regarding the King County development to the Hearing Examiner.
23

1 The City then informed the public that interested stakeholders could appeal these decisions to
2 the Hearing Examiner. The City should be bound to that legislative intent and those public
3 representations.

4 Signed this 13th day of March 2017 in Seattle, Washington.

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Department of Planning and Development

Director's Report

Youth Service Center Amendments

Introduction

The Department of Planning and Development (DPD) is proposing amendments to the Land Use Code to define a new land use for Youth Service Center (YSC) and allow the use in Neighborhood Commercial 3 (NC3) and Lowrise (LR3) zones in existing public facilities operated by King County. The amendments would also authorize the Director to waive or modify standards for structure setbacks and maximum width limits for YSCs in LR3 zones.

Proposal Summary

DPD is proposing to define a new use – a “Youth Service Center” – to address a unique and existing use. Although the Land Use Code definition of a jail is somewhat similar to a YSC, it only describes an incarceration function. A YSC includes multiple programs for diversion, education, courtrooms and family assistance, some of which fall into the description of uses excluded from the Land Use Code definition of “jail,” such as facilities for programs providing alternatives to imprisonment. Courtrooms are also included in a YSC.

In addition, an existing facility (the King County Youth Service Center) is operating in the city, and King County’s plans to replace it will add other programs and activities that are not commensurate with the definition of “jail.” These other activities are consistent with uses currently allowed in NC3 and LR3 zones.

In NC3 zones, YSCs would be required to meet the standards of the zone, which are intended to accommodate a wide range and mix of uses including those anticipated to be part of a YSC. In LR3 zones, YSCs would be required to meet the standards for institutions as is the case with other public facilities allowed in the zone. Consistent with the relevant Comprehensive Plan policies, the Council’s action on the proposal would authorize waiver or modification of certain development standards for institutions in the LR3 zone. Development standards for structure setbacks and maximum width limits could be waived or modified by DPD when based on a finding of public necessity and consistent with proposed Urban Design Objectives as specified in the Code. The Director would be required to impose any needed mitigating conditions.

Permit Approach and Development Standards

Current provisions in NC3 and LR3 zones allow for public facilities that do not meet development standards to be permitted by the City Council as a quasi-judicial (Type IV) decision. The intent is to recognize that development standards are not necessarily adopted with these facilities in mind. Flexibility in how standards are applied allows for public facilities to be located in the city and account for the unique nature of their programming, service delivery, and scale (public facilities often occupy large structures on large sites).

The standards in the NC3 zone are anticipated to be sufficient to accommodate YSCs. The standards for institutions in LR3 zones are also anticipated to be sufficient, except for the fixed numerical limits used for structure setbacks and width limits. Other standards for institutions are expressed as percentages of lot dimensions or performance based. The proposal is to allow waiver or modification of setbacks and maximum structure width balanced with appropriate design-related performance objectives and authority to require mitigating conditions to create a smooth transition to the nearby residential area. For example, for commercial and residential development, these standards are available for departure pursuant to Design Review. The limited number of standards proposed to be waived or modified in conjunction with the use of performance objectives and required mitigation make this decision an appropriate one for DPD's administrative review and decision, rather than a City Council decision.

Front Lot Line Setback Requirement (23.45.570.F)

As an example of how the amendments could be used in King County's project, current setback standards require a front setback at least five feet from a front lot line. Although the project would provide a more generous 15 foot setback from most of the 14th Avenue lot line, there are three places along the 14th Avenue frontage where the property lot line is irregular. The project would be set back less than five feet at those places. The County would meet or exceed the required setback for 85 percent of the lot line.

Maximum Width Requirement (23.45.570.D.1)

As stated above, the unique needs of public facilities often require larger structures. As an example, the internal dimensions of space required by County programming and public service delivery will create a structure width that exceeds the maximum width limit of 150 feet.

Compliance with the urban design objectives and the authority to require mitigating conditions is intended to meet the spirit and purpose of the two standards and would reduce the resulting appearance of bulk and enhance the public experience of nearby residents. For both of these standards, application of the urban design objectives by DPD is intended to result in an appropriate and carefully limited modification to the development standards.

DPD Waiver or Modification of Development Standards

The proposal would allow applicants to apply for a Type II (a DPD decision that requires public notice

and comment, and is appealable to the Hearing Examiner) waiver or modification of these setback and maximum width standards. As provided in the amendment, the DPD decision must be based on a finding that such waiver or modification:

“is needed to accommodate unique programming, public service delivery, or structural needs of the facility and that the...urban design objectives are met.” (23.51A.004.B.6)

The proposed Urban Design Objectives are as follows:

Objective 1 - calls for design that creates visual interest along and activates each street frontage. Specific examples for achieving this objective include incorporating prominent entrances and architectural detailing of the façade to welcome pedestrians.

Objective 2 – calls for creating a continuous pedestrian environment by incorporating overhead weather protection, such as awnings and building overhangs, and providing pedestrian amenities like benches or free-standing pavilions.

Objective 3 - calls for design treatments that transition to the scale of nearby development. Examples of these design treatments include modulation of the walls and adding decorative facade elements, like architectural detailing, screening, artwork, or vegetated walls.

Consistency with the Comprehensive Plan

The following are excerpts from applicable Comprehensive Plan policies.

LU 14: “In recognition of the positive contributions many institutions and public facilities have made [such as] providing necessary services...allow...public facilities...determined to be compatible with the function, character and scale of the area in which they are located.

LU 15: “Development standards for small institutions and public facilities affecting building height, bulk, setbacks, open space, landscaping, and screening shall be similar to those required of other development, but should be allowed to vary somewhat because of the special structural requirements of some institutional and public facility uses. Establish criteria limiting variation, in order to achieve design compatibility with the scale and character of the surrounding area.

LU 16: “Public facilities uses not similar to those permitted for the private sector shall be permitted or prohibited depending on the intended function of the area. Evaluate parking and transportation impacts and consider the relationship with surrounding uses in the design, siting,

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
DPD	Kristian Kofoed / 233-7191	Melissa Lawrie / 684-5805

Legislation Title:

AN ORDINANCE relating to land use and zoning, amending Sections 23.47A.004, 23.51A.004, 23.84A.020 and 23.84A.046 of the Seattle Municipal Code, to establish a definition for and allow youth service centers, and provide development standards for youth service centers existing as of January 1, 2013 in public facilities operated by King County.

Summary of the Legislation:

The legislation would:

1. Define Youth Service Center (YSC) as “A youth service center means youth detention facility, holding cells, courtrooms, classroom space, a gymnasium for detained youth, and related uses including but not limited to administrative offices and meeting rooms.”
2. Allow replacement of or additions to YSCs existing as of January 1, 2013 in facilities operated by King County in Neighborhood Commercial 3 and Lowrise 3 zones.
3. Allow the DPD Director as a Type II Land Use Decision (includes notice to neighbors, opportunity for comment and appeal of the DPD decision to the Hearing Examiner) to modify or waive maximum structure width and setback standards for YSCs based on programming, service and structural needs and compliance with proposed Urban Design Objectives.

Background:

In 2012, King County voters approved a nine-year levy increase providing \$210 million in funding for the Children and Family Justice Center project on 12th Avenue in the Central District. The approved facility would use the proposed amendments.

Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.

Other Implications: