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7 BEFORE THE HEARING EXAMINER  
8 FOR THE CITY OF SEATTLE

9 In the Matter of the Appeal of:

10 ESCALA OWNERS ASSOCIATION

11 Of a Master Use Permit Decision issued by  
12 the Director, Seattle Department of  
13 Construction & Inspections  
14

Hearing Examiner File: MUP-17-035

DECLARATION OF IAN S. MORRISON IN  
SUPPORT OF RESPONDENTS' JOINT  
MOTION FOR PARTIAL DISMISSAL

15  
16 I, IAN S. MORRISON, under penalty of perjury under the laws of the State of  
17 Washington, declare as follows:

18 1. I am an attorney with McCullough Hill Leary, PS, attorneys for Applicant Jodi  
19 Patterson-O'Hare. I am competent to make this declaration based on my personal knowledge.  
20

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

22 **Exhibit A:** Seattle Department of Construction & Inspections ("SDCI") Zoning Correction  
23 Notice #3 for Master Use Permit No. 3019699 ("Project"), dated November 11, 2016.

24 **Exhibit B:** Office of Hearing Examiner receipt for the Appellant's appeal for Project, dated  
25 November 9, 2017.  
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28 DECLARATION OF IAN MORRISON IN  
SUPPORT OF RESPONDENTS' JOINT  
MOTION FOR PARTIAL DISMISSAL - Page 1 of 2

**McCullough Hill Leary, PS**

701 Fifth Avenue, Suite 6600  
Seattle, Washington 98104  
206.812.3388  
206.812.3389 fax

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2 **Exhibit C: SDCI Tip #256 regarding Land Use Code Interpretations.**

3 Executed this 5<sup>th</sup> day of January, 2018, at Seattle, Washington.

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6 IAN MORRISON  
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28 DECLARATION OF IAN MORRISON IN  
SUPPORT OF RESPONDENTS' JOINT  
MOTION FOR PARTIAL DISMISSAL - Page 2 of 2

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## **EXHIBIT A**



# City of Seattle

## Department of Construction and Inspections

### Land Use Review

JODI J PATTERSON-O'HARE  
17479 7th Ave SW  
Normandy Park, WA 98166

**Re: Project# 3019699**

### Correction Notice #3

<b>Review Type</b>	ZONING	<b>Date</b>	November 11, 2016
<b>Project Address</b>	1933 5th Ave	<b>Contact Phone</b>	(425) 681-4718
<b>Contact Email</b>	jodi@permitcnw.com	<b>Contact Fax</b>	
<b>SDCI Reviewer</b>	Naomi Henry	<b>Address</b>	Seattle Department of Construction and Inspections 700 5th Ave Suite 2000 PO Box 34019 Seattle, WA 98124-4019
<b>Reviewer Phone</b>	(206) 684-0711		
<b>Reviewer Fax</b>			
<b>Reviewer Email</b>	naomi.henry@seattle.gov		
<b>Owner</b>	GAVIN SMITH		

### Applicant Instructions

Please see the attached flyer to learn "[How to Respond to a SDCI Correction Notice](#)".  
If the 3-step process outlined in the aforementioned document is not followed, it is likely that there will be a delay in permit issuance and there is a potential for penalty fees.

### Codes Reviewed

This project has been reviewed for conformance with the applicable development standards of the Land Use Code.

### Corrections

- 1 Floor Area Ratio (FAR).** Per SMC 23.49.011 this site has a base FAR of 5 and a maximum FAR of 14. Because the site is within the Local Infrastructure Project Area for Downtown, the first increment (.75 FAR) of chargeable floor area above the base FAR, shall be gained by acquiring regional development credits pursuant to [Section 23.58A.044](#). Additional chargeable floor area above the first increment of FAR that exceeds the base FAR may be obtained only by qualifying for floor area bonuses pursuant to [Section 23.49.012](#) or [23.49.013](#), or by the transfer of transferable development rights pursuant to [Section 23.49.014](#), or both.  
Please provide an approved draft declaration approved by the Office of Housing for housing and childcare payments, and a letter of approval from King County for the TDRs.

*Draft declarations are required prior to MUP issuance. All payments must be made, and required final declarations and other documents must be recorded prior to the zoning approval/issuance of the first building permit.*

- 2 Design Departures.** Please note that any requested design departures must be approved by the Design Review Board prior to zoning approval.
- 3 Driveway/Aisle Slope.** An exception to driveway/aisle slope requirements, as allowed by SMC 23.54.030.D.3, was requested in your correction response letter. Per SMC 23.54.030.H, valet parking is exempt from SMC 23.54.030.A-E. Therefore, the exception is not necessary.



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### Step 1: Wait for all reviews to be completed

- You may check the status of any review at the following link:  
<http://web6.seattle.gov/dpd/permitstatus>
- All reviews must be completed *before* the applicant can respond, upload, or submit any correction responses.
- **Electronic Plans:** We will send correction letters to the Seattle DCI Project Portal. We will notify the primary contact for the project when all reviews in the review cycle are complete.
- **Paper Plans:** We will notify the primary contact for the project by email or phone when all reviews in the review cycle are complete and plans are ready to be picked up. Once you have been notified, pick up the plans at Plans Routing in the Applicant Service Center.

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### Step 2: Make Corrections

**Provide a written response for each item on all correction notices. We will not accept corrected plans without written responses. Include the following information for each item:**

- Describe the change
- Say where the change can be found in the plan set
- If you have not made a requested change, give a code citation or provide calculations to explain why not
- Coordinate responses to correction items among all designers, architects, engineers, and owners
- If you make voluntary changes to your plans, describe the changes you have made in your response letter

#### **Correct your Plans:**

- Cloud or circle all changes
- You may add new sheets to the plan set if you have new information to show

#### **For Electronic Plans:**

- Always upload a complete plan set

#### **For Paper Plans:**

##### **If you replace sheets in the paper plan sets:**

- Remove the old sheets, mark them as "VOID," and include them loose at the back of each plan set
- All original sheets and plan pages must be returned to Plans Routing in the Applicant Service Center
- Insert the new sheets and staple the plan sets

##### **If you make changes to the original paper plan sheets:**

- Make all changes with ink (preferably red, waterproof ink). Do not use pencil to make changes
- Do not tape or staple anything to the plan sets

**Platting Actions:** Provide new copies of the survey when responding to a correction notice for a shortplat, lot boundary adjustment, or other platting action. Provide the same number of copies that were required when you submitted the project.

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### Step 3: Submit Corrected Plans

#### **Electronic Plans:**

Upload your corrected plan set and correction response letter through your Seattle DCI Project Portal.

#### **Paper Plans:**

Return your corrected plans and your correction response letter to Plans Routing in the Applicant Services Center.

#### **If you don't follow these instructions:**

- **Plans Routing may not accept your corrected plans**
- **We may be delayed in starting corrected plan review, which can delay permit issuance**
- **We may charge a penalty fee**

## **EXHIBIT B**



City of Seattle  
Office of Hearing Examiner Receipt

2538

Date 11/9 20 17

Received From

Bricklin Newman

Address

1424 4th Ave #302

Telephone

Amount

\$ 300.00

Dollars \$

300.00

For

rent

How Paid

CH

1403

Cash

Check

Money Order

Credit Card

By

3 21054



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## **EXHIBIT C**



# Seattle Permits

— part of a multi-departmental City of Seattle series on getting a permit

## Land Use Code Interpretations

March 28, 2017

### What is an interpretation?

A Land Use Code interpretation is SDCI's formal decision about the meaning, application, or intent of a provision in Seattle's Land Use Code (Title 23 of the Seattle Municipal Code (SMC)) or regulations for environmentally critical areas (SMC Chapter 25.09). Under some circumstances, as described below, you may appeal an interpretation to the Seattle Hearing Examiner. SDCI also offers "opinion letters." Opinion letters provide a project applicant or interested party advance guidance about how the code would apply to a particular proposal on a particular lot. You cannot appeal opinion letters.

### What issues does a Land Use Code interpretation address?

Interpretations address development regulations in the Land Use Code or the environmentally critical areas regulations. They do not address procedural provisions, or statements of policy in the code.

Interpretations are site-specific. They do not address how a standard applies in general, but rather how it applies to a specific site or development proposal.

Interpretations fall into the following categories; each with unique timing, notice, and appeal requirements according to SMC 23.88.020.

- Interpretations that do not relate to any pending project application
- Interpretations relating to a pending project application that will not be subject to appeal before the Hearing Examiner (Type I decisions)
- Interpretations relating to a pending project application that has a discretionary component that will

be subject to appeal before the Hearing Examiner (Type II decisions)

### How does the interpretation process relate to an appeal of a Type II project decision?

Your appeal of a Type II decision, such as a variance, conditional use, or SEPA (environmental) review, may challenge only how we applied the criteria for that decision, as provided in the code. This means that you cannot raise questions about how the code was applied, beyond the discretionary criteria, as a part of your appeal of the discretionary decision. In such a case, to challenge the way we applied a code standard, other than a criterion specifically listed for the discretionary decision, you need to request a Land Use Code interpretation in addition to appealing our discretionary decision. For example, compliance with development standards such as height limits or setback requirements generally is not a criterion for discretionary reviews, so questions about whether a proposed project meets standards, in general, cannot be considered by the Hearing Examiner as part of an appeal of a project decision, unless a code interpretation is requested regarding particular standards as they apply to the proposed development. An interpretation may be requested during the public comment period for a Type II project, or as part of an appeal of a Type II project.

Our final land use decisions are subject to court appeals. However, if you don't request a Land Use Code interpretation about the meaning and application of a particular code provision, or don't appeal that interpretation to the Seattle Hearing Examiner, you may not be able to raise that issue in a court appeal.

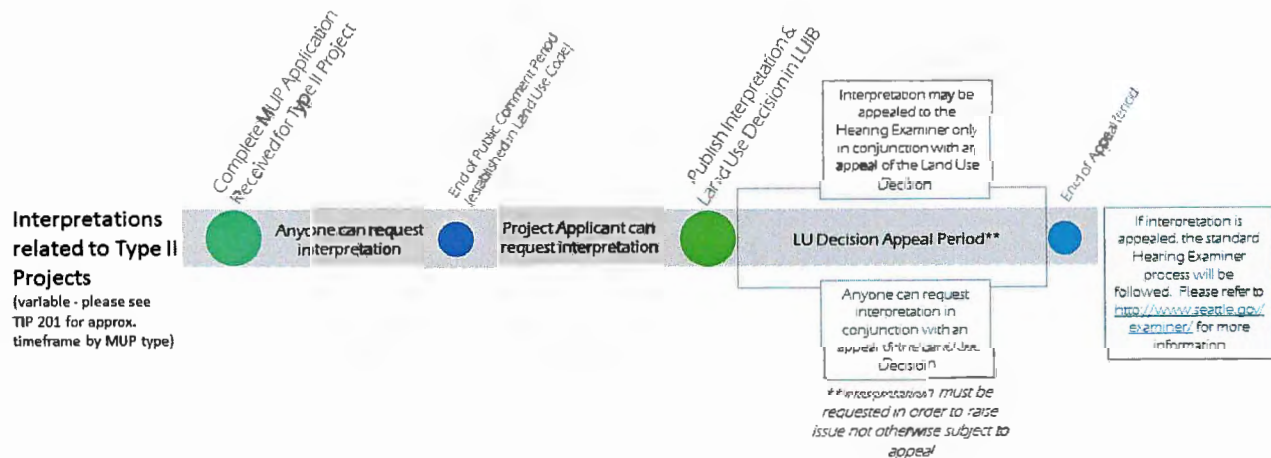
### How does the timing of an interpretation relate to the timing of project review?

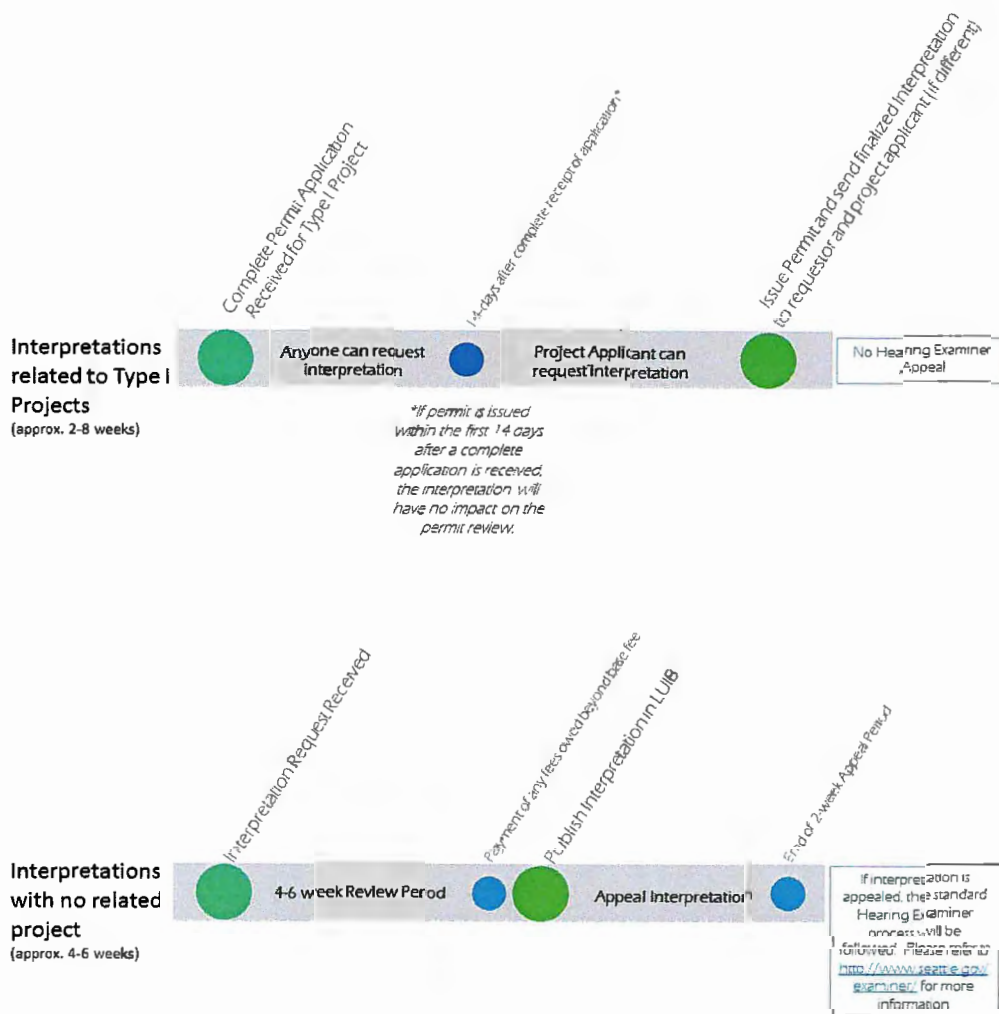
The City is required to meet specific turn-around times for project reviews according to State law. The state law does not provide exceptions to these turn-around times in cases where a project interpretation is requested. Our procedures for interpretations, including when they may



be requested and whether they may be appealed to the Hearing Examiner, are tailored to ensure that interpretation requests do not prevent us from meeting state-imposed review deadlines for related projects. As a result, interpretations relating to different types of project decisions have different procedural provisions as shown in the table and time lines below.

Type of Related Project	Timing of an Interpretation Request
No related project	Interpretation may be requested at any time, by any person
Type I: Project with no discretionary component; project not subject to appeal to the Hearing Examiner	<p>Any person may request an interpretation within 14 days of when SDCI deems the project application is complete. However, if SDCI has already issued the permit for that project, or is ready to issue the permit when you submit the interpretation request, the interpretation won't affect the project.</p> <p>The project applicant may request an interpretation more than 14 days after SDCI deems the project application complete. The applicant must agree to waive the time limits that would otherwise apply to the project review.</p>
Type II: Project with a discretionary component, such as SEPA or conditional use; project is subject to appeal to the Hearing Examiner	<p>Any person may request an interpretation during the project's public comment period.</p> <p>The project applicant may request an interpretation after the public comment period has ended. The applicant must agree to waive the time limits that would otherwise apply to the project review.</p> <p>In addition, your appeal of a Type II project decision may include a request for interpretation related to the project. However, you may not request an interpretation regarding how a proposed use has been categorized at this stage.</p>





### When can an interpretation be appealed to the Seattle Hearing Examiner?

Anybody can appeal an interpretation that is unrelated to a pending project application to the Hearing Examiner. You may not appeal an interpretation to the Hearing Examiner if it is related to a Type I project, i.e. a project that has no other discretionary, appealable component, and requires no public notice. You may appeal an interpretation that is related to a Type II project, such as a project requiring a variance, conditional use approval, or SEPA review, to the Hearing Examiner only if you also appeal the related project decision. The deadline for filing an appeal is 5:00 p.m. on the date 14 days after SDCI publishes the interpretation. Below is a summary of when interpretations can be appealed.

Type of Related Project	Land Use Code Interpretation Appealable to Hearing Examiner?
No related project	Yes
Type I: Project with no discretionary component; project not subject to appeal to the Hearing Examiner	No
Type II: Project with a discretionary component, such as SEPA or conditional use, subject to appeal to the Hearing Examiner	Yes, but only in conjunction with an appeal of the related Type II project decision



## What public notice is provided when an interpretation is requested or issued?

No public notice is provided when an interpretation is requested. If the interpretation request relates to a pending project application, and is submitted by a party other than the project applicant, then notice is provided to the project applicant.

When an interpretation is published, notice is provided to the person requesting the interpretation, and if the interpretation relates to a pending project application, notice is provided to the project applicant. If the interpretation was requested as a part of an appeal of a project decision, notice is provided to the parties to that appeal. If an interpretation is otherwise subject to appeal, notice of the interpretation is published in the Department's Land Use Information Bulletin.

Type of Related Project	Notice of Interpretation Request?	Notice of Issued Interpretation?
No related project	None	SDCI notifies the person requesting the interpretation and publishes it in SDCI's Land Use Information Bulletin
Type I: Project with no discretionary component; project not subject to appeal to the Hearing Examiner	Notice provided to project applicant only	SDCI only notifies the person requesting the interpretation and the project applicant
Type II: Project with a discretionary component, such as SEPA or conditional use, subject to appeal to the Hearing Examiner, if interpretation is NOT requested in conjunction with an appeal of the project decision	Notice provided to project applicant only	SDCI notifies the person requesting the interpretation and the project applicant, and publishes it in SDCI's Land Use Information Bulletin
Type II: Project with a discretionary component subject to appeal to the Hearing Examiner, where the interpretation is requested in conjunction with such an appeal	Notice provided to parties to the appeal including project applicant	SDCI notifies parties to the appeal

## How long does it take SDCI to prepare a Land Use Code interpretation?

If the interpretation is related to an appealable project, SDCI publishes the interpretation at the same time as the project decision. If you're requesting the interpretation in conjunction with an appeal of a project decision, we typically negotiate the timing of the interpretation as a part of that process. If your interpretation request does not relate to a pending project application, or relates to an application for a Type I project that is not subject to appeal, we can typically publish an interpretation within six weeks after we receive the request. However, times may vary depending on the complexity of the issues.

## How much does an interpretation cost?

The initial fee for an interpretation is 10 times the hourly rate set for land use review under the fee ordinance. Under the 2017 fee ordinance, that hourly rate is \$315 and the initial fee required for an interpretation is \$3,150. If you appeal an interpretation to the Hearing Examiner, we will also bill for the time we spend defending our

interpretation. We may require separate interpretations, with separate initial fees, in cases where multiple unrelated questions are raised. The amount of staff time required to prepare an interpretation varies depending on the complexity of the issues. In most cases, we do not need additional payments beyond the initial fee. (See the Fee Subtitle at [www.seattle.gov/dpd/codes-rules/codes/fees](http://www.seattle.gov/dpd/codes-rules/codes/fees) for more information.)

## How do I request an interpretation?

1. Complete our Miscellaneous SDCI Services Request form ([www.seattle.gov/dpd/permits/forms](http://www.seattle.gov/dpd/permits/forms)).
2. Complete our Statement of Financial Responsibility form, committing to pay for any fees that may be required in excess of the base fee ([www.seattle.gov/dpd/permits/forms](http://www.seattle.gov/dpd/permits/forms)).
3. Pay the initial fee when you submit your request.

## 4. Send us forms and payment by:

- Email:  
Public Resource Center  
prc@seattle.gov  
We will notify you when you can pay the fee
- In Person:  
Public Resources Center  
20th Floor of the Seattle Municipal Tower  
700 Fifth Avenue  
M, W, F: 8:00 a.m. – 4:00 p.m.
- Mail:  
SDCI Public Resource Center  
700 Fifth Avenue, Suite 2000  
P.O. Box 34019  
Seattle, WA 98124-4019

Your request should clearly identify the related project, the code provision subject to interpretation, and the specific question you want SDCI to address. You should submit the form and payment according to the instructions on the form. Note: If you are requesting an interpretation in conjunction with an appeal of a project decision, the interpretation request must be submitted before the end of the appeal period for that related decision. You can submit your interpretation request at the Applicant Services Center on the 20th floor of the Seattle Municipal Tower, 700 5th Avenue. The Applicant Services Center closes at 4:00 p.m. each day. If you need to submit the request after 4:00 p.m., you may submit it at the reception desk on the 19th floor of the Seattle Municipal Tower.

### How can I get more information?

For additional information, please refer to the Land Use Code, Section SMC 23.88.020

If you have additional questions about the Land Use Code interpretation process after reviewing this Tip, please visit the land use coaching counter in the Applicant Services Center. The ASC is located on the 20th floor of the Seattle Municipal Tower, 700 5th Ave. Our hours are:

- Monday, Wednesday, Friday: 8:00 a.m. – 4:00 p.m.
- Tuesday, Thursday: 10:30 a.m. -4:00 p.m.

### Access to Information

Links to electronic versions of SDCI **Tips, codes, and forms** are available on the "Tools & Resources" page of our website at [www.seattle.gov/sdci](http://www.seattle.gov/sdci). Paper copies of these documents are available from our Public Resource Center, located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave. in downtown Seattle, (206) 684-8467.