



Memo

Date: 04/20/2022
To: Nathan Torgelson
From: Policy and Technical Team
Subject: 2021 Omnibus Ordinance Updates

We received approximately half a dozen discrete comment letters on the SEPA DNS and Director's Report for the 2021 Omnibus Ordinance. In addition to comment letters from the attorneys for the Master Builders Association of King and Snohomish Counties (MBAKS), we also received an appeal of the SEPA determination by the same organization. We have met with opposing counsel and are working to resolve the appeal prior to hearing.

The appeal focused on several areas of the code that the MBAKS had previously commented on. After consideration, we have amended the Omnibus proposal to remove two amendments and refined the language of several other proposed amendments.

Removed:

23.41.004.A.7 – Design Review Applicability – Additions and Expansions

With regard to this section, we have concluded that questions raised by commenters are of sufficient complexity and scope to warrant removing this proposal from the Omnibus and identifying it for possible future legislation.

SMC 23.53.015.D.2.b – Improvements to existing streets

In this section, which deals with street improvements, we disagree that the scope of impacts would rise to a SEPA impact, we do agree that more clarity is needed in terms of policy intent. This change is best handled by separate legislation.

Clarified:

We received comments on these sections proposing refinements to the language which would not change the scope or intent to our applicability, but we think minor modifications to clarify intent and are worth making for clarity and plain language.

SMC 23.42.112-Nonconformity.

This section dealing with parking is intended to allow retention of nonconforming parking spaces and access when a single-family structure is rebuilt or modified pursuant to subsection 23.42.112.B. We have adopted some of the proposed language from public comment that clarifies a longstanding interpretation of the code.

SMC 23.44.009- Design Standards.

With regards to this section on pedestrian entries we have made plain language changes that make it clear that both an entryway or a front door oriented towards the street on corner lots may satisfy this section.

Added:

SMC 23.42.038 - Uses allowed on vacant and underused lots in certain zones

The change to this section to allow issuance of a 3-year renewable Type I Master Use Permit to arts or cultural organization when partnering with a City agency for a use on a City owned lot in single-family and lowrise zones that would otherwise be allowed as a Type II Conditional Use Permit.

SMC 23.45.600 - Major Phased Developments in Midrise Zones

The addition is to allow the Major Phased Development (MPD) process for Midrise multifamily zones for residential development. Eligible development would need to be on large sites, over 5 acres in area, and include 500 housing units or more.

SMC 23.48.620 - Floor area ratio in SM-U zones

The change is to correct the additional increment of FAR to 1.0 when providing family sized units.

SMC 23.48.720 - Floor area ratio (FAR) in SM-UP zones

The proposal is to correct the additional increment of FAR to 1.0 when providing family sized units.

SMC 23.49 -Downtown Overlay Maps

The proposal is to update Map 1J: Public Amenity and Other Features to expand the FAR Exemption Area: Uses Listed in 23.49.009.A., Major Retail Store and Shopping Atrium which incentivizes additional street level uses in the Downtown Core.

SMC 23.54.030- Parking space and access standards

The change is this section will allow flexibility to modify the required dimensions and distribution percentage of parking spaces for nonresidential uses.

SMC 25.05.680 – Appeals

The first change to this section is to remove the exemption date for certain Council land use actions from administrative or judicial SEPA appeals to a permanent exemption. This change is due to recent State Substitute Senate Bill 5818 update.

The second change to this section includes exemptions for residential and mixed-use developments from SEPA appeals based on elements of the environment “Aesthetics and Light and Glare.” This change is due to recent State Substitute Senate Bill 5818 update.

Noted but retained:

We received comments on the following sections proposing a variety of revised language or changes to the ordinance. For example, one comment requested that we not extend the living building pilot program.

Comments on the following sections are acknowledged but after analysis we have concluded the proposed language best fits with the existing policy, code intent and prior direction of City Council legislation.

We have received comments on these sections. We are not taking this direction.

SMC 23.40.060 – Living Building Program: Comment from Irene Wall requesting that the Living Building Program not be extended despite that fact it has not yet reached the number of projects it was intended to advance during the pendency of the current code limitation. This comment was noted but not adopted.

SMC 23.47A.014 – Setback requirements: Comment from Irene Wall focused on how setbacks should be measured from the “development lot line”. This is not a term used in the Land Use Code. This direction is inconsistent with existing policy. This comment was noted but not adopted.

SMC 23.53.006 – Pedestrian access and circulation: Comment from MBAKS focused on whether Unit Lot Subdivisions were no longer exempted from the street improvement requirements. There is no change to that exemption. This comment was noted but not adopted.

SMC 23.54.030 – Parking space and access standards: Comment from MBAKS raised the issue of whether this is a substantive change in code. It is not, the change makes the text of the code match the title of the tables below it. This comment was noted but not adopted.

SMC 23.76.026 – Vesting: Comment from MBAKS suggesting that Stormwater and drainage code should be vested by Master Use Permit. This suggested change would not be consistent with existing code or policy. This comment was noted but not adopted.

SMC 25.09.012 – Designation and definitions of environmentally critical areas: Comment from MBAKS questioned whether this was a substantive change, which it is not. Plain language edits are proposed to align terminology more closely. The existing Director’s Rule 19-2006 still is used to interpret the ECA code with regards to who may designate a wetland. This comment was noted but not adopted.

SMC 25.09.052 - Replacing structures in environmentally critical areas and buffers: Comment from MBAKS questioned whether this was a substantive change Plain language

updates were made which relate to replacement of structures. If addition is outside of ECA or ECA buffer, they would need to conform with current standards. This comment was noted but not adopted.

SMC 25.09.070 – Standards for tree and vegetation and impervious surface management: Comments from David Moehring were received and reviewed with Urban Forestry Commission. This comment was noted but not adopted.

SMC 25.09.520 – Definitions: Comment from MBAKS were concerned that the added definition of ‘Existing Paved Areas’ and the requirements that in order to be recognized as legally existing, the coverage needed to have been lawful at the time it was installed. MBAKS expressed concern that this would add needless complexity to reviews in ECAs. It is not a new concept in the code and as is the case with any existing development for which a new development right is being conferred by permit, SDCI has the duty to inquire as to how and when the development was created.

This is neither a new practice nor new interpretation of the code and SDCI has a simple process for evaluating that “lawful” status when there is a question. This process is called “establish use for the record” and is a longstanding review used to allow applicants to prove whether a development should have been lawful at the time, regardless of whether a permit was sought. Our evaluation is that these situations are rare and do not represent an onerous new process. This code change was also reviewed with Law several times and is well supported. This comment was noted but not adopted.