

ORDINANCE No. 119895

COUNCIL BILL No. 112896

Law

The City

AN ORDINANCE relating to land use and zoning; amending Section 23.76.062 of the Seattle Municipal Code to provide specifically that a hearing before the City Council is not required for an emergency amendment to the Land Use Code.

Honorable President:

Your Committee on _____

to which was referred the within Council report that we have considered the same

3/7/00 Hold-Discussion

3/21/00 Pass 3-0 C

3-27-00 Passed

COMPTROLLER FILE No.

Introduced: <i>SEP 13 1999</i>	By: DRAGO
Referred: <i>SEP 13 1999</i>	To: Business, Economic & Community Development Committee
Referred: <i>FEB - 7 2000</i>	To: Landlord/Tenant & Land Use Committee
Referred:	To:
Reported: <i>3-27-00</i>	Second Reading
Third Reading: <i>3-27-00</i>	Signed: <i>3-27-00</i>
Presented to Mayor: <i>3-28-00</i>	Approved: <i>3/31/00</i>
Returned to City Clerk: <i>3/31/00</i>	Published: <i>full app.</i>
Vetoed by Mayor:	Veto Published
Passed over Veto:	Veto Sustained

(TW)

Law Department

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

able President:

committee on

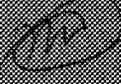
h was referred the within Council Bill No.

that we have considered the same and respectfully recommend that the same:

1/00 Hold-Discussion

4/00 Pass 3-0 (JN, MP, PS)

27-00 Passed 7-0 (Excused: Drago, Melven)



Committee Chair

ORDINANCE 119895

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AN ORDINANCE relating to land use and zoning; amending Section 23.76.062 of the Seattle Municipal Code to provide specifically that a hearing before the City Council is not required for an emergency amendment to the Land Use Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.76.062 of the Seattle Municipal Code, as last amended by Ordinance 118672, is amended as follows:

23.76.062 Council hearing and decision.

A. Public Hearing. The Council shall itself conduct a public hearing for each Type V (legislative) land use decision except that no public hearing is required for an emergency amendment to the text of the Land Use Code. The Council may also appoint a hearing officer to conduct an additional fact-finding hearing to assist the Council in gathering information. Any hearing officer so appointed shall transmit written Findings of Fact to the Council within ten (10) days of the additional hearing.

B. Notice of Hearings.

1. Notice of ~~((the))~~ a required Council hearing on a Type V decision shall be provided by the Director at least thirty (30) days prior to the hearing in the following manner:

- a. Inclusion in the General Mailed Release;
- b. Posting in the Department; and
- c. Publication in the City's official newspaper.

2. Additional notice shall be provided by the Director for public hearings on City facilities, Major Institution designations and revocation of Major Institution designations, as follows:

- a. Mailed notice; and



1 b. One (1) land use sign posted visible to the public at each street frontage abutting the site
2 except, when there is no street frontage or the site abuts an unimproved street, the Director shall either
3 post more than one (1) sign and/or select an alternative posting location so that notice is clearly visible
4 to the public.

5 C. Council Decision. In making a Type V land use decision, the Council shall consider the oral and
6 written testimony presented at the public hearing, as well as any required report of the Director. The City
7 Council shall not act on any Type V decision until the end of the appeal period for the applicable DNS or
8 Final EIS or, if an appeal is filed, until the Hearing Examiner issues a decision affirming the Director's DNS
9 or EIS decision.

10 **Section 2.** This ordinance shall take effect and be in force thirty (30) days from and after its
11 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
12 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

13 SMC 23.76.062 Council hearing and decision.

14 Passed by the City Council the 27th day of March, ²⁰⁰⁰~~1999~~, and signed by me in open
15 session in authentication of its passage this 27th day of March, ²⁰⁰⁰~~1999~~.

16 Margaret A. Pappas
17 President of the City Council

18 Approved by me this 31st day of March, ²⁰⁰⁰~~1999~~.

19 Paul Schell
20 Mayor

21 Filed by me this 31st day of March, ²⁰⁰⁰~~1999~~.

22 Janith E. Pappas
23 City Clerk

24 (Seal)





City of Seattle

Paul Schell, Mayor

Department of Design, Construction and Land Use

R. F. Krochalis, Director

MEMORANDUM

TO: Councilmember Jan Drago, Chair, BECD Committee
Councilmember Sue Donaldson
Councilmember Peter Steinbrueck

FROM: Rick Krochalis, Director *RK*

DATE: October 19, 1999

RE: Legislation Concerning Public Notice for Emergency Legislation

In response to comments received at the public hearing on the legislation that proposes deletion of prior public notice of emergency Land Use Code amendments, this memo clarifies the type of actions that would be included in this exception if adopted, and explores other options to the draft proposal.

The proposed ordinance would exempt emergency amendments to the Land Use Code from the general requirement for a public hearing and attendant 30-day notice for Type V land use decisions. Type V land use decisions are decisions made by Council in their legislative capacity as stewards of public lands and resources. The only category of Type V decisions that would be affected by this proposal is a Land Use Code text amendment to be enacted as an emergency because Council believes there is an imminent threat to the public if immediate action is not taken and which would be compromised if time were taken to comply with public notice and process.

The City Charter explicitly recognizes the potential need for emergency ordinances, by providing for ordinances to take effect immediately when it is "necessary for the immediate preservation of the public peace, health or safety." At least three-quarters of the Council must vote in favor for an emergency ordinance to become law.

The proposed ordinance does not define an emergency, leaving that decision to the judgement of the Councilmembers in recognition of the wide-range of circumstances that could arise. An example of such a circumstance includes action by a federal agency, such as the recent federal listing of salmon as an endangered species, and the City's need to stop projects from vesting to land use regulations that would run counter to the intent

City of Seattle, Department of Design, Construction and Land Use
710 Second Avenue, Suite 200, Seattle, WA 98104-1703

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of the federal directive. Another example potentially requiring emergency code amendments might be natural disasters, such as the landslides experienced in recent winters, when time is of the essence.

Comments received by Council at the public hearing indicate a desire to limit the use of emergency legislation (when no prior public notice would be required) and/or to encourage the provision of whatever notice can be provided.

An "emergency" is generally considered to be unforeseen circumstances that call for immediate action. While general language could be written to describe potential emergencies, it does not appear possible to cover circumstances which, by definition, are "unforeseen." Likewise, the need for "immediate" action, by definition, means there is little if any time for public notice. Emergency legislation does not necessarily go through the normal process of committee deliberation and vote, then full Council vote; otherwise it might be possible to mandate at least a week of public notice.

State law requires that, in the case of moratoria and interim zoning controls when emergency legislation has been adopted without a public hearing, a public hearing be held within at least sixty days of the adoption of the emergency legislation. One possible option would be to adopt this approach in the Land Use Code for any type of emergency amendment (not just moratoria and interim zoning control). Recent experience has shown that this is not an empty exercise held merely to validate earlier decisions, but can produce beneficial information, especially with experience gained in that interim time.



City of Seattle

Paul Schell, Mayor

Department of Design, Construction and Land Use

R. F. Krochalis, Director

MEMORANDUM

TO: Councilmember Sue Donaldson, President

FROM: 
Rick Krochalis, Director

DATE: September 3, 1999

RE: Proposed Land Use Code Amendment: Public Notice of Emergency Legislation

With this letter I am transmitting legislation that clarifies Land Use Code requirements concerning public hearings for emergency legislation. The City of Seattle Charter contemplates the need to act quickly by providing that emergency legislation is effective immediately. The Land Use Code, however, does not specifically address emergency text amendments. We propose that the Code be amended to clearly state that a public hearing, with its attendant 30-day notice, is not required prior to emergency legislation.

As the attached ordinance addresses only procedural issues, it is exempt from environmental review (SEPA). If you have any questions, please contact Diane Althaus at 233-3894.



CHRISTOPHER KENT LEMAN

85 East Roanoke Street
Seattle, Washington 98102

Phone/Fax: (206) 322-5463
Internet: cleman@oo.net

October 4, 1999

Seattle City Councilmembers
600 Fourth Avenue, 11th floor
Seattle, WA 98104

**RE: REDRAFTING AND RENOTICE OF PROPOSED REPEAL OF HEARING NOW
REQUIRED PRIOR TO EMERGENCY LAND USE CODE AMENDMENTS**

To Members of the City Council:

As currently written, please do not pass the proposed amendment to Section 23.76.062 of the Land Use Code. The amendment would repeal the current requirement for a public hearing prior to passage of an emergency land use code amendment.

While there are situations in which a suspension of the public hearing requirement for land use code amendments may be desirable, the current proposed language opens up a huge gap for potential misuse by failing to define the emergencies in which the hearing requirement may be suspended. Also, it does not require the City Council to provide a prior public hearing in those emergencies whose timing will allow one, even if with less than the 30-day public notice normally required.

The courts have deferred to city councils and other legislative bodies as to whether they acted well in declaring an emergency, and as a result, the emergency power is sometimes (some would say frequently) used inappropriately. It is important for any City Council action in broadening the emergency power to be carefully circumscribed in order to prevent future abuse. The ordinance should carefully define the classes of emergency situations that would be covered, and the classes of circumstances in which the emergency power cannot be invoked.

The repeal of the public hearing requirement appears to be proposed largely out of concern that in emergency situations it is difficult to observe the current 30-day public notice requirement. Unfortunately, the current amendment would totally repeal the requirement for a prior public hearing whenever an emergency has been declared, rather than provide for a prior public hearing with a shorter public notice period for those emergencies that can accommodate it. I want to believe that the City Council wishes to receive public input whenever it can feasibly do so, and that it will exempt itself from the requirement for a public hearing only when one it not feasible.

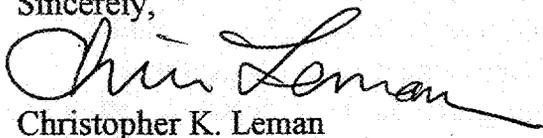
The proposed amendment should be altered to require that, even when the City Council has declared an emergency and cannot observe the current requirement for 30 days notice prior to the hearing, the Council will make every effort to schedule a hearing prior to passage of the land use code amendment. A public notice period of 20, 10, or 5 days prior to a public hearing is certainly better than allowing no prior hearing. In order to ensure a hearing with the normal 30-day notice period, a second hearing could be held within 60 days after the emergency legislation, in accordance with state law. As currently written, the proposed amendment would completely exempt the City Council from holding a public hearing prior to an emergency code amendment so that the only hearing held would one required by state law after the emergency is made law. Needless to say, holding a hearing after an ordinance is adopted is a poor substitute for holding one prior to passage, if the prior hearing is in any way feasible.

The Executive branch and the City Council have insufficiently publicized this ordinance change. It has received only the minimal required mention in the General Mailed Release, the Daily Journal of Commerce, and the City Council committee agenda and meeting schedule. The proposed ordinance change has not been mentioned in the DDCLU-INFO newsletter (including the current issue), and has not been the subject of any Executive- or City Council-sponsored public meetings or special mailings.

What is at issue in the October 5 hearing is very misleadingly described in the current City Council meeting schedule: "The amendments would acknowledge State Law (RCW) and the City Charter with regard to emergency Land Use Code amendments to the effect that a public hearing is not required in advance of emergency legislation." Nowhere is it stated that the measure up for a hearing tomorrow would repeal the Land Use Code's current requirement for a prior public hearing in cases where the City Council declares an emergency. The October 5 hearing must be rescheduled in order to allow a more accurate announcement of its content.

And before holding a final hearing on this legislation, the City Council should send it back to the Executive for development of additional language (including alternative approaches) that would deal with the issues raised above. The City Council must insist on better analysis and outreach from the Executive branch on a matter with as much potential for governmental abuse and public distrust as this one.

Sincerely,


Christopher K. Leman

E-MAIL

From: Jeannie Hale <jeannieh@serv.net>
To: DOM01.P0103(DRAGOJ)
Date: Mon, Oct 4, 1999 2:30 PM
Subject: Tomorrow's Meeting

Hi Jan,

I just noticed that your committee is reviewing a proposed change to eliminate the hearing for emergency land use code amendments tomorrow. I have a copy of the proposed ordinance that I got off the city's website. Do you have any other information that you could fax to me? My fax number is 525-9631. Thanks for your assistance.

Jeannie Hale
Laurelhurst Community Club

From: "Kent Kammerer" <kammerer@aa.net>
To: DOM01.P0103(STEINBP,PODLODT,PAGELEM,MCIVERR,LICATA...
Date: Mon, Oct 4, 1999 10:09 PM
Subject: Repeal of Hearing

Council Members,

Ñ I urge you to reject the amendment to the land use code 23.76.062 that would repeal public hearings in emergencies. I believe this is ill considered legislation that would take a first step onto a slippery slope that could open the door to possible abuse.

Ñ I would be surprised if anyone could cite examples of specific situations where the public interest was severely damaged by waiting. I believe this raises the issue of whether this is absolutely essential legislation.

Ñ I question if there are reasonable definitions of just what kind of emergency would qualify for this action. The emergency for one may only be an inconvenience for another. One of our stadiums gained ballot stature by be called an emergency.

Ñ This proposed change has nearly slipped through the system with very little public awareness. I urge you vote no and re-address this issue by crafting much narrower legislation that clearly defines emergencies that might affect the health or safety of the general public. Other situations are not emergencies an no rationale could justify abandoning the necessary public hearing.

Kent Kammerer

From: "Friends of Brooklyn, by Brian Ramey" <friends_of_brooklyn@ghspr.com>
To: "Honorable Tina Podlodowski, Seattle City Council" ...
Date: Tue, Oct 5, 1999 6:23 AM
Subject: Proposed amendment to Section 23.76.062

RE: REDRAFTING AND RENOTICE OF PROPOSED REPEAL OF HEARING NOW REQUIRED
PRIOR TO EMERGENCY LAND USE CODE AMENDMENTS

The proposed amendment to Section 23.76.062 of the Land Use Code

To Members of the City Council:

Members of Friends of Brooklyn are concerned that the proposed legislation in Councilwoman Jan Drago's committee today will open up the possible abuse of the emergency land use code actions and eliminate the public's rights to be heard on important land use and zoning decisions.

Please do not approve the legislation without removing the language which would allow for passage of such legislation without a public hearing.

Thank you,

Brian Ramey
and Friends of Brooklyn
P.O. Box 85462
Seattle, WA 98145-1462
(206) 515-8904

cc Members Friends of Brooklyn and Lakeview

From: Toby Thaler <louploup@wolfenet.com>
To: DOM01.P0103(PODLODT,DONALDS,MCIVERR,CONLINR,STEINB...
Date: Tue, Oct 5, 1999 10:43 AM
Subject: Proposed amendment to Section 23.76.062

The fact that I am sending this note during the hearing on the proposed changes (coming from Councilmember Drago's committee) clearly indicates the need for better public involvement before adoption of changes to the land use code that widen the "emergency" exception for zoning amendments.

I concur in Chris Lehman's analysis of this proposal.

Thank you for your attention.

Toby Thaler
Fremont

From: Cheryl Klinker <"WPGATE::VAXES::CKLINKER"@is.ssd.k12.wa.us>
To: Sea-Leg.Council & Central Staff(MCGRADD),dom13.p13...
Date: Fri, Oct 1, 1999 4:18 PM
Subject: EMERGENCY LAND USE ACTIONS

As a member of the North District Stewardship Committee, carrying forward from where the Planning Committee ended, it has been brought to my attention that Oct 4 is the end of a comment period for a proposed change to the process for emergency land use decisions and actions. As part of that, the Public process notification, and review is being removed. This seems to me to be a very bad idea! Especially now that we have several neighborhood stewardship groups who want to know what the influences of various land use decisions will have on their ability to implement their neighborhood plans.

Please pass this along to Jan Drago and other Councilmembers working on this, and please explain to me what constitutes an emergency land use decision, and why it would be needed. In all my experiences with land use changes or actions, nothing moves along that quickly...it is not like an earthquake disaster that just happens totally unexpected. Are there written materials you could give me to share with our stewardship committee to help us get educated about this issue?

Send them to Cheryl Klinker 12036 35th AVE NE, Seattle, WA 98125
I can be reached at 206-298-7096.

Thank you.

From: "Knoll Lowney" <knoll@igc.org>
To: DOM01.P0103(MCGRADD)
Date: Mon, Oct 4, 1999 11:46 AM
Subject: Public Notice of Emergency Legislation

I am very concerned about the proposal to exempt emergency legislation from public hearing processes. There is no policy justification for removing the public from any legislative action.

As a land use attorney, I have significant experience working with local governments that abuse the "emergency" exemption for avoiding public scrutiny of their actions. While I would like to believe that the City of Seattle would not similarly abuse this authority, one also has a difficult time imagining a need to remove the process from a legislative action.

Certainly, there are times when emergency "actions" must be taken. However, a permanent amendment to the land use code need not be made in this situation. However, the exemption that is currently being proposed allows just this type of permanent code amendment in response to an emergency situation.

The difficulty of exempting emergency actions from public notice is that there becomes no accountability for the decision that there actually exists an emergency. Other jurisdictions have taken emergency actions in response to situations that clearly do not qualify as an emergency. However, without public notice, the public has no way to challenge the declaration of an emergency.

It is also troubling that there is no definition of an emergency in this proposed legislation. The situations that qualify as an emergency should be clearly delineated, and there should be notice and an opportunity to appeal the declaration of an emergency.

For example, an emergency justifying avoiding a public hearing should be just that -- it must be such an emergency that there is no time to have a public hearing. Then, the action taken without public hearing should only be a temporary, emergency action. For example, the emergency declaration perhaps could allow an action to be taken prior to the time the public notice and proper procedures could be followed. But then the normal public notice should immediately be sent and all normal procedures should be followed. A temporary state of emergency should never be used as a vehicle to exclude the public from participating in a permanent land use code revision.

Please forward this e-mail to all of the members of the committee and let me know how the committee proceeds on this.

Knoll Lowney
Smith & Lowney PLLC
2317 E. John St.
Seattle, WA 98122
206-860-2976

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

_____ *Jan Page* _____

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE



STATE OF WASHINGTON - KING COUNTY

116747

City of Seattle, City Clerk

--SS.

No. FULL ORDINAN

City of Seattle

ORDINANCE 119895

AN ORDINANCE relating to land use and zoning, amending Section 23.76.062 of the Seattle Municipal Code to provide specifically that a hearing before the City Council is not required for an emergency amendment to the Land Use Code.

BE IT OBTAINED BY THE CITY OF SEATTLE AS FOLLOWS:

SECTION 1. Section 23.76.062 of the Seattle Municipal Code, as last amended by Ordinance 116672, is amended as follows:

23.76.062 COUNCIL HEARING AND DECISION.

A. Public Hearing. The Council shall itself conduct a public hearing for each Type V (legislative) land use decision, except that no public hearing is required for an emergency amendment to the text of the Land Use Code. The Council may also appoint a hearing officer to conduct an additional fact-finding hearing to assist the Council in gathering information. Any hearing officer so appointed shall transmit written Findings of Fact to the Council within ten (10) days of the additional hearing.

B. Notice of Hearings.

1. Notice of (the) a required Council hearing on a Type V decision shall be provided by the Director at least thirty (30) days prior to the hearing in the following manner:

a. Inclusion in the General Mailed Release;

b. Posting in the Department; and

c. Publication in the City's official newspaper.

2. Additional notice shall be provided by the Director for public hearings on City facilities, Major Institution designations and revocation of Major Institution designations, as follows:

a. Mailed notice; and

b. One (1) land use sign posted visible to the public at each street frontage abutting the site except, when there is no street frontage or the site abuts an unimproved street, the Director shall either post more than one (1) sign and/or select an alternative posting location so that notice is clearly visible to the public.

C. Council Decision. In making a Type V land use decision, the Council shall consider the oral and written testimony presented at the public hearing, as well as any required report of the Director. The City Council shall not act on any Type V decision until the end of the appeal period for the applicable DNS or Final EIS or, if an appeal is filed, until the Hearing Examiner issues a decision affirming the Director's DNS or EIS decision.

SECTION 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

SMC 23.76.062 Council hearing and decision.

Passed by the City Council the 27th day of March, 2000, and signed by me in open session in authentication of its passage this 27th day of March, 2000.

MARGARET CARTER, President of the City Council.

Approved by me this 31st day of March, 2000.

PAUL SCHELL, Mayor.

Filed by me this 31st day of March, 2000. (Seal) JUDITH E. PIPPIN, City Clerk.

Publication ordered by JUDITH PIPPIN, City Clerk.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:119895 ORD IN FUL

was published on

04/06/00

The amount of the fee charged for the foregoing publication is the sum of \$, which amount has been paid in full.

Subscribed and sworn to before me on 04/07/00 [Signature] Notary Public for the State of Washington, residing in Seattle