Legislative Department
Seattle City Council
Memorandum

Date: June 20, 2011

To: Sally Clark, Chair
Tim Burgess, Vice Chair
Sally Bagshaw, Member
Committee on the Built Environment (COBE)

From: Ketil Freeman, Council Central Staff

Subject: Council Bill 117124 – Land Use Omnibus

Introduction

About every other year the Department of Planning and Development (DPD) develops an omnibus bill amending the Land Use Code (Code). Generally, the omnibus bill corrects typographical errors, corrects cross-references, clarifies existing regulations, and makes other minor amendments identified by DPD in the course of Code administration. The omnibus bill is not intended to be a vehicle for addressing significant policy issues.

On April 27, the Committee on the Built Environment (COBE) received an initial briefing from DPD on Council Bill (CB) 117124. On May 14, COBE held a public hearing on the bill. This memo identifies non-substantive amendments to CB 117124 that have been incorporated into a proposed substitute bill and discusses issues that have been raised by Councilmembers or identified by the public through written comment or testimony at the public hearing.

Substitute Bill (Attached on Yellow Paper)

CB 117124 was introduced on March 7. Since introduction, the Land Use Code has been amended by Ordinance 123589, which implemented regulatory changes for south downtown. Additionally, staff has identified a few minor amendments that could be incorporated into a substitute and are within the scope of environmental review already performed by DPD. The proposed substitute contains the following:

1. Changes to the base legislation to reflect amendments to the Land Use Code passed in the south downtown legislation, Ordinance 123589 (located throughout the substitute);
2. Changes to the SMC 23.22.074, 23.44.016, 23.44.041 and 23.53.030 to replace references to the now defunct King County Records and Elections Office with King County Recorder (see p. 2, p.31, p.40, and p. 94);
3. Changes to SMC 23.42.106 to clarify that only applicable development standards for institutions would apply to small projects in existing, non-conforming cemeteries (see p.11); and
4. Changes to SMC 23.76.026 to correct an inadvertent deletion in Ordinance 123564 that precludes certain projects from taking advantage of pre-existing sloped lot bonuses (see p.149).

Issues for Discussion

Issue	*Discussion*
Design Review Vesting, SMC 23.76.024 See page 7 of this memo for a flow chart of the design review process.	Master Use Permit (MUP) applicants vest to development standards with a DPD permit decision or when a MUP is accompanied by a complete building permit application. MUPs with design review components have preferential vesting and vest with a complete early design guidance application, provided that a MUP application is filed within 90-days of an early design guidance public meeting. DPD proposes to amend the Code to address circumstances where there are multiple Early Design Guidance (EDG) meetings by: 1) allowing preferential vesting if a MUP application is filed within 150 days of the first EDG meeting; or 2) allowing vesting to development standards in place at the most recent EDG meeting, if a MUP application is filed within 90 days of that meeting. The purpose of the proposed amendment is to preclude applicants from gaming the EDG process to gain preferential vesting. Public comment from the National Association of Industrial and Office Properties (NAIOP) expressed concern over loss of preferential vesting when an EDG meeting does not occur through no fault of an applicant. This could occur in the unlikely event that a Design Review Board (DRB) does not show up for an EDG meeting or if it is impractical for DPD to schedule multiple DRB meetings within 150 days due to venue constraints. However, a determination of fault as to why a meeting did not occur is not an easily administrable procedural requirement. If the Committee wants to consider modifying the vesting window, the Committee could extend the proposed 150-day period. <u>Options:</u> 1. Do not amend the Code; (Blue Paper) 2. Approve DPD's recommended change; or 3. Extend the proposed period from the first EDG meeting. (Green Paper)
Rulemaking for Green Building Standards, SMC 23.88.010	The Code currently contains density bonuses available to developers who meet green building standards, such as the US Green Building Council's Leadership in Energy and Environmental Design (LEED) Silver rating and the Master Builders Association's Built Green 4-star rating. Requirements for meeting these standards are promulgated by the organization that originated the standard and are updated periodically. DPD proposes to amend the Code to authorize the DPD Director to promulgate by rule performance standards for determining whether a new structure meets applicable green building requirements. Rulemaking by City departments is governed by Chapter 3.02 of the Seattle Municipal Code, which contains mandatory public comment and notice periods before a rule can take effect. This proposed delegation would allow for standards to be updated more quickly and efficiently but would remove from the Council the opportunity for legislative decision-making about new performance standards. NAIOP has expressed concern about the proposed delegation.

	Options: 1. Do not amend the Code or (Red Paper) 2. Approve DPD's recommended change.
"Household" Definition, SMC 23.84A.016	The Code currently defines "household" as, "a housekeeping unit consisting of any number of related persons; eight (8) or fewer non-related, non-transient persons; or eight (8) or fewer related and non-related non-transient persons, unless a grant of special or reasonable accommodation allows an additional number of persons."[1] Thus, under the current definition, an unlimited number of related persons can live in a dwelling unit and up to eight unrelated persons can live in a dwelling unit. DPD proposes to amend the Code to exempt residents of an adult family home – up to six adults – from those persons who must be counted towards the maximum household size. Thus, the maximum size for a household of unrelated persons that includes an adult family home would be 14 persons of whom six would be adult family home residents. An "adult family home" is defined by the state as "a residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services."[2] Adult family homes are primarily regulated by the Washington Department of Social and Health Services and are intended to provide humane and safe residential environments for persons who have functional limitations and need special care. Adult family homes are permitted residential uses in Seattle's Single Family, Multifamily, and Commercial zones. According to DPD, there are approximately 200 registered adult family homes in Seattle. The proposed amendment stems from an enforcement action in which an adult child of a couple that operated a fully occupied adult family home returned home thus causing the maximum household size to exceed eight. Options: 1. Do not amend the Code and defer consideration for further policy analysis or (Orange Paper) 2. Approve DPD's recommended change.
Length of Temporary Use Permits, SMC 23.42.040	The Code currently allows activities that are temporary in nature and not expressly permitted to be established as temporary uses. There are two types of temporary use permissions that can be issued: 1) authorization of a use for up to four weeks and 2) authorization of a use for up to six months. The former requires a simple administrative decision by the DPD Director. The latter requires a discretionary decision that is appealable to the Hearing Examiner. DPD review of a six month temporary use permit application can take up to four months.

[1] Seattle Municipal Code (SMC) § 23.84A.016.
[2] Revised Code of Washington § 70.128A.010.

	DPD proposes to amend the Code to extend the term of a six month temporary use permit to one year. According to DPD, from 2007 to 2011, 23 temporary use permits were issued. Uses authorized by those permits were: ▪ Light rail staging areas for Sound Transit construction – 6 permits; ▪ Temporary offices or retail sales – 3 permits; ▪ Temporary fire stations – 2 permits; ▪ Temporary school structures – 1 permit; ▪ Worker housing for a Todd Shipyard project – 1 permit; ▪ Parking lots – 5 permits; and ▪ Transitional encampments for the homeless – 5 permits. Like Seattle, other jurisdictions have variable temporary use permit terms. However, unlike Seattle, other jurisdictions specify permit terms by type of use. With the exception of boat building shelters, temporary fire and police stations, and light rail construction staging areas, the Seattle Code allows the permit term sought by an applicant to be either four weeks or six months regardless of the type of use. San Francisco allows temporary uses of 60 days to two years.[3] Sixty day permits are for uses like neighborhood festivals and booths for charitable organizations. Two year permits are for uses like construction staging. Tacoma allows temporary uses of 14 days to one year.[4] Fourteen day permits are for carnivals. One-year permits are for uses like temporary housing and office space. Finally, King County allows temporary uses of 14 days to two year.[5] Fourteen day permits are for uses like community festivals and carnivals. Two year permits are for temporary real estate offices. Homeless encampments are expressly prohibited as temporary uses by King County.[6] <u>Options:</u> 1. Do not amend the Code or (Blue Paper) 2. Approve DPD's recommended change.
Interpretability of Type IV and V Decision, SMC 23.76.004	Any person can request an interpretation by DPD on the meaning, application, or intent of a development regulation in the Code. Procedural provisions and policy statements are not subject to interpretation. DPD proposes to amend the Code to clarify that permit decisions for all types of land use actions, including Council legislative and quasi-judicial decisions, are subject to interpretation. This would provide an additional administrative remedy that an applicant could pursue before seeking judicial review. The plain language of the proposed amendment could lead to unintended consequences. Specifically, the proposed amendment could be read to authorize executive branch review of final legislative branch land use

[3] San Francisco Municipal Code § 205.1 – 205.4.
[4] Tacoma Municipal Code § 13.06.635.
[5] King County Code § 21A.32.120- 21A.32.180
[6] Ibid § 21A.32.145.

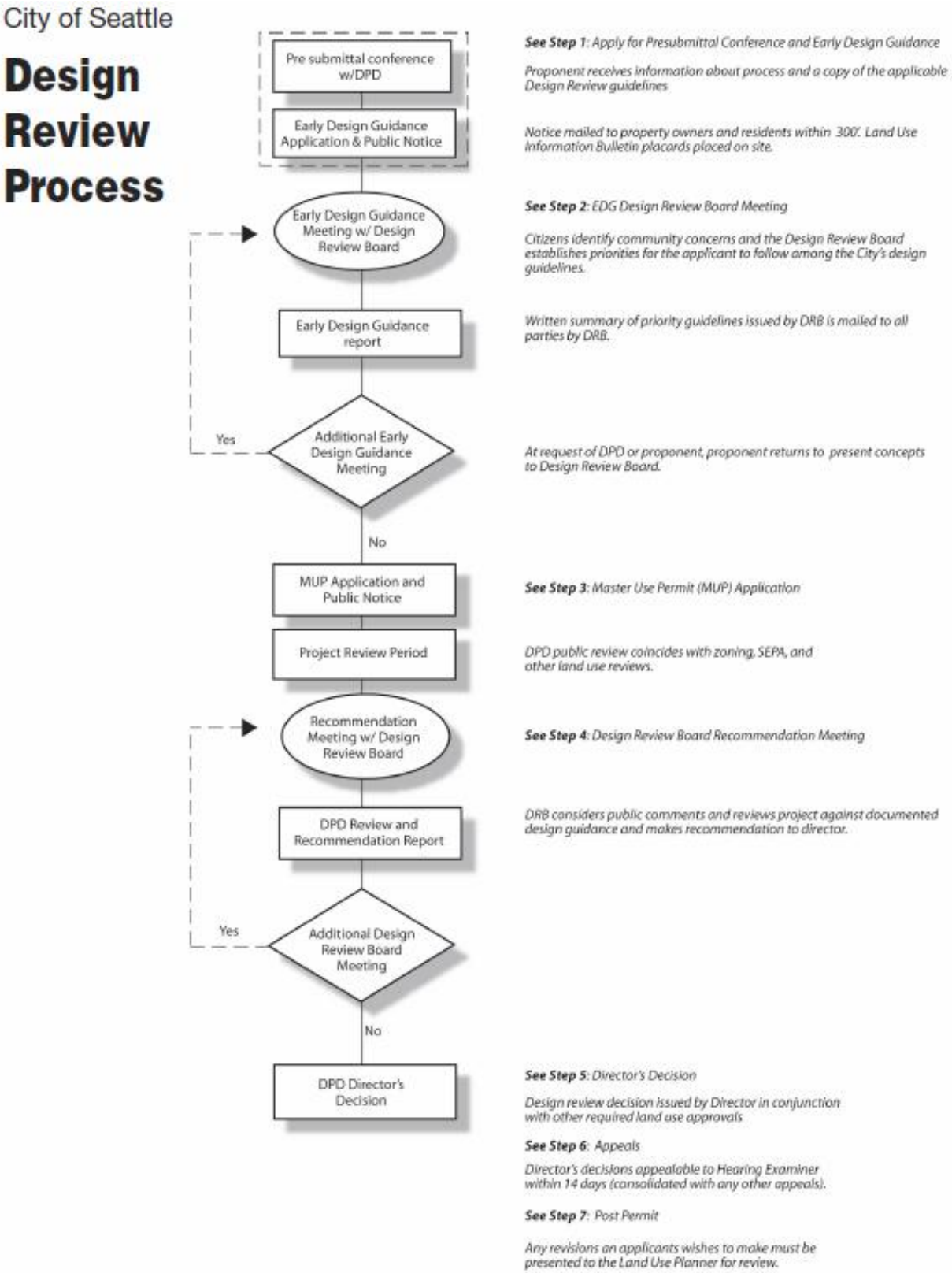
	decisions. For example, the Council makes project-specific legislative decisions when deciding to waive development standards for City facilities. A recent example was the Council's decision to allow the Parks Department to install overheight light poles at the Asa Mercer Middle School playfields. If, for whatever reason, the Council had determined not to approve those light poles, the proposed language would authorize the Parks Department to request an interpretation from DPD that could overturn that decision. <u>Options:</u> 1. Do not amend the Code for Type IV and V decisions or (Green Paper) 2. Approve DPD's recommended change.
Signage for "Multiple Business Centers," SMC 23.84A.036, 23.55.030 and 23.55.036.	The Code currently allows a variety of on-premises business signs. On-premises business signs are intended to identify businesses on a site and are not intended to advertise a product or service. The number and size of on-premise business signs allowed depends on the zone. The greatest restrictions apply to zones that allow less intensive land uses, like single family zones, and the least restrictions apply to zones that allow more intensive land uses, like industrial zones. In Commercial and Industrial Zones "multiple business centers," which include shopping centers and industrial parks are restricted to one on-premises, pole sign for each 300 lineal feet of street frontage, although individual businesses with street frontage may have additional signage. There are variable maximum size limits for on-premises business signs in commercial zones. There are no maximum size limits for on-premises business signs in industrial zones. DPD proposes to amend the Code to allow multiple business centers in Commercial and Industrial zones to choose sign types in addition to pole signs. These include ground signs, wall signs, and marquee signs. Additionally, DPD proposes to define "multiple business center sign" as: > An on-premises sign directing attention to a grouping of two or more business establishments that either share common parking on the lot where the sign is located or occupy a single structure or separate structures that are physically attached or both. A multiple business center sign may be used to identify a multiple business center and may identify individual business establishments within a multiple business center but not the products or services offered by the business establishments. DPD does not propose to amend any maximum size limits for signs. Public comment expressed the concern that the proposed changes to the types of signs allowed for multiple business centers could lead to the proliferation of additional signage and should not be done without further policy review. DPD does not propose to change the quantity or size of signs allowed in Commercial and Industrial zones. Additionally, the definition of "multiple business center sign" contains language that would preclude those signs being used to advertise products or services offered by businesses in the center. However, the option of additional sign types could induce multiple

	business center owners, who have not installed pole signs, to install new signs or to change sign types from pole signs to another type. Later this year the Council will be taking up legislation that addresses loopholes for on-premises business signs that have been exploited by advertisers. If the Committee determines that the policy issues associated DPD's proposed change are too significant for the omnibus, Council could defer consideration of the proposed changes to that bill. <u>Options:</u> 1. Do not amend the Code and defer consideration for further policy analysis; (Red Paper) 2. Amend the Code but only for Industrial areas; or (Orange Paper) 3. Approve DPD's recommended change.
"Research and Development Laboratory" Definition, SMC 23.84A.024	In June 2010, Council adopted Resolution 31217, which was sponsored by Councilmember Licata. Resolution 31217 urged the State of Washington to establish statewide standards for biosafety laboratories. In September 2010, Council passed Ordinance 123393, which updated the Seattle Fire Code. Consistent with Resolution 31217, Ordinance 123393 clarified the definition of "laboratory" in the Fire Code. Additionally, Ordinance 123393 established a requirement that operators of laboratories where activities subject to biosafety level 3 or level 4 are conducted notify the City fire code official of their locations. Biosafety level 3 and 4 are defined by the U.S. Department of Health and Human Services in *Biosafety in Microbiological and Biomedical Laboratories*. DPD proposes to amend the definition of "research and development laboratory" to include language that clarifies that laboratories subject to any level of biosafety containment are considered research and development laboratories for the purposes of land use regulation. The amendment proposed by DPD does not change any existing operative language in the definition of "research and development laboratory." Options: 1. Do not amend the Code or (Blue Paper) 2. Approve DPD's recommended change.

Next Steps

The Growth Management Act sets out minimum public participation measures when adopting development regulations. The changes discussed in this memo are likely significant enough that Council should provide an additional opportunity for written comment. Assuming that the Committee moves a substitute or any amendments at Wednesday's meeting, notice of an opportunity to comment can go out in Monday's Land Use Information Bulletin and the legislation should be held at Full Council until July 11 to allow for additional public input.

Design Review Process Flow Chart



Source: DPD Client Assistance Memo 238.