



Legislative Department Seattle City Council Memorandum

Date: April 10, 2012
To: Planning, Land Use and Sustainability (PLUS) Committee Members
From: Sara Belz, Council Central Staff
Subject: **Council Bill (CB) 117430 – Regulatory Reform**

At its April 11, 2012, meeting, the PLUS Committee will continue its review of CB 117430, which would amend several sections of the City's Land Use Code (Seattle Municipal Code Title 23) and Environmental Policies and Procedures (Seattle Municipal Code Chapter 25.05) in order to encourage economic growth and job creation. The Committee's previous deliberations on CB 117430 have occurred as follows:

February 29, 2012 – Department of Planning and Development (DPD) staff presented an overview of the Executive's proposed regulatory reform package, which was introduced on March 26 as CB 117430.

March 28, 2012 – the PLUS Committee hosted a public hearing on CB 117430 and heard comments from about 30 constituents.

March 29, 2012 – the PLUS Committee reviewed the input received at the March 28 public hearing and directed staff to provide additional information and analysis on specific elements of CB 117430 before the Committee takes action on the legislation.

Identified Issues

To date, Committee members have requested further staff review of the following proposals included in CB 117430:

- Change State Environmental Policy Act (SEPA) environmental review thresholds for Urban Centers and Station Area Overlay Districts.
- Codify DPD's authority to require transportation studies and mitigation for projects that would become exempt from SEPA under CB 117430.
- Extend no-minimum parking requirements to areas within one-quarter mile of frequently-served transit stops.
- Allow ground-floor commercial uses in certain multifamily zones.
- Extend the maximum length of most temporary use permits to 18 months and convert the issuance of such permits from appealable Type 2 decisions to non-appealable Type 1 decisions.

- Eliminate the existing requirement that a backyard cottage not exceed the height of a principal dwelling unit by more than 15 feet.
- Allow operators of home-based businesses to list their addresses in advertisements and on business cards.

On April 11, the PLUS Committee will discuss the decision agenda that follows below. The decision agenda covers all the issues identified above except for the proposed SEPA and parking reforms. A discussion of those topics is scheduled for the May 9 PLUS Committee meeting.

Additionally, there are several elements of CB 117430 that staff has not been asked to study further. These include, but are not limited to, 1) proposals to permit backyard cottages on through-lots, 2) increase the number of non-resident staff a home-based business may employ from one to two, and 3) allow greater flexibility for street-level uses in several areas of the City where ground-floor commercial development is currently required.

Decision Agenda

Central Staff and DPD have studied each of the issues described below and identified action options and considerations for the PLUS Committee's review. Staff requests that Committee members discuss and provide recommendations on these items at the April 11 PLUS meeting. This will allow staff to prepare any necessary amendments in advance of the May 9 PLUS meeting, during which the Committee may take action on CB 117430.

Issue #1: Allow ground-floor commercial uses in certain multifamily zones.

CB 117430 would allow ground-floor commercial uses in all Midrise (MR) zones and in Lowrise 2 and 3 (LR2 and LR3) zones that are located in Urban Centers and Station Area Overlay Districts. Although such uses are already permitted on lots in MR zones that are within 800 feet of an existing Commercial or Neighborhood Commercial (C or NC) zone, they are not currently allowed in most LR zones. The only exceptions are LR zones with a Residential/Commercial (RC) suffix, which are generally adjacent to existing business districts. The RC suffix is not widely applied to LR-zoned property and permits types of commercial development that DPD determined were not appropriate for all LR2 and LR3 zones located in Urban Centers and Station Area Overlay Districts.

Under CB 117430, the types of ground-floor commercial uses that could operate in the multifamily zones identified in the legislation include business support services, food processing, craft work, retail shops, medical services, offices, restaurants, and live-work spaces. To the extent possible, venting that emits smoke or fumes, or that services devices such as air-conditioning units or exterior heat exchangers, would be required to be directed away from neighboring residential uses.

Part A: Allow ground-floor commercial uses in all MR zones.

Ground-floor commercial uses of up to 4,000 square feet are already allowed on MR-zoned lots that are located within 800 feet of an existing C or NC zone. Multi-purpose retail sales establishments of up to 10,000 square feet (e.g., pharmacies, hardware stores, small supermarkets) may also be located on such MR-zoned lots. As is shown on the attached Map #1, provided by DPD, small pockets of MR zoning that do not meet the 800-foot criteria are located

along Alki Avenue, Avalon Way, Martin Luther King Junior Way, Queen Anne Avenue, Lake City Way, adjacent to the Jackson Park golf course, and along the eastern side of Bitter Lake. Allowing ground-floor commercial uses in all MR zones would simplify the Land Use Code by applying a single set of commercial use standards to all MR-zoned lots, regardless of their proximity to a C or NC zone. However, it could also alter the character of some of the MR zones where commercial uses are not currently permitted, particularly if retail establishments of up to 10,000 square feet eventually locate in those areas.

Options:

1. Consistent with CB 117430, allow ground-floor commercial uses in all MR zones.
2. No action; retain existing language in Land Use Code.

PLUS Committee Recommendation:

Part B: Allow small-scale, ground-floor commercial uses in LR2 and LR3 zones that are located in Urban Centers and Station Area Overlay Districts.

CB 117430 would allow ground-floor commercial uses of up to 2,500 square feet to operate in LR2 and LR3 zones that are located in Urban Centers and Station Area Overlay Districts. Any outdoor seating associated with such uses would be required to close by 10:00 pm. Lists of Seattle’s Urban Centers and Station Area Overlay Districts are provided below.

Urban Centers

Northgate
University
Capitol Hill/First Hill
Uptown*
South Lake Union*

Station Area Overlay Districts

Roosevelt
University**
Capitol Hill**
North Beacon Hill
Mt. Baker
Columbia City
Othello
Rainier Beach

*No LR2 or LR3 zoning is located in these areas.

**These Station Area Overlay Districts fit within the boundaries of their respective Urban Centers.

After meeting with Councilmembers and reviewing the comments submitted by Seattle residents on this proposed element of CB 117430, Central Staff and DPD have identified the following potential action options and considerations for Committee members’ review. Most of the options are not mutually exclusive, meaning Committee members could vote in favor multiple amendments if desired. Committee members should also be aware that the Seattle Planning Commission is likely to offer its formal recommendations on this component of the legislation within the next several days.

Options	Considerations
<p>1. Consistent with CB 117430, allow small-scale, ground-floor commercial uses in LR2 and LR3 zones that are located in Urban Centers and Station Area Overlay Districts.</p>	<ul style="list-style-type: none"> • This option would create opportunities for small businesses that might not be able to afford space in an established business district to locate in walkable, densely developed, and transit-rich areas. • Many of the LR zones that would be affected by this legislation are located within walking distance of an established business district. • Allowing limited commercial uses in LR2 and LR3 zones that are located in Urban Centers and Station Area Overlay Districts could draw customers away from nearby business districts. • Many ground-floor residential units are located in the affected LR zones. The occupants of these units could be particularly, and negatively, impacted if food service businesses and other commercial uses with nighttime hours are permitted to operate on neighboring lots. • This option could increase the demand for parking in areas where on-street spaces are already highly utilized.
<p>2. Further limit eligible LR-zoned lots to those on arterial streets.</p>	<ul style="list-style-type: none"> • This option would reduce by 60 percent the number of LR-zoned lots where ground-floor commercial uses would be permitted. • Arterials are generally louder and more heavily trafficked than side streets. As such, the incremental impacts associated with allowing commercial uses on LR-zoned lots located along arterials would likely be less than those associated with permitting such uses on side streets. • LR-zoned lots located on arterials are visible to more potential customers than those located on side streets and, thus, may be more viable as potential locations for small businesses.
<p>3. Further limit eligible LR-zoned lots to corners locations only.</p>	<ul style="list-style-type: none"> • Under this option, ground-floor commercial uses would be permitted on even fewer lots than under Option 2, above.

	<ul style="list-style-type: none"> • LR-zoned lots located on corners may be more visible to potential customers than mid-block sites, potentially making them more viable locations for small businesses. • This approach as it could be challenging to administer and is not recommended by DPD.
<p>4. Reduce the size limit for commercial uses in eligible LR zones from 2,500 to 2,000 square feet.</p>	<ul style="list-style-type: none"> • Members of the Seattle Planning Commission report that 30 feet by 60 feet (1,800 square feet) is a common dimension used by local architects to design commercial spaces for small retail businesses. Limiting the size of business establishments in eligible LR zones to 2,000 square feet would meet this standard and provide a small amount of additional space for further design flexibility. • Reducing the size limit for commercial uses to 2,000 square feet would reduce the number of employees and customers a business could host at a given time and potentially help to limit the noise and traffic impacts associated with that business. • If the size limit for commercial uses in eligible LR zones is reduced, the number and range of businesses interested in locating in those areas could also decline.
<p>5. Permit commercial uses only in newly constructed buildings on eligible LR-zoned lots.</p>	<ul style="list-style-type: none"> • Further limiting the locations of commercial uses to newly built ground-floor spaces could help mitigate the noise, odors, and other negative impacts that are generated by some small businesses and challenging to contain in older, retrofitted spaces. • Limiting commercial uses to newly constructed buildings could result in teardowns of older structures that might otherwise be preserved.

<p>6. Clarify that the nightlife disturbance provisions in the Seattle Municipal Code would apply to commercial uses in eligible LR zones.</p>	<ul style="list-style-type: none"> • The nightlife disturbance provisions in the Seattle Municipal Code are intended to apply to amplified noise of a certain level that is audible between 10:00 pm and 7:00 am. There is currently an exception in the Code that was intended to apply to residential uses and could be interpreted to exempt commercial uses in LR zones. Language for a possible clarifying amendment is shown below in <u>underline</u>. <p>25.08.501 Nightlife disturbance.</p> <p>A. It is unlawful for any person in possession of real property, other than residential property, to allow to originate from that property between the hours of ten (10:00) p.m. and seven (7:00) a.m. amplified noise that is plainly audible to a person of normal hearing when measured inside a receiving dwelling unit. <u>The residential property exception shall not apply to any nonresidential use regardless of its location or zoning designation.</u></p> <ul style="list-style-type: none"> • Amending the nightlife disturbance provisions in the Seattle Municipal Code will require the preparation and passage of separate legislation.
<p>7. Restrict outdoor eating areas in eligible LR zones via one or more of the following means:</p> <ol style="list-style-type: none"> a. Prohibit outdoor eating areas from being provided in these areas. b. Require outdoor eating areas to be located at least 50 feet away from single-family-zoned lots. c. Limit outdoor eating areas to sidewalks. 	<ul style="list-style-type: none"> • Placing additional restrictions on outdoor eating areas could help reduce noise impacts on nearby residents. • Limiting opportunities for restaurants to provide outdoor eating areas could ultimately reduce the number of restaurants that locate in eligible LR zones.

<p>8. Further restrict the types of commercial uses that would be permitted in eligible LR zones.</p>	<ul style="list-style-type: none"> • Prohibiting restaurants and other commercial uses that generate noise and odors or nighttime customers could help to reduce potential adverse impacts on nearby residents. • With the exception of retail shops, small commercial uses that operate primarily during daytime hours (offices, business and medical services) generally add limited vitality to the streets where they are located and can be compatible with quieter neighborhood environments.
<p>9. No action; retain existing language in Land Use Code.</p>	<ul style="list-style-type: none"> • Commercial uses would continue to be prohibited in all LR zones except for those with an RC suffix.

PLUS Committee Recommendation:

Issue #2: Extend the maximum length of most temporary use permits to 18 months and convert the issuance of such permits from appealable Type 2 decisions to non-appealable Type 1 decisions.

DPD currently issues two types of temporary use permits: Type 1 non-appealable permits with terms of four weeks or less and Type 2 appealable permits with durations of up to six months. CB 117430 would extend the term of almost all temporary use permits to 18 months and convert the issuance of such permits to Type 1 decisions. The following table provides more detail.

Duration and Review of Temporary Use Permits: Current Practice and CB 117430

<p>Current Practice</p>	
<p><i>Type 1 – Decision by DPD Director, Non-Appealable</i></p> <ul style="list-style-type: none"> • Temporary use permits with a duration of four weeks or less. • Temporary use permits with a duration of up to six months that are issued for the temporary relocation of police and fire stations. 	<p><i>Type 2 – Decision by DPD Director, Appealable to Hearing Examiner</i></p> <ul style="list-style-type: none"> • Temporary use permits with a duration of between four weeks and six months, except for permits issued for the temporary relocation of police and fire stations.
<p>CB 117430</p>	
<p><i>Type 1 – Decision by DPD Director, Non-Appealable</i></p> <ul style="list-style-type: none"> • Temporary use permits with a duration of up to 18 months, except for temporary use permits that are issued for transitional encampments and facilities for light rail transit construction. 	<p><i>Type 2 – Decision by DPD Director, Appealable to Hearing Examiner</i></p> <ul style="list-style-type: none"> • Temporary use permits with a duration of up to six months that are issued for transitional encampments. • Temporary use permits with a duration of up to 18 months that are issued for facilities for light rail transit construction.

The intent of the Executive's proposal is to create opportunities for low-cost business activities, such as retail kiosks, that do not require the construction of permanent structures. CB 117430 supports this goal by 1) creating a more predictable process for the issuance of temporary use permits, 2) reducing the fees associated with temporary use permits, and 3) providing stability to business owners by lengthening the duration of temporary use permits. Since 2004, DPD has issued 36 temporary use permits, only two of which were for private business activities. The remainder were for Sound Transit construction facilities, transitional encampments, and temporary relocations of fire stations.

Type 2 permit applications can take DPD staff a few months to process and are subject to an hourly review charge of \$250. A typical Type 2 permit application can require up to 10 hours of DPD staff time, which equates to a base fee of \$2,500. If DPD issues a Type 2 permit that is subsequently appealed, the permit applicant is charged additional fees that are used to cover DPD's defense of its permit decision. Although none of DPD's Type 2 temporary use permit decisions have been appealed in recent years, such an appeal could take up to six months to resolve.

In contrast, DPD can review and issue a decision on a Type 1 permit in about six to eight weeks. For temporary use permit applications, the fees associated with Type 1 decisions are also generally less than those associated with the Type 2 process. This is because Type 1 permit fees are tied to construction costs, which are typically low for temporary uses. Additionally, Type 1 decisions cannot be appealed. Given the small number of temporary use permits DPD has issued in recent years, converting the issuance of most temporary use permits to Type 1 decisions is expected to have little impact on DPD fee revenues.

Councilmembers should be aware that a temporary use permit can be renewed if DPD determines that the use does not negatively impact neighboring properties. This applies even if the use would not otherwise be permitted in the zoning district where it is located. Thus, extending the term of temporary use permits and applying a Type 1 decision framework would reduce opportunities for public comment on nonconforming uses allowed throughout the City, potentially for extended periods of time.

Options:

1. Consistent with CB 117430, extend the maximum length of most temporary use permits to 18 months and convert the issuance of most temporary use permits to non-appealable Type 1 decisions (see table on p.7).
2. Same as Option 1 but only extend the maximum length of temporary use permits to 12 months.
3. Same as Option 1 but maintain current practice of issuing temporary use permits as Type 2 decisions, except for temporary use permits issued for short-term police and fire station relocations.
4. No action; retain existing language in Land Use Code.

PLUS Committee Recommendation:

Issue #3: Eliminate the existing requirement that a backyard cottage not exceed the height of a principal dwelling unit by more than 15 feet.

In 2009 the Council passed Ordinance 123141, which created opportunities for the construction of backyard cottages in single-family zones across the City. The final version of the legislation included a requirement, added by the Council, that the height of a backyard cottage not exceed the height of the principal house on the same lot by more than 15 feet. The Council added this language to the legislation as a means of addressing concerns about the visual impacts of cottages that might be taller than existing principal houses, particularly when a cottage is located on a sloping rear yard.

By removing the existing requirement that a backyard cottage not exceed the height of a principal dwelling unit by more than 15 feet, the Executive hopes to encourage further construction of backyard cottages across the City. When DPD staff completed their first annual review of backyard cottage permit data in 2011, they found that the scale of completed backyard cottages is generally modest compared to the height and size of the single-family homes that surround them. (Whereas the maximum structure heights for backyard cottages range from 15 to 23 feet, depending on roof type and the width of the lot where the cottage is located, detached homes on single-family-zoned lots may be built to heights of up to 35 feet.) DPD staff also concluded that restricting the height of backyard cottages relative to the height of principal dwelling units creates an additional and generally unnecessary regulatory hurdle. Of the backyard cottage permit applications submitted to date, DPD staff are not aware of any that had to be revised as a result of the relative height restriction. However, if the height restriction is eliminated, it is possible that backyard cottages that exceed the height of their associated principal houses by more than 15 feet could be constructed in the future.

Options:

1. Consistent with CB 117430, eliminate the existing requirement that a backyard cottage not exceed the height of a principal dwelling unit by more than 15 feet.
2. No action; retain existing language in Land Use Code.

PLUS Committee Recommendation:

Issue #4: Allow operators of home-based businesses to list their addresses in advertisements and on business cards.

The Land Use Code currently prohibits owners of home-based businesses from including their address in any advertisements produced for their businesses. Additionally, the address of a home occupation may only be listed on a business card if the card clearly states that customer visits are by appointment only. CB 117430 would remove these specific restrictions on home-based businesses, although a general requirement that customer visits to home occupations be by appointment only would be retained.

The Executive endorses these Code changes as ways to 1) provide operators of home-based businesses with new and reasonable ways to promote their entrepreneurial activities, and 2) assist customers with way-finding as they travel to their appointments at home-based businesses. It is

possible that allowing wider publication of home-based business addresses could result in more customer visits to some locations. Additionally, the general requirement in the Land Use Code that visits to home-based businesses be by appointment only could be difficult to enforce. Potential negative consequences could include noise and traffic impacts and, if significant, would have to be addressed by neighbors via a formal complaint to DPD.

Options:

1. Consistent with CB 117430, allow operators of home-based businesses to list their addresses in advertisements and on business cards.
2. No action; retain existing language in Land Use Code.

PLUS Committee Recommendation:

Next Steps

The PLUS Committee's next opportunity to discuss and possibly vote on CB 117430 will be on May 9. The Committee may also choose to amend or remove specific sections of the bill, or break up CB 117430 into smaller pieces of legislation. Going forward, if you have any questions or concerns about the content of CB 117430, or would like to offer an amendment for the Committee's consideration, please feel free to contact me at any time (684.5382 / sara.belz@seattle.gov).