



**Legislative Department
Seattle City Council
Memorandum**

Date: June 22, 2012

To: Richard Conlin, Chair
Tim Burgess, Vice Chair
Mike O'Brien, Member
Planning Land Use and Sustainability (PLUS) Committee

From: Rebecca Herzfeld and Ketil Freeman, Council Central Staff

Subject: **Council-generated Land Use Procedures Legislation – Council Bill 117456 and Resolution 31375**

Introduction:

On June 13, 2012, the PLUS Committee held a public hearing on Council Bill 117456 and Resolution 31375. This legislation would amend Seattle Municipal Code (SMC) Chapter 23.76, which establishes procedures for administering Seattle's land use decision-making framework, and revise the Council's Rules for Quasi-Judicial Proceedings. The Committee also received a briefing on the legislation at its meeting on May 23, 2012. The goals of the legislation are 1) to improve public notice requirements for land use decisions and 2) to improve code administration by addressing inconsistencies, clerical errors, and inefficiencies.

After the hearing, the Committee requested that staff respond to the concerns that were raised in the public testimony. This memo addresses the following issues:

1. Whether the procedures for shoreline special use permits are being changed to remove the option of appealing the Department of Planning and Development (DPD) decision to the Shorelines Hearings Board.
2. The rationale for the proposal to change the standard for who has standing to appeal the Hearing Examiner's recommendation to the City Council on a Type IV Council land use decision to a more restrictive "participation standing" standard.
3. Whether the use of the Daily Journal of Commerce (DJC) for legal notices makes it difficult for the general public to access the information, because the DJC requires a paid subscription for both the paper and web editions of the paper.

Responses to issues raised at the public hearing

1. Shoreline special uses

Section 4 of Council Bill 117456 would amend Table A for Section 23.67.004, which describes the five categories of land use decisions established by the Land Use Code. Table A is intended to provide an easy reference for the types of decisions that fit into each category. However, Sections 23.76.006 (for Master Use Permits) and 23.76.036 (for Council land use actions) officially establish each decision type.

In drafting the proposed legislation, City staff found several instances in which Table A did not match the controlling language in 23.76.006 and 23.76.036. The proposed amendments address these inconsistencies by correcting the table, and would also add a clarifying footnote to Table A that states:

(1) Sections 23.76.006 and 23.76.036 establish the types of land use decisions in each category. This table is intended to provide only a general description of land use decision types.

A question was raised at the public hearing about the proposed correction of one of these inconsistencies between the table and the text, which addresses shoreline special use decisions. Shoreline special uses are a type of decision created by the City when the first Shoreline Master Program was adopted in the 1970s. Shoreline special use review provides extra consideration of certain actions. Each Shoreline Environment established by the Code lists the types of activities that may be permitted through the shoreline special use process. Examples of special uses include natural beach protection, bulkheads to support a water-dependent or water-related use, and dry boat storage. In every case, the activity may cost no more than \$5,000, which is the trigger for requiring a shoreline substantial development permit.

Table A currently states that “Shoreline decisions appealable to Shorelines Hearings Board along with all related environmental appeals” are Type II Master Use Permit (MUP) decisions. “Shoreline decisions” was intended to apply only to shoreline substantial development permits, shoreline variances, and shoreline conditional uses, which are the shoreline decisions listed in subsection 23.76.006.C.2.g. These three permits are the *only* decision types that the Shoreline Management Act gives the State Shoreline Hearings Board (SHB) jurisdiction to review on appeal; the SHB has no authority to review other types of decisions.

Since it is unique to Seattle, the State Shoreline Management Act does not give the SHB authority to hear an appeal of a shoreline special use, unless it is also part of a shoreline substantial development permit. The proposed amendment clarifies that a shoreline special use permit that is not also a shoreline substantial development permit is a Type I decision and not appealable to the SHB, which is consistent with state law. Because shoreline special uses have been Type 1, non-appealable decisions for over 35 years, the proposed amendment does not remove an existing opportunity to appeal.

2. Standing to appeal the Hearing Examiner’s recommendation to the Council

At the hearing on June 13th, the PLUS committee heard comment questioning the proposed amendment to the standing provisions for appeals to the Council of the Hearing Examiner’s recommendation for quasi-judicial land use decisions.

“Standing” describes a person’s right to seek redress through some tribunal, like the Hearing Examiner or, in the case of quasi-judicial decisions, the Council. The Land Use Code currently establishes the following for standing to appeal a Hearing Examiner’s recommendation on a quasi-judicial matter to Council:

Any person substantially affected by or interested in the Hearing Examiner’s recommendation regarding a Type IV land use decision may submit in writing an appeal of the recommendation to the Council...¹

This permissive standing provision allows any person or entity to appeal a Hearing Examiner’s recommendation on a quasi-judicial decision. Persons have standing: 1) regardless of whether they participated in the process or asserted an interest by either testifying before the Hearing Examiner or submitting written comments to the Department of Planning and Development or the Hearing Examiner; and 2) regardless of whether they would be adversely affected by a decision.

Council consideration of quasi-judicial decisions is restricted to an evidentiary record compiled by the Hearing Examiner.² The Hearing Examiner holds a public hearing as part of her review.³ Oral and written testimony provided to the Hearing Examiner becomes part of the record. Permissive standing provisions provide an opportunity for appellants to avoid the Hearing Examiner’s process entirely and submit a written appeal to the Council that assert issues that may not be informed by the record at all and that other parties did not have the opportunity to address while the record was being established.

Staff proposes that the Council adopt a “participation standing” standard. This is similar to the standard established in the Growth Management Act for quasi-judicial Growth Management Hearings Boards.⁴ The proposed amendment would provide the following for standing to appeal a Hearing Examiner’s recommendation on a quasi-judicial matter to Council:

Any person (~~(substantially affected by or interested in the)~~) who submitted a written comment to the Director, or who provided a written or oral comment to the Hearing Examiner, may submit in writing an appeal of the Hearing Examiner’s recommendation regarding a Type IV land use decision may submit in writing an appeal of the recommendation to the Council...

¹ Seattle Municipal Code (SMC) 23.76.054.A.

² SMC 23.76.054.E.

³ SMC 23.76.052.A.

⁴ RCW 36.70A.280.

As a practical matter, since 2007 all appellants of quasi-judicial decisions have been participants in the process and would have had standing to appeal under participation standing. During its review of the Children’s Hospital Major Institution Master Plan, the Council did receive two appeals from persons that would not have had participation standing. However, both appeals were filed after the appeal deadline had expired and were rejected as untimely. Neither of the appeals raised issues that were different from those raised by the nine other timely appellants.

Persons who do not have standing may file a motion to intervene. The Council may grant intervenor status if a person can demonstrate that: 1) they have an interest that is not otherwise represented by a party; 2) the intervention would not cause undue delay or prejudice the right of current parties; and 3) they could not have participated in the Hearing Examiner or DPD proceedings.⁵

3. Use of the Daily Journal of Commerce for legal notices

At the hearing on June 13th, a commenter noted that it is difficult for the general public to access legal notices in the online version of the Daily Journal of Commerce (DJC) because it is a paid subscription site. Contracting requirements in the City Charter state that the City shall designate a “City Official Newspaper” to publish all official proceedings required by law to be published.⁶ Certain Land Use procedures also require notices to be published in the City’s official newspaper. Through a bidding process, the City has designated the DJC as its official newspaper. The DJC provides the lowest cost alternative for publishing notices compared to other local newspaper sources. Like other local newspapers of general circulation, such as the Seattle Times, print editions of the DJC must be purchased. However, unlike some other local newspapers and media outlets, access to the DJC online requires a paid subscription.

To address this concern, and to make notices of land use applications, decisions, and appeals more readily available to the general public, the City also provides notice through a variety of means that are free. They are:

The Land Use Information Bulletin (LUIB) - The LUIB, which provides the same notice of land use applications, decisions, and appeals as the DJC, is available through DPD’s webpage.⁷ DPD’s webpage offers an email subscription service that sends a link to the latest LUIB when it is published.

Online Council Agenda Subscription Service - The City Council’s website offers an email subscription service. Members of the public are able to subscribe to any or all special or regular committee meeting agenda notices they would like to receive via e-mail by completing a brief agenda request form. The agendas list public hearings and provide links to further information.

⁵ Council Quasi-judicial Rules Section V.D.

⁶ [City Charter Article VII Section 3.](#)

⁷ <http://www.seattle.gov/dpd/Notices/Overview/default.asp>.

Legislative Department Legal Notices and Public Hearings Web Page - The City Clerk and City Council's home pages are currently being updated to provide a link for accessing Legislative Department legal and public hearing notices. These notices will also provide a link to the LUIB.