



Snohomish County Council

Committee: Planning & Community Development **Analyst:** Ryan Countryman

ECAF: 2022-0646

Proposal: Proposed Ordinance 22-027

Date: June 21, 2022

Consideration

Ordinance 22-027 would adopt new State Environmental Policy Act (SEPA) exemptions for infill development in Urban Growth Areas (UGAs). This ordinance would implement changes authorized by the Washington State Legislature in 2021 with enactment of Substitute House Bill 2673 (SHB 2673). It would also increase exemption thresholds for minor new construction as allowed in Washington Administrative Code (WAC) 197-11-800.

Background

SEPA requires that impacts of new development have appropriate mitigation. It allows for reliance on existing plans and regulations to provide adequate mitigation for many types of projects instead of requiring additional analysis and review. For example, the administrative rules adopted by the Washington State Department of Commerce allow local jurisdictions to consider single-family development with up to 30 units in UGAs to be “minor new construction” that are exempt from additional review. This requires that the jurisdiction already have regulations addressing common potential impacts such as to wetlands and traffic in place. Snohomish County has the required regulations. The County has also adopted thresholds for minor new construction in the categories allowed, although some thresholds are lower than the maximum. This includes the threshold that would apply to urban single-family development which is currently set at 20 dwelling units.

SHB 2673 amended SEPA to promote infill development in UGAs. SHB 2673 made specific amendments to RCW 43.21C.229 that increased the potential categorical exemptions from SEPA. Now actions where the “density and intensity of use is roughly equal to or lower than called for in the goals and policies of the applicable comprehensive plan” may be exempt with certain exceptions. Categorical exemptions are different from exemptions for minor new construction discussed above. Some projects may be exempt both as minor new construction and under the new categorical exemptions. Use of categorical exemptions requires completion an Environmental Impact Statement (EIS) for the comprehensive plan.

Snohomish County completed a programmatic EIS for the 2015 Update to the comprehensive plan and is thus eligible to make use of the categorical exemptions.

Ordinance 22-027 originates in County Council Motion 21-334. Councilmember Nehring sponsored that motion which the County Council passed on September 29, 2021. The motion referred similar code revisions as are now in Ordinance 22-027 to Planning and Development Services (PDS) and other departments for review and input. Ordinance 22-027 is the result of the review and input process.

Analysis

Ordinance 22-027 would increase certain thresholds for minor new construction to match existing upper limits in WAC 197-11-800. It would also adopt new categorical exemptions as authorized by the State Legislature in 2021. Use of categorical exemptions would be a significant change to the permitting process for many types of permits in UGAs.

Using categorical exemptions in the permitting process would reduce submittal requirements for applicants and may help reduce review timeframes overall. SEPA-related procedural steps for permitted uses such as townhomes in residential zones and warehouses in industrial zones would no longer be necessary. The programmatic EIS for the comprehensive plan already studied the overall impact for these uses. Site-specific mitigation would come from existing regulations such as protections for critical areas and drainage. In many ways the current SEPA requirements are redundant, hence the action by the State Legislature to allow most development in UGAs to be exempt. However, related to review timeframes, adoption of Ordinance 22-027 would require changes in how PDS processes permit applications. These changes may take time to successfully implement. At least initially, changes related to permit intake and screen for complete submittals may take longer while PDS adjusts and fine-tunes its procedures.

Ordinance 22-027 would make changes related to public involvement in two ways. First, it makes changes to notice of application requirements to maintain the current levels of notice provided to the public. The September 12, 2021 staff report and Motion 21-334 identified this as a potential issue, but no code provisions had been proposed at that time. This secondary effect of making more projects categorically exempt from SEPA on noticing has now been adequately address by new proposed in changes to SCC 30.070.050 included in Ordinance 22-027.

A second and perhaps more important effect of Ordinance 22-027 on public involvement relates to appeals. If a project is categorically exempt, there is no SEPA threshold determination to make. The importance of this change is arguably an issue of perception. Functionally, by making a project categorically exempt, the lack of a threshold determination (and notice thereof) means that the public cannot appeal a project under SEPA. If categorical exemptions are applied correctly, then there would be little to no merit in a SEPA-based appeal. Appeal rights per RCW 36.70C, the Land Use Petition Act (LUPA), would be unaffected. A non-trivial share of appeals nominally based on SEPA

and received by the Snohomish County Hearing Examiner have been dismissed whole or in part because the arguments were insufficiently based on SEPA concerns. Use of categorical exemptions would thus take away a theoretical opportunity for the public to file SEPA appeals on those projects. However, the opportunity to successfully appeal on such grounds is often illusory. Use of categorical exemptions may therefore appear to reduce the public's opportunity to appeal a project, but it would also mean that appeals could be more often LUPA-based, which may be a more appropriate mechanism.

Ordinance 22-027 also makes changes to maintain current practice related to interlocal agreements (ILAs) for reciprocal traffic mitigation with other agencies. Most ILAs current in effect use SEPA eligibility as a trigger for whether the ILA is applicable to the project. The proposed new subsection SCC 30.61.035(3) would applicability of such ILAs by making categorical exemption subject to an applicant's voluntary agreement to be subject to all reciprocal mitigation imposed under applicable ILAs. Absent such a provision, the adoption of categorical exemptions could have unintended adverse impacts on city and state roads. Ordinance 22-027 avoids potential scenario.

Timing Considerations

DPW and PDS were both closely involved in reviewing and providing input on changes to the original proposal in Motion 21-334 which led to Ordinance 22-027. However, these departments have not had much time to consider the final approved-as-to-form (AATF) language of the ordinance, which included some minor changes for technical reasons. As a result, the recommendation from the Executive Branch is still to be determined.

The Planning & Community Development Committee will receive a briefing on Ordinance 22-027 on June 21, 2022, in part because that meeting has time available on its agenda to allow for discussion. The agenda for the next committee meeting on July 5 is likely to be comparatively full of new items. However, July 5 could include time for a continued briefing on Ordinance 22-027 by which time an Executive recommendation would probably be available and amendments prepared for further discussion if necessary.

Continued briefing or not, the combination of notice requirements for a hearing and availability on possible hearing dates suggests that August 17, 2022 is likely the soonest potential date for a hearing on Ordinance 22-027. Therefore, a decision to move Ordinance 22-027 out of committee or to continue the briefing to July 5 would have little to no impact the timing of a hearing on the ordinance.

Current Proposal

Summary: Ordinance 22-027 would increase exemption thresholds for minor new construction and adopt new categorical exemptions under SEPA by amending existing sections in Chapters 30.61 and 30.70 SCC.

Fiscal Implications: None

Handling: NORMAL

Approved-as-to-form: YES

Executive Recommendation: TBD

Request:

Provide direction on whether to move Ordinance 22-027 to General Legislative Session on June 29 to set time and date for a hearing, or to continue the briefing to July 5.