

# Seattle Permits

— part of a multi-departmental City of Seattle series on getting a permit

## How to Legalize a Use Not Established by Permit

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Seattle's Land Use Code specifies the type of development or "use" allowed on property in different zones in the City. Examples of different types of uses are single-family homes, multifamily residences, office buildings, and warehouses. The Land Use Code requires that all uses of land be established by permit.

This Tip explains how to legalize a use not previously established by a permit issued by the Seattle Department of Construction and Inspections (SDCI). In many cases, a use not previously established by permit will be considered a "nonconforming" use. This Tip further explains what a nonconforming use is, and when a nonconforming use can become recognized as legal through the SDCI permit process.

### Why Apply for a Permit to Establish a Use?

There are several situations in which you might wish to demonstrate that a use of a property not established by permit is a legal land use:

- You may have applied for a permit to change or expand the use, and a routine check of SDCI records shows that the current use claimed for the structure does not have a permit.
- You may wish to sell a building as a duplex or triplex (or other nonconforming use), but the most recent permit shows only a single-family residence is permitted.
- You may find that the use is permitted under present zoning, but it is advantageous to show that it commenced prior to the beginning of modern Seattle Building Code (SBC) requirements on Jan. 1, 1976, or prior to the effective date of other codes affecting land use, such as the Shoreline Master Program enacted in 1972, or the State Environmental Policy Act (SEPA) enacted in 1971.

- You may have discovered that there are no City records for the triplex (or other nonconforming use) you always thought you had, and you want to clear up any title, tax assessment, or other problems that may result from not having a permit.

### Establishing Conforming Uses

A use is conforming if it is allowed under current zoning and meets all current Seattle Municipal Code standards. If it has been ongoing for many years, but has never been legally established by permit, the owner may apply for and obtain a use permit by the same procedures that apply to new uses.

### Establishing Nonconforming Uses

An existing use is a "nonconforming use" if it would not be permitted in its location by current land use codes. If it was built at a time when it was permitted by applicable codes and has been in continuous operation since then it may be established as "legally nonconforming."

To "establish" or obtain a permit for a nonconforming use you are "establishing a use for the record." A typical example of the need to establish a use for the record is where a property is zoned for single-family residences only, but a triplex structure is located on the property. The triplex is nonconforming because the present zoning is limited to single-family residences. By "establishing use for the record" you would be able to obtain a permit to maintain the triplex. Otherwise, complaints regarding this nonconforming use could result in fines or requirements that you convert it to single-family use only.

There are a couple ways to establish the use:

1. If the triplex was originally permitted, and the use has not been discontinued for more than 1 year, then it is a legally established nonconforming use.
2. If the triplex was not originally permitted, or the available permits describe the structure as a single-family residence, then SDCI cannot recognize the triplex as a legal use. The property owner must then demonstrate that the triplex was put on the lot when zoning and other regulations would have allowed it, and that



the structure has been used continuously as a triplex since that time.

If the property owner can successfully demonstrate either of these circumstances SDCI will issue a permit recognizing the triplex as an established use.

**Note:** If you are seeking a permit for a conforming or nonconforming use, your project may need to meet the current Seattle Building Code (SBC). This could require the installation of a sprinkler system, one-hour fire wall, etc., before we can issue a permit.

## Demonstrating Use for the Record

SDCI can only issue a permit to establish a use from a certain date in the past if your property meets the criteria and documentation below. You must provide evidence:

- That the use commenced at or prior to a time when it could have been lawfully established either under the zoning code in effect at the time, or
- That the residential use commenced prior to 1957 or if a nonresidential use, prior to 1923.
- That the use has been in existence continuously, with no interruption greater than 12 months that would constitute abandonment or discontinuance of a nonconforming use.

Modern residential zoning standards went into effect on July 24, 1957, specifying the uses allowed in each zone, which previously had been unregulated.

Nonresidential uses, however, such as a commercial office in a neighborhood residential zone, must meet the requirements of the 1923 code or have been constructed prior to 1923.

An alternative to establishing a residential use not established by permit may be to apply for an attached or detached accessory dwelling unit (AADU or DADU) permit instead if you wish to legalize one additional dwelling unit. More information on this is available in Tip 116A, *Establishing an Attached Accessory Dwelling Unit (AADU) in Residential Zones*, or Tip 116B, *Establishing a Detached Accessory Dwelling Unit (DADU)*.

## Documenting Existence of a Use

To prove that your use was established at a time when it would have been legal, you must submit 2 (two) pieces of documentation that show it is more probably than not that the use existed prior to the property's critical date.

Examples of records that SDCI will accept as documentation of the existence of a use are:

- **Occupancy listings** from the Polk Directory or Reverse Telephone Directories. The Seattle City Clerk's Office at 600 4th Ave and the Seattle Public Library, Central Branch, at 1000 4th Ave have copies of the Polk reverse directories dating from 1939. To submit reverse directory information as proof of use, make copies of the pages showing the occupants of your property at several year intervals beginning at the time you wish to establish the occupancy.
- **Business and/or licensing records** from the Washington State Department of Licensing and Consumer Affairs, (206) 684-8484. These records can document a business use.
- **County records** showing the previous permitted use if the property was formerly not part of the City of Seattle. Contact the information number for King County zoning is (206) 296-6655. Be aware that very few of these records are available.
- **Tax assessment records** for the property. You can obtain records from 1972 to the present from the King County Assessor (<https://kingcounty.gov/depts/assessor.aspx>). Tax records prior to 1972 must be obtained from the Washington State Archives Puget Sound Branch, located in Bellevue, (425) 564-3940. To obtain tax records, you will need the tax account number and the legal description of the property.
- **Sewer hookup records** from the Seattle Department of Transportation's Street Use Section, (206) 684-5253.
- **Electric or gas meter connections.** Available from Seattle City Light or Puget Sound Energy.
- **Signed written statements** from people having no financial interest in the property and who are not relatives of the applicant or property owner but have knowledge about the historical the use of the property. These may be current or previous residents, neighbors, or other people in the area. Notarization is not required.
- Other evidence that SDCI's Director deems useful and reliable, based on the circumstances of the individual case. Examples include, but are not limited to:
  - **Photographs**
  - **U.S. Census reports**

- **Other signed written statements** of experts such as engineers, architects, or building professionals, testifying to the age of a structure or its fixtures, such as kitchen equipment.

SDCI may require further documentation if the information you submit does not demonstrate the existence of the use from a time when it was permitted outright, or if it fails to show continuous, uninterrupted maintenance of the use. SDCI may, in some cases, accept only one type of documentation from the sources listed above if that documentation is particularly persuasive. Any number of signed written statements, however, are not sufficient by themselves to document the existence of a use.

Please also note that if you or a prior owner have ever applied for and been granted permits for work inconsistent with the use you are now seeking to establish, SDCI may deny your application. For example, if you have applied to establish a legally nonconforming duplex for the record in a neighborhood residential zone, we will deny the application if prior permits which identified the building as a single-family residence have been issued for additions to the structure in question.

## Housing Building Maintenance Code Inspection

If establishing a residential use prior to July 24, 1957, the SDCI inspection process must verify that the building meets applicable standards of the Housing and Building Maintenance Code (HBMC), while Seattle Building Code (SBC) standards must be met if the use commenced after Jan 1, 1976. More information can be found in Director's Rule 9-2022.

An applicant must demonstrate the following before SDCI can issue a permit:

### Residential Structures

For establishing dwelling units, the minimum standards for habitable dwellings in the Seattle Housing and Building Maintenance Code (HBMC) in effect at the time of application must be met if the dwelling unit was created prior to January 1, 1976. If the dwelling unit was created after January 1, 1976, and a zoning Notice of Violation (NOV) has been issued regarding it, then site inspection is required by Housing and Zoning Division to determine if minimum HBMC standards are met.

If the inspection shows that the minimum standards are not met, then you must make repairs before SDCI will issue a permit establishing the use. If you need electrical work to satisfy the HBMC standards, SDCI can issue an electrical permit before issuing the use permit if you have been granted zoning approval from SDCI.

### All Structures

- For all structures, you must demonstrate that they meet minimum applicable SBC standards for fire and life safety as described in Section 104.
- For uses that began after 1976: the structure must meet all SBC standards for the year in which the use first legally commenced. SDCI requires building plans review and a building inspection.

The building inspector will contact you to schedule an inspection.

### Applying for a Permit

You can apply for a permit online through the Seattle Services Portal at <https://cosaccella.seattle.gov/Portal/welcome.aspx>.

You will also need to:

1. Submit a plan set, clearly identifying the structure you are establishing;
2. Submit the supporting documentation you have gathered to prove the existence of the use at a time when it was legal;
3. Complete our Statement of Financial Responsibility/ Agent Authorization form ([www.seattle.gov/sdci/permits/forms](http://www.seattle.gov/sdci/permits/forms));
4. Pay the initial fee when you submit your request;
5. Schedule an intake appointment

### Fees

- The permit fee to establish use for the record is 1.5 times the SDCI Base Fee. If construction is included, the fee will include both a permit fee and a plan review fee based on the cost of the construction. See the SDCI Fees page for current fees: [www.seattle.gov/sdci/codes/codes-we-enforce-\(a-z\)/fees](http://www.seattle.gov/sdci/codes/codes-we-enforce-(a-z)/fees).
- SDCI will charge for a minimum of two hours (at the land use hourly rate). We will charge additional land use hours on an hourly basis. This fee may change every January when a new Fee Ordinance is adopted by City Council. SDCI may also charge fees for additional research, plan checking, or other services as described in the Fee Ordinance.
- The HBMC inspection is incorporated into the standard fee, but SDCI will charge additional fees SBC review and any building permit that needs to be issued to bring a structure into compliance with the SBC.

For an up-to-date fee listing, visit SDCI's website at [www.seattle.gov/sdci/codes/codes-we-enforce-\(a-z\)/fees](http://www.seattle.gov/sdci/codes/codes-we-enforce-(a-z)/fees) or contact the Public Resource Center at (206) 684-8467.

If you have questions about establishing use for the record, please submit them at [https://sdci.zendesk.com/hc/en-us/requests/new?ticket\\_form\\_id=1500003356822](https://sdci.zendesk.com/hc/en-us/requests/new?ticket_form_id=1500003356822).

## Access to Information

Links to electronic versions of SDCI Tips, Director's Rules, and the Seattle Municipal Code are available on our website at [www.seattle.gov/sdci](http://www.seattle.gov/sdci).