

**Interpretation of the Director  
Under Seattle Municipal Code Title 23**

**Regarding the Use of the**

**Property at**

**2410 East Cherry Street**

**(Horace Mann Public School)**

**DPD Interpretation No. 09-003-D**

**(Project No. 3010278)**

**Background**

This interpretation was requested on behalf of the Seattle Public Schools, to clarify procedural requirements for occupying a former school in a residential zone with other uses. Similar interpretations have been concurrently requested with respect to seven other school sites in single family and multifamily zones. In particular, the question raised is whether the School Use Advisory Committee (“SUAC”) process, described in Chapter 23.78 of the Seattle Land Use Code, is required in order to occupy the building with another use listed as permitted outright in the zone, or specifically listed as a use permitted in a former school.

**Findings of Fact**

1. The Horace Mann Public School building is on a site in the Central District bounded by East Cherry and Columbia Streets and 24<sup>th</sup> and 25<sup>th</sup> Avenues. It was built in approximately 1910. At one time it was used as an elementary school, and it later housed an alternative high school (the Nova Project). The north portion of the property is in an L1 (Lowrise-1 Multifamily residential) zone, and the south 100 feet, along East Cherry Street, is in an L2/RC zone (Lowrise-2 subject to a Residential-Commercial overlay.)
2. The property to the east, immediately across 25<sup>th</sup> Avenue, also in an L1 and L2/RC zone, is in use as a private school, the Islamic School of Seattle. The property immediately across East Columbia Street to the north, in an SF 5000 (Single Family residential) zone, is in use as a church. Across East Cherry Street, to the south, is Parks Department property improved with the Garfield Community Center and the Medgar Evars swimming pool. This property is largely in an SF 5000 zone, with the exception of a 100-foot-wide strip along East Cherry that is in an NC1-30 zone, and a strip along 23<sup>rd</sup> Avenue that is in an L1 zone.

3. Principal uses permitted outright in multifamily zones are listed at Section 23.45.004:

A. The following principal uses are permitted outright in all multifamily zones:

1. Single-family dwelling units;
2. Multifamily structures;
3. Congregate residences;
4. Adult family homes;
5. Nursing homes;
6. Assisted living facilities;
7. Institutions meeting all development standards;
8. Major Institution and Major Institution uses within Major Institution Overlay Districts subject to Chapter 23.69;
9. Public facilities meeting all development standards; and
10. Parks and open space including customary buildings and activities.

B. In Midrise and Highrise zones certain ground-floor business and commercial uses are permitted outright according to the provisions of Section 23.45.110.

C. Uses in existing or former public schools:

1. Child care centers, public or private schools, educational and vocational training for the disabled, adult evening education classes, nonprofit libraries, community centers, community programs for the elderly and similar uses are permitted in existing or former public schools.
2. Other non-school uses may be permitted in existing or former public schools pursuant to procedures established in Chapter 23.78, Establishment of Criteria for Joint Use or Reuse of Schools.

D. Medical service use, meeting the development standards for institutions, are permitted outright on property conveyed by a deed from the City that, at the time of conveyance, restricted the property's use to a health care or health-related facility.

4. The uses listed in Section 23.45.004 C 1, above, are all regulated as institutional uses under the Land Use Code. These uses are defined at Section 23.84A.018. Those definitions are incorporated by reference as findings of fact.

5. General provisions relating to institutions in Multifamily zones are found at SMC Section 23.45.090. Dispersion standards for institutional uses in Multifamily zones are provided at Section 23.45.102. Administrative conditional use criteria for institutions not meeting development standards are found at Section 23.45.122. Code provisions regulating the School Use Advisory Committee process are found in Chapter 23.78. These sections are incorporated by reference as findings of fact.

6. In addition to the uses permitted under the applicable Lowrise Multifamily zoning, other uses are permitted, either outright or as a conditional use, on property that is in a Residential Commercial overlay zone, such as the portion of the Horace Mann Public School site adjacent to East Cherry Street. In the RC overlay zone, live-work units are permitted outright, and certain commercial uses, as listed in SMC Section 23.46.004 are permitted outright at or below the ground floor of buildings that also contain at least one residential unit. (See SMC Chapter 23.46.)
7. Two adopted Comprehensive Plan policies relate to re-use of public school properties:
  - LU23** In order to encourage future school use of public school buildings that are no longer used as schools allow non-residential uses not otherwise permitted in the area to locate in school buildings as long as specific criteria for each such re-use are met.
  - LU24** Determine criteria for judging the acceptability of proposed uses of school buildings for each school, which may differ from school to school. Address through the criteria the effects of the uses on students, teachers and residents of the surrounding area, and traffic, parking and other land use impacts. Determine the specific criteria for each school through a process that ensures the participation of the Seattle School District, the City, and the neighborhood involved.
8. Chapter 23.78, including provisions for the SUAC process, was a part of the original installment of Title 23, adopted in 1982 by Ordinance No. 110381.
9. In 1985, an application (Project No. 8500790/Permit No. 622924) was submitted to convert the former Queen Ann High School at 201 Galer Street to residential units. Most of the site is in an L2 (Lowrise-2) multifamily residential zone, with one corner of the property in an SF 5000 (Single Family 5000) zone. No SUAC was convened. The development was permitted through an administrative conditional use, pursuant to a provision allowing uses not otherwise permitted in the zone in landmark structures.

### Conclusions

1. SMC Section 23.45.004 C1 lists a number of institutional uses as permitted in existing or former public schools. Paragraph C2 states that *other* non-school uses may be permitted in existing or former public schools pursuant to the procedures in Chapter 23.78, i.e. the SUAC process. Reading these two paragraphs together, it is logical to conclude that the SUAC process is not required in order to establish one of the institutional uses listed in Paragraph C1 in an existing or former public school. If the intent had been to require the SUAC process in order to establish any of the institutional uses listed in Paragraph C1, those uses would be regulated no differently than the uses listed in Paragraph C2, and there would have been no reason to list them separately.
2. A separate question is whether the SUAC process is required in order to devote a former school to one of the uses listed as permitted outright in Section 23.45.004 A. For example, multifamily structures are permitted outright in L3 zones. Would it be necessary to convene a SUAC in order to authorize conversion of a former school to a multifamily structure? We conclude that the language of Section 23.45.004 C2 does not override Section 23.45.004 A: If a use is permitted outright in a zone, without discretionary review or public processes, then that use is permitted

on the same basis in an existing or former public school building in that zone. The language of Section 23.45.004 C2 is permissive rather than mandatory: It says that other non-school uses **may be permitted** through the SUAC process, and not that that is the exclusive process for permitting non-school uses in existing or former public schools. Likewise, the chapter describing the SUAC process, SMC Chapter 23.78, does not say that it is the sole process for establishing non-school use in an existing or former public school structure. Instead, it is written permissively: “The Seattle School District or other owner of a public school structure **may** apply for the establishment of criteria for non-school use....”

3. By the same reasoning, the SUAC process is not required in order to convert a portion of the structure that is located within the Residential-Commercial overlay zone to live-work units or commercial uses allowed in that overlay zone, in a manner consistent with the requirements for the zone.
4. As reflected in Comprehensive Plan Policy LU23, the purpose of the SUAC process is to encourage future school use of public school buildings, which would start with preserving the buildings. The process would provide flexibility by “allow[ing] non-residential uses *not otherwise permitted*” subject to specific criteria. This also reflects an intent that the purpose of the process is to provide a means for allowing uses not otherwise permitted, and that the process is not necessary or intended for authorizing uses that *are* otherwise permitted. . It is logical, therefore, to read the applicable Land Use Code regulations to comport with this intent.
5. The reading that the SUAC process is not the exclusive process for establishing non-school uses in former schools is consistent with past practices with respect to similar provisions in the Single Family chapter: In 1985, the former Queen Anne High School building, partially in a Single Family zone was converted to multifamily residential use. Although the SUAC process had been established at that time, it was not deemed necessary to apply that process in order to allow the conversion. Instead, pursuant to another code provision, an administrative conditional use approval was obtained allowing the use not otherwise permitted in the zone on the basis of the landmark status of the structure.
6. Having concluded that the listing of permitted in existing or former public schools, under Subsection C, does not override or limit the operation of Subsection A, we note that “institutions meeting all development standards” are permitted outright under Section 23.45.004 A7, yet most of the institutional uses regulated under the code are also listed as permitted in existing or former public schools, under Section 23.45.004 C1. Paragraph C1 is presumed to have some effect, and not to be merely a redundant listing of use categories already covered under the earlier provision. We conclude that Paragraph C1 must be read as permitting the listed institutional uses outright in an existing or former public school building, even if they would not meet all institutional development standards. Institutions not meeting development standards, such as dispersion requirements, would otherwise require administrative conditional use approval. (See Sections 23.45.090 and 23.45.122.)
7. In the case of the Horace Mann school site, for example, a new institutional use would normally require a conditional use, as there are other institutional uses – a private school, a church and a community center – all within 600 feet, in residential zones. However, based on the language of Section 23.45.004 C1, the listed institutional uses could occupy the school structure without conditional use approval, even though certain development standards that would normally apply to them are not met.

**Decision**

The Horace Mann Public School building at 2410 East Cherry Street may be converted to any of the following institutional uses, regardless of conformity with institutional development standards, without going through the SUAC process: Child care centers, public or private schools, educational and vocational training for the disabled, adult evening education classes, nonprofit libraries, community centers, community programs for the elderly or similar uses. The building also may be converted to any other use permitted outright under the applicable zoning, as listed at Seattle Municipal Code Section 23.45.004 A, without going through the SUAC process. Portions of the structure located within the portion of the site that is in the Residential-Commercial overlay zone may also be converted to certain commercial uses, subject to the standards of SMC Chapter 23.46, without going through the SUAC process.

Entered this 25 day of June, 2009.

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(signature on file)

Andrew S. McKim  
Land Use Planner – Supervisor