

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

**Regarding the Use of the**

**Property at**

**305 Harrison Street**

**DPD Interpretation No. 10-006**

**(Project No. 3011935)**

**Background**

This interpretation was requested by John Cooke of Perkins Coie on behalf of Great City Attractions Site Development Ltd, a company that proposes to locate and operate a 197-foot observation wheel on the grounds of Seattle Center for an 18-month period. The question raised is what use permits, if any, this would require under the Land Use Code. (The letter requesting the interpretation also asks whether a building permit is required. This question is beyond the scope of what may be addressed in a Land Use Code interpretation, but the Department has separately determined that the observation wheel, as it has been described to us, does not require a construction permit.)

**Findings of Fact**

1. The Seattle Center property is in an NC3-85 zone: Neighborhood-Commercial-3, subject to an 85-foot structure height limit. The uses on the Seattle Center grounds may be generally characterized as parks and open space, retail uses, and entertainment uses including theaters, meeting halls and outdoor sports and recreation.
2. The proposed observation wheel would be located on the Seattle Center grounds, in the vicinity of the Fun Forest, between the Center House and the Experience Music Project, for 18 months, starting in April of 2011. A number of historic permits characterized the use of that area as “amusement park.” (Examples include Permit No. 602438, for additions to a concessions building in 1983, and No. 571865, issued in 1977 for construction of a new structure for bumper car rides.)
3. “Amusement park” is not a use category defined or specifically regulated under the current Land Use Code. When a use predates the current code, and has been characterized on earlier permits with a use category that does not exist under the current code, it has been the practice of the Department to recognize the ongoing use, and regulate it according to the standards for the most similar use category under the current code. (Thus, for example, a business that was called a saloon under an early permit, and a tavern under later permits, would now be regulated as a “drinking establishment,” but would not require a new use permit in order to establish the use.)

4. The observation wheel is approximately 197 feet in height. It would be similar in nature to a Ferris wheel, but with enclosed gondolas that would each hold six to eight people. Specific details for the proposed installation at Seattle Center have not been provided, but a similar installation by the company in Dublin had 42 cars.
  5. The wheel would not be affixed to the ground or any permanent foundation. Rather, it would be stabilized by six water-filled ballast tanks on either side of the wheel. The process of installation, which would require a crane, would take approximately ten days, and removal would take up to a week.
  6. "Outdoor participant sports and recreation" is defined at Seattle Municipal Code Section 23.84A.010, under "Entertainment use" as "an entertainment use in which facilities for engaging in sports and recreation are provide outside of an enclosed structure, and in which any spectators are incidental and are not charged admission. Examples include tennis courts, water slides and driving ranges." "Entertainment use" is defined, generally, as "a commercial use in which recreational, entertainment, athletic and/or cultural opportunities are provided for the general public, either as participants or spectators. Uses accessory to institutions or to public parks or playgrounds shall not be considered entertainment uses."
  7. According to SMC Section 23.47A.004 Table A and footnote 2 to that table, outdoor participant sports and recreation is a prohibited use in NC3 zones, except at Seattle Center, where the use is specifically permitted.
  8. SMC Section 23.40.002 provides in part:
    - A. The establishment or change of use of any structures, buildings or premises, or any part thereof, requires approval according to the procedures set for the in Chapter 23,76, Procedures for Master Use Permits and Council Land Use Decisions, except:
      1. establishment of an urban farm, or community garden, that is permitted outright under the provisions of this title 23 applicable to the lot;
      2. as permitted in subsections 23.47A.004.E and 23.47A.004.F;
      3. keeping of animals as permitted under Section 23.42.052; and
      4. reinstatement of a use interrupted by a temporary use authorized pursuant to Section 23.42.040.
    - B. No use of any structure or premises shall hereafter be commenced, and no structure or part of a structure shall be erected, moved, reconstructed, extended, enlarged or altered, except in conformity with the regulations specified in this title for the zone and overlay district, if any, in which it is or will be located.
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9. Director's Rule 51-88, appended and incorporated into this interpretation, elaborates on the circumstances under which a use permit is required. DR 51-88 reflects the general principle that a use permit is required when a new structure is built, or when an existing structure or premises is changed from one use to another use that is regulated differently under the Land Use Code.

10. For the purposes of the Land Use Code (Title 23 of the Seattle Municipal Code), “structure” is defined at Section 23.84A.036, as “anything constructed or erected on the ground or any improvement built up or composed of parts joined together in some definite manner and affixed to the ground, including fences, walls and signs, but not including poles, flowerbed frames and such minor incidental improvements.”
11. It has not been the past practice of the Department of Planning and Development to regulate construction equipment or play equipment as structures for purposes of the Land Use Code.

### **Conclusions**

1. The proposed installation, which would be temporary in nature and not affixed to the ground, is not a “structure” for purposes of the Land Use Code, but rather is regulated as equipment. Accordingly, it is not subject to the general 85-foot structure height limit that applies in the zone.
2. The recognized use of the “Fun Forest” area of Seattle Center was historically characterized as “amusement park.” Under the current code, it would be properly regulated as “outdoor participant sports and recreation.” The use standards for the applicable zone include a special provision specifically allowing that use at Seattle Center, even though it is not generally allowed in the NC3 zone. By making this provision, it was clearly contemplated that this use could occur, or was already occurring, on the Center grounds, at the time the current code provisions were adopted. The proposed observation wheel is completely consistent with this use category, which is permitted outright, and already recognized in the location where the wheel is proposed.
3. The use of the observation wheel, for recreation and entertainment, is consistent with the uses already established on the site and in the proposed location. Because it is not a new structure or a new use of the property that is regulated differently than the uses already present, a separate use approval is not required under the Land Use Code.

### **Decision**

The location of a 197-foot-tall observation wheel, not affixed to the ground but supported by ballast tanks, for an 18-month period, is consistent with the uses already established by permit on the site, and requires no further use approval from this Department. It is regulated as equipment rather than as a structure, and is not subject to the structure height limit of the zone.

Entered this 31<sup>st</sup> day of January, 2011.

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(Signature on File)  
Andrew S. McKim  
Land Use Planner – Supervisor