

ORDINANCE _____

AN ORDINANCE relating to the regulation of Essential Public Facilities, amending SMC 23.66.030, SMC 23.76.064, SMC 23.80.002, SMC 23.80.004, SMC 23.84A.010, and enacting new sections 23.60.040, 23.80.003, 23.80.006, 25.09.053, and 25.11.026.

WHEREAS, the Washington State Growth Management Act (GMA) requires local government development regulations to include provisions for the siting of Essential Public Facilities; and

WHEREAS, in 1994 the City of Seattle adopted SMC 23.80 to implement the requirements of the GMA for Essential Public Facilities; and

WHEREAS, the Legislature has amended the GMA since 1994 to further regulate Essential Public Facilities; and

WHEREAS, State regulations for Essential Public Facilities contained in WAC 365-196-550 have been recently updated to reflect amendments to the GMA; and

WHEREAS, the City of Seattle needs to update its development regulations to reflect changes to the GMA and to the WAC with respect to the regulation of Essential Public Facilities,

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 23.60.040 of the Seattle Municipal Code is added as follows:

23.60.040 Essential Public Facilities.

If an Essential Public Facility is proposed within a Shoreline District, review of the proposed facility is subject to the provisions of SMC 23.80.

Section 2 . Subsection 23.66.030.D of the Seattle Municipal Code, which section was last amended by Ordinance 121276, is amended as follows:

23.66.030 Certificates of Approval – Application, review and appeals((=))

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1 D. Review.

2 1. Review When No Special Review Board is Established.

3 a. When there is no special review board, the Department of
4 Neighborhoods Director shall, within (~~(thirty (30))~~)30(~~(30))~~) days of a determination that an
5 application for a certificate of approval is complete, determine whether the proposed action is
6 consistent with the use and development standards for the district and shall, within (~~(fifteen~~
7 ~~(15))~~)15(~~(15))~~) additional days, issue, issue with conditions or deny the requested certificate of
8 approval.
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10 b. A copy of the Department of Neighborhoods Director's decision shall
11 be sent to the Director and mailed to the owner and the applicant at the addresses provided in the
12 application. Notice of the Director's decision also shall be provided to any person who, prior to
13 the rendering of the decision, made a written request to receive notice of the decision or
14 submitted written substantive comments on the application.
15

16 2. Review When Special Review Board is Established.

17 a. When a special review board has been established, the board shall hold
18 a public meeting to receive comments on certificate of approval applications.
19

20 b. Notice of the board's public meeting shall be posted in two (~~(2))~~)
21 prominent locations in the district at least three (~~(3))~~) days prior to the meeting.
22

23 c. The board, after reviewing the application and considering the
24 information received at the public meeting, shall make a written recommendation to the
25 Department of Neighborhoods Director to grant, grant with conditions, or deny the certificate of
26 approval application based upon the consistency of the proposed action with the requirements of
27 this chapter, the district use and development standards, and the purposes for creating the district.
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1 The board shall make its recommendation within (~~thirty~~)30(~~)~~) days of the receipt of a
2 completed application by the board staff, except that the applicant may waive the deadlines in
3 writing for the special review board to make a recommendation or the Director of the
4 Department of Neighborhoods to make a decision, if the applicant also waives any deadlines on
5 the review or issuance of related permits that are under review by the Department of Planning
6 and Development.

7
8 d. The Department of Neighborhoods Director shall, within (~~fifteen~~
9 ~~)~~15(~~)~~) days of receiving the board's recommendation, issue or deny a certificate of approval or
10 issue an approval with conditions.

11 e. A copy of the decision shall be sent to the Director and mailed to the
12 owner and the applicant at the addresses provided in the application. Notice of the decision shall
13 be provided to any person who, prior to the rendering of the decision, made a written request for
14 notice of the decision, or submitted substantive written comments on the application.

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16 3. A decision denying a certificate of approval shall state the specific reasons for
17 the denial and explain why the proposed changes are inconsistent with the requirements of this
18 subchapter and adopted use and development standards for the district.

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20 4. Essential Public Facilities. No certificate of approval may be denied or
21 conditioned in a manner that would preclude the siting of an Essential Public Facility as defined
22 in SMC 23.84A.010 E. In determining whether to waive or modify a development regulation to
23 avoid that effect, and whether to impose conditions to mitigate the impacts of waiver or
24 modification, the Director shall employ the procedure prescribed by SMC 23.80.006.

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1 Section 3 . Subsection 23.76.064.B of the Seattle Municipal Code, which section was
2 last amended by Ordinance 118672, is amended as follows:

3 **23.76.064 Approval of City facilities((:))**

4 * * *

5 B. City Facilities Not Meeting Development Standards. The Council may waive or
6 modify applicable development standards, accessory use requirements, special use requirements
7 or conditional use criteria for City facilities. If a waiver or modification of a development
8 regulation is sought because the development regulation would otherwise preclude the siting of
9 an Essential Public Facility as defined in Section 23.84A.010, then the decision to waive or
10 modify shall be made pursuant to Chapter 23.80 and not this section.
11

12 Section 4. Section 23.80.002 of the Seattle Municipal Code, adopted by Ordinance
13 117430, is amended as follows:

14 **23.80.002 Application submittal requirements((:))**

15 In addition to the application submittal requirements specified in other chapters and codes
16 that constitute development regulations, applicants for essential public facilities shall address
17 each of the review criteria of this chapter in their application materials, and provide additional
18 information as required by the Director to complete review of the project.
19

20 Section 5. A new Section 23.80.003 of the Seattle Municipal Code is added as follows:

21 **23.80.003 Review is supplementary**

22 Review of an essential public facility under this chapter, including a decision to condition
23 approval of a project or to waive or modify a development regulation as authorized by this
24 chapter, is an additional component of regulatory review for the underlying regulatory decision,
25 and not a different or distinct regulatory decision. If the underlying decision is subject to
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1 administrative appeal, then decisions made under this chapter are subject to review on
2 administrative appeal of the underlying decision. If the underlying decision is not subject to
3 administrative appeal, then decisions made under this chapter are not subject to review on
4 administrative appeal of the underlying decision.

5 Section 6. Subsection 23.80.004.B of the Seattle Municipal Code, which section was last
6 amended by Ordinance 122198, is amended as follows:

7
8 **23.80.004 Review criteria((:))**

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12 B. ~~((H))~~Except as provided in subsection 23.80.004.C, if the decisionmaker determines
13 that attaching conditions to the permit approval will facilitate project siting in light of the
14 considerations identified above, the decisionmaker may establish conditions for the project for
15 that purpose. However, the decisionmaker may waive or modify development regulations only
16 to the extent that a waiver or modification is approved pursuant to Section 23.80.006.

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18 * * *

19 Section 7. A new Section 23.80.006 of the Seattle Municipal Code is added as follows:

20 **23.80.006 Waiver or modification of development regulation**

21 A. Application for waiver or modification. If the applicant for approval of an essential
22 public facility seeks the waiver or modification of a development regulation, the applicant shall
23 include in the application:
24

- 25 1. The specific identification of each development regulation sought to be waived
26 or modified.

1 2. A detailed explanation of the manner in which each development regulation is
2 believed to preclude the siting of the essential public facility.

3 3. A detailed description of any mitigation measures the applicant proposes to
4 take to avoid or mitigate the adverse effects that may result from the proposed waiver or
5 modification of the development regulation.

6 B. Decision to waive or modify. If the decisionmaker determines that application of a
7 development regulation will preclude the siting of an essential public facility, the decisionmaker
8 shall waive or modify the application of the development regulation to the extent necessary to
9 allow siting the facility. The decisionmaker shall consider the provisions of WAC 365-196-550
10 when deciding whether a development regulation precludes the siting of the facility.
11

12 C. Mitigation. If the decisionmaker waives or modifies a development regulation, the
13 decisionmaker may require the applicant to comply with conditions that avoid or mitigate
14 adverse effects that the decisionmaker believes may result from waiver or modification of the
15 development regulation. If the development regulation to be waived or modified is contained in
16 SMC 23.60 (Shoreline Master Program) or SMC 25.09 (Regulations for Environmentally
17 Critical Areas), and the waiver or modification would result in a net loss of ecological function,
18 the decisionmaker shall impose mitigation conditions to achieve no net loss of ecological
19 functions as a result of granting the waiver or modification.
20

21 D. Relationship to other Seattle Municipal Code provisions authorizing exceptions,
22 variances, exemptions, and other forms of relief. Regardless of any other provision of this Title
23 23, Chapter 25.09, or Chapter 25.11, if an applicant seeks the waiver or modification of a
24 development regulation under this section, the applicant is not required to also seek relief from
25 the application of the development regulation pursuant to any other form of relief afforded by the
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1 Seattle Municipal Code, including procedures for exceptions, variances, exemptions, and similar
2 procedures. However an applicant is not precluded from seeking such other relief in addition to
3 seeking relief under this section.

4 Section 8. Section 23.84A.010 of the Seattle Municipal Code, last amended by
5 Ordinance 123495, is amended as follows:

6 **23.84A.010 “E”**

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8 * * *
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9 “Essential public facilities” means those facilities identified as an essential public facility in
10 RCW 36.70A.200 and in addition, ((airports, sewage treatment plants, jails,)) light rail transit
11 systems, ((and)) power plants, and sewage or stormwater treatment, storage or pumping
12 facilities.

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14 * * *

15 Section 9. A new Section 25.09.053 of the Seattle Municipal Code is added as follows:

16 **25.09.053 Essential Public Facilities**

17 If an Essential Public Facility as defined in Section 23.80.004 is proposed within an
18 environmentally critical area as defined in Section 25.09.020, review of the proposed facility is
19 subject to the provisions of Chapter 23.80.

20
21 Section 10. A new Section 25.11.026 of the Seattle Municipal Code is added as follows:

22 **25.11.026 Essential Public Facilities**

23 If this chapter applies to a proposal for an Essential Public Facility as defined in Section
24 23.80.004, review of the proposed facility is subject to the provisions of Chapter 23.80.

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26 Section 11. Sections 2 through 10 of this ordinance shall take effect and be in force
27 thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the

1 Mayor within ten (10) days after presentation, it shall take effect as provided by Seattle
2 Municipal Code Section 1.04.020. Section 1 of this ordinance shall take effect as provided in
3 WAC 173-26-120.

4 Passed by the City Council the ____ day of _____, 2011, and signed by me in open
5 session in authentication of its passage this ____ day of _____, 20__.

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7 _____
8 President _____ of the City Council

9 Approved by me this ____ day of _____, 2011..

10
11 _____
12 Mayor

13 Filed by me this ____ day of _____, 2011.

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15 _____
16 City Clerk

17 (Seal)