

SDCI

Director's Rule 17-2019

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Subject: Exemptions from State Environmental Policy Act (SEPA) Requirements	Code and Section Reference: SMC 25.05.800	
	Type of Rule: Code Interpretation	
	Ordinance Authority: SMC 3.06.040	
Index: City of Seattle State Environmental Policy Act (SEPA) Ordinance	Approved <u>(signature on file)</u> Nathan Torgelson, Director, SDCI	Date <u>2/07/2020</u>

PURPOSE:

The purpose of this Director's Rule is to provide interpretation of the categorical exemptions associated with establishing a new use with new construction, changing a use within an existing structure, expanding an existing use or structure, and other SDCI approvals that may be exempt from State Environmental Policy Act (SEPA) review. This rule helps determine when SEPA environmental review is required and when it is not. In the event of conflict, the code or state law controls over this rule.

BACKGROUND:

State environmental regulations require local jurisdictions to review certain actions and identify and evaluate probable environmental impacts, alternatives and mitigation measures. The City SEPA Ordinance, Seattle Municipal Code Chapter 25.05, is based on the Revised Code of Washington Chapter 43.21C and the Washington Administrative Code Chapter 197-11. SEPA code regulations provide "categorical exemptions" from compliance with procedural requirements related to environmental review. In other words, projects of a certain type or scale are exempt from SEPA review.

EXEMPTION LEVELS:

The information in Tables A and B for SMC 25.05.800, showing the exemption levels for residential and nonresidential uses, is consolidated and clarified below as Table A for ease of reference in this Rule.

TABLE A
SEPA Environmental Review Exemption Levels for
Establishing a New Use with New Construction
(based on SMC 25.05.800)¹

	Outside of urban centers and urban villages ¹		Within urban centers and urban villages ¹ where SEPA infill exemption levels are in effect ²		Within urban centers and urban villages ¹ where growth estimates have been exceeded and infill exemption levels are not in effect ²	
	Residential Uses	Non-Residential Uses	Residential Uses	Non-Residential Uses ⁵	Residential Uses	Non-Residential Uses
Zone Designation	<i>Number of Exempt Dwelling Units³</i>	<i>Exempt Area of Use⁴ (square feet)</i>	<i>Number of Exempt Dwelling Units³</i>	<i>Exempt Area of Use⁴ (square feet)</i>	<i>Number of Exempt Dwelling Units³</i>	<i>Exempt Area of Use⁴ (square feet)</i>
SF and RSL	4	4,000	4	4,000	4	4,000
LR1	4	4,000	200	4,000	20	4,000
LR2	6	4,000	200	12,000 or 30,000	20	12,000
LR3	8	4,000	200	12,000 or 30,000	20	12,000
MR and HR	20	4,000	200	12,000 or 30,000	20	12,000
NC zones	4	4,000	200	12,000 or 30,000	20	12,000
C zones	4	12,000	200	12,000 or 30,000	20	12,000
SM zones	20	12,000	200	12,000 or 30,000	20	12,000
Industrial zones	4	12,000	4	12,000	4	12,000
MPC-YT	n/a	n/a	30	12,000	20	12,000
Downtown zones	n/a	n/a	250	12,000 or 30,000	20	12,000

FOOTNOTES FOR TABLE A:

1 Urban centers and urban villages are identified in the Seattle Comprehensive Plan

2 According to SMC 25.05.800.A.2, a Director's Rule (16-2019 or a successor Rule) identifies urban centers and urban villages where SEPA infill exemption levels are not in effect. If they are not in effect, the reduced SEPA exemption levels for residential uses, non-residential uses, or both will apply (see the last two columns of this Table A).

3 See Section I.D, general standards, of this rule to determine the number of dwelling units for this exemption level.

4 See Section I.E, general standards, of this rule to determine the square footage to include in the area of use for this exemption level.

5 For zones with alternative exemption levels of 12,000 or 30,000 square feet, the SEPA exemption level for new non-residential development located in an urban center or urban village that is not part of a mixed-use development (as described in Section I.F of this rule) is 12,000 square feet. The SEPA exemption level for new non-residential development located in an urban center or urban village that is part of a mixed-use development (as described in Section I.F of this rule) is 30,000 square feet.

RULE:

This Rule provides information on SEPA environmental review exemptions for the following types of actions:

- I. General Standards (including establishing a new use or demolition)
- II. Change of use in an existing structure
- III. Additions to existing structures and expansion of outdoor “areas of use”
- IV. Parking
- V. Telecommunications
- VI. Other

Section I. General Standards for establishing a new use, changing a use, additions, or demolition

A. *Exemption levels.* Table A provides the highest levels of proposed development that are exempt from SEPA environmental review when a new use is established as the result of new construction, or by the establishment of new uses, including certain outdoor areas.¹ If development is proposed that exceeds the SEPA exemption level, environmental review is required.

B. Unless stated otherwise, exemption levels in this Rule, including changes of use and expansions, do not apply to actions proposed on land wholly or partly covered by water.

C. *Live-work units.* Live-work units will be evaluated subject to the SEPA exemption levels for non-residential uses, based on the entire gross floor area of the live-work units.

D. *Determining total number of units.* The SEPA exemption is based on the total number of units in a development site or project, not on the number of units per structure.

- Small efficiency dwelling units are each counted as 0.5 dwelling units.
- For other residential uses not readily described as a discrete number of units, including nursing homes and congregate residences, each sleeping unit (functionally equivalent to bedrooms) is counted as 0.5 dwelling units.

E. *Area of use.* All non-residential area of a development is included in the evaluation of whether a development exceeds a SEPA exemption level, even if the development contains separate business establishments or multiple structures. To determine whether a proposed

¹ Other criteria in this rule, addressing situations such as proposed changes in land use and expansions of existing uses, may also lead to a determination that SEPA environmental review is required.

development is exempt from SEPA review, the total square footage of the “area of use” will be evaluated.

- Accessory uses other than parking shall be considered part of the area of the principal use.
- For uses located in buildings, “area of use” shall mean gross floor area.
- For public parks, the “area of use” shall include gross floor area of structures together with outdoor areas improved for active recreational uses, such as athletic fields.
- The footprint coverage of new cisterns or other above-ground tanks to hold rainwater shall be included in the “area of use.” Such coverage will be evaluated against the square feet for non-residential use exemption levels in Table A, regardless of whether the principal uses on the site are residential or non-residential.
- Outdoor amenity, open spaces, yards, and setbacks generally are not counted as part of the “area of use.”
- Outdoor areas that are actively used for non-residential purposes are counted toward the “area of use” for the non-residential use. Examples of such outdoor uses include, but are not limited to, the following:
 - Outdoor storage;
 - Outdoor sales areas;
 - Outdoor seating for restaurants, if outdoor seating area exceeds 750 square feet;
 - Outdoor sports and recreational facilities;
 - Salvage yards;
 - Towing company impound lots;
 - Gas station canopies;
 - Car washes.
- Accessory parking areas are not included in the area of use except that for uses that entail the storage and parking of motorized vehicles (e.g. automobiles, buses, and trucks) as an intrinsic element of the use, SEPA exemption levels are based on the total square footage of the use, inclusive of the exterior vehicle storage areas, rather than the number of parking spaces. Examples of uses that include vehicle storage are as follows:
 - Major vehicle repair;
 - Sales and rental of motorized vehicles or;
 - Outdoor parking areas for two or more fleet vehicles of more than 10,000 pounds gross vehicle weight.

F. *Mixed-use buildings.* For the purposes of determining whether a proposed development is exempt from SEPA review, residential uses will be evaluated according to number of dwelling units, and non-residential uses will be evaluated according to square footage of the “area of use.”

For example, a development proposal in an NC3 zone outside an urban center or urban village contains 3,800 square feet of non-residential floor area and four dwelling units. This project is exempt from SEPA review, even though the total floor area of all uses in the development proposal exceeds 4,000 square feet. Since non-residential and residential uses are reviewed independently, the example does not exceed either exemption level (the square footage exemption level for non-residential uses or the number of exempt units for residential uses).

- To determine the amount of non-residential gross floor area in a mixed-use building, common areas, such as lobbies and mechanical rooms, shared by both residential and non-residential uses will be prorated based on the percentage of the structure dedicated to non-residential uses according to SMC 23.86.032.
- For the purpose of determining if the non-residential portion of a mixed-use development located within an urban center or urban village where growth estimates have not been exceeded is subject to the higher exemption level in Table A, the development must have at least two principal uses, including one that is a residential use comprising 50% or more of the total gross floor area of the development.

G. *Demolition.* Demolition of any structure or facility requires SEPA review if construction of that structure or facility would have required SEPA review.

- Demolition of an otherwise exempt structure is required to be reviewed under SEPA if it is part of a larger proposal that requires SEPA review.
- The demolition of any structure or facility that has recognized historical significance, such as listing in an historic register, is not exempt from SEPA regardless of size or number of dwelling units.

H. *Parking.* For the purposes of determining whether a proposed development is exempt from SEPA review, when construction, expansion, or removal of parking is proposed on a site, whether accessory or not, the number of parking spaces is evaluated separately from the area of use, except as specified in the "Area of Use" subsection of this rule.

- See Section IV of this Rule for SEPA exemption rules for parking.

I. *Series of exempt structures or actions.* A series of exempt structures or actions (i.e. SDCI approvals), may require environmental review if they are physically or functionally related to each other and together may have a probable significant adverse environmental impact, or if they are proposals or a series of actions that are related to each other closely enough to be considered a single course of action. This will be determined on a case-by-case basis by the Director.

Section II. Exemptions for Change of Use in an Existing Structure

- A. A change of use (by remodel or demolition) involving fewer dwelling units or less square footage than the exemption levels in Table A above does not require SEPA review, unless the change causes the development as a whole to exceed the exemption levels in Table A for the first time.
- B. If the total number of dwelling units is already over the exempt level for the zone, and the change of use increases the number of dwelling units by more than 50 percent, SEPA review is required.
- C. A proposal is considered a "change of use" for purposes of determining SEPA exemption if the principal use of floor area within an existing building or actively used outdoor area is changed:
- from a residential use to a non-residential use, or
 - from a non-residential use to a residential use, or
 - from one type of non-residential use in Table B below to a more intensive type of nonresidential use (such as from a Type 1 use to a Type 2 use); provided that in an industrial zone, a change to a non-residential use in an adjacent more intensive category is not regarded as a "change of use" for purposes of this rule. For example, if an existing Type 3 use in an industrial zone is changed to a Type 4, the change of use does not require SEPA review. However, a change from a Type 1 use to a Type 3 use in an industrial zone would require SEPA review.
- o For the purposes of determining whether a change of use is exempt from SEPA review, non-residential uses are categorized into four types of uses in Table B based on their intensity. Uses listed in Table B are defined in Chapter 23.84A of the Land Use Code. Uses not specifically listed in Table B will be categorized based on the types of uses most similar in nature and/or relative intensity, as determined by the Director.

TABLE B
Exemptions for “Changes of Use” From One Nonresidential Use to
Another Nonresidential Use

TYPES OF USES CATEGORIZED BY INTENSITY¹	
Type 1	
<ul style="list-style-type: none"> • Automotive retail sales and services² • Eating and drinking establishments • General sales and service • Indoor sports and recreation • Institutions and Major Institutions • Live-work units • Lodging • Wholesale showrooms 	<ul style="list-style-type: none"> • Medical services • Offices • Research and development labs • Sales and rental of motorized vehicles • Theaters and spectator sports facilities • Warehouses <ul style="list-style-type: none"> o Mini-warehouses

Type 2	
<ul style="list-style-type: none"> • Animal shelters and kennels • Food processing and craft work • Gas stations • Light manufacturing • Marine sales and services 	<ul style="list-style-type: none"> • Passenger terminals • Rail transit facilities • Urban Farms • Utility services
Type 3	
<ul style="list-style-type: none"> • Adult entertainment • Cargo terminals • Dry boat storage • General manufacturing • Heavy commercial sales and services 	<ul style="list-style-type: none"> • Major automotive vehicle repair • Outdoor Storage <ul style="list-style-type: none"> o Towing services • Vehicle storage and maintenance
Type 4	
<ul style="list-style-type: none"> • Heavy manufacturing • High-impact uses • Jails • Major communication utility • Power plants 	<ul style="list-style-type: none"> • Recycling • Salvage yards • Sewage treatment plant • Solid waste management • Work-release centers
<p>FOOTNOTES FOR TABLE B: 1 If a use is not listed in this table, it will be categorized according to its relative intensity compared to other uses listed, as determined by the Director. 2 Except gas stations, which are categorized as a Type 2 use.</p>	

Section III. Exemptions for Additions to Existing Structures and Expansion of Outdoor “Areas of Use”

A. *SEPA Review Exemptions Described in Table C.* The exemptions in Table C relate to physical expansions in uses that result in additional floor area, a larger building footprint, or an increase in the size of an actively used outdoor area, which may or may not relate to increased total dwelling unit counts.²

TABLE C
Exemptions from SEPA Review for Additions

RESIDENTIAL USES¹	
Use	Level of expansion exempt from SEPA
Expansion of a residential development <u>without</u> adding dwelling units	If the total number of dwelling units is not increased with the expansion of a structure, regardless of whether the number of existing dwelling units in the development exceeds the exemption level (See Table A), then the addition is exempt from SEPA review.

² Refer to Section II for guidance on changes in use in an existing structure if that is applicable.

Expansion of a residential development <u>when</u> adding dwelling units	<ul style="list-style-type: none"> • If the total number of existing dwelling units in a development is less than the exempt number of units (see Table A) and the addition of dwelling units results in a proposal that exceeds the exemption level for the first time, SEPA review is required. • If the total number of dwelling units in a development after the addition remains less than the exempt number of dwelling units (See Table A), then the addition that adds dwelling units is exempt from SEPA review. • If the total number of dwelling units on a development site is already over the exempt number of dwelling units (See Table A), an increase of no more than 50 percent in the total number of dwelling units on the site is exempt from SEPA review, unless the number of dwelling units added itself exceeds the exemption for the zone (See Table A).
NONRESIDENTIAL USES²	
Use	Level of expansion exempt from SEPA
Expansion of non-residential development	<ul style="list-style-type: none"> • If the total existing area of use for a development is less than the exempt square footage (see Table A) and the expansion of the area of use results in a proposal that exceeds the exemption level for the first time, SEPA review is required. • If the total area of use for a development after the expansion remains less than the exempt square footage (See Table A), then the expansion is exempt from SEPA review. • If the total area of use for a development is already over the amount of exempt square footage (See Table A), an increase of up to 50 percent of the existing "area of use" is exempt from SEPA review, unless the increase in the "area of use" itself exceeds the exemption for the zone (See Table A).
<p>FOOTNOTES FOR TABLE C:</p> <p>1 See Section I.D, general standards, of this rule to determine the number of dwelling units for this exemption level.</p> <p>2 See Section I.E, general standards, of this rule to determine the square footage to include in the "area of use" for this exemption level.</p>	

Section IV. Parking

A. *Construction, expansion, or removal of parking.*³ For the purposes of determining whether a proposed development is exempt from SEPA review, when construction, expansion, or removal of parking is proposed on a site, the number of parking spaces is evaluated

³ SMC 25.05.800 provides an exemption for a parking lot designed for 40 or fewer "automobiles." For the purposes of this Rule, SDCI considers "automobiles" to include other motor vehicles consistent with the Land Use Code definition of a parking area, which is an area "for the parking of vehicles."

separately from the area of use, except as specified in the "Area of Use" in Section I of this rule.

- Construction or addition of 40 or fewer parking spaces is exempt from SEPA review.
- More than 40 parking spaces is exempt from SEPA review if the parking is:
 - o required accessory parking, or
 - o parking accessory to development in an urban center or urban village where growth estimates have not been exceeded.
- A change of use or addition that includes an increase in parking that causes the total parking quantity to surpass 40 spaces for the first time requires SEPA review, regardless of the number of parking spaces added, unless the parking is:
 - o required accessory parking; or
 - o parking accessory to development in an urban center or urban village where growth estimates have not been exceeded.
- Elimination of an existing accessory surface parking area is exempt from SEPA review when it is part of a larger proposal that is exempt from SEPA, regardless of the number of spaces removed.
- Demolition of a parking structure is exempt from SEPA review if:
 - o construction of that structure would not have required SEPA review as determined above; or
 - o if the demolition is part of a larger proposal that is exempt from SEPA.

B. Parking expansions within past five years are evaluated cumulatively. When an existing parking area is expanded, the five-year past record of parking expansions (from date of application) will be considered in determining whether SEPA review is required for a current proposal. If past parking expansions combined with a current proposal for parking expansion add up to more than 40 parking spaces that would require SEPA review if undertaken in a single proposal, SEPA review is required for the current proposal.

Section V. Telecommunications

- A. Wireless Service Facilities.* See categorical exemptions in SMC 25.05.800.AA.
- B. Wireless services.* Cellular telephone facilities fall under the category of commercial mobile services.
- C. Collocation.* The definition of "collocation" in SMC 25.05.800.AA is only for the purpose of determining a SEPA exemption. Collocation means the mounting or installation of equipment on an existing tower, building, structure, for purposes of either transmitting or receiving, or both, radio frequency signals for communication purposes.
- D. Environmentally Critical Areas.* Wireless service facilities are not exempt from SEPA within a designated environmentally critical area unless the facility would otherwise

qualify for an exemption from SEPA review under other criteria, such as “minor new construction.”

E. *Accessory Communication Devices.* The following accessory communication devices qualify as “minor accessory facilities” under SMC 25.05.800.B.5 and are categorically exempt from SEPA review:

- Satellite dish antennas that transmit and receive if:
 - o accessory to a use located on the same site,
 - o 6 feet or less in diameter, and
 - o use no more than 2 watts of power.
- Point-to-point dish and panel antennas that transmit as well as receive, if:
 - o accessory to a use located on the same site, and
 - o no more than 4 feet in diameter or 15 square feet.
- Receive-only dish and panel antennas, if
 - o accessory to a use located on the same site, and
 - o no more than 12 feet in diameter or 38 square feet.

F. *Minor Antennas.* The following shall be categorically exempt from SEPA review:

- “Whip” antennas: Tubular antennas (resembling flagpoles) if they are 4 inches or less in diameter.
- GPS (global positioning satellite) antennas: Small, round antennas (resembling hockey pucks) that are typically placed on roofs of buildings.
- “Test mobile” antennas: Small, prism-shaped antennas that are mounted near other antennas to act as monitors.

G. *Satellite Earth Station Antennas.* The following standards shall govern whether SEPA review is required for satellite earth station antennas (which are dishes or similar antennas pointed up at satellites in geostationary orbit):

- *Antennas one meter (3.28 feet) or smaller in diameter:* SEPA review shall be required only if the antenna is to be located in a historic district or on a site or structure designated as a historic landmark.
- *Antennas two meters (6.56 feet) in diameter or smaller, but larger than one meter in diameter:* SEPA review is required for those antennas to be located in residential zones (including single family, multifamily, DMR and IDR). SEPA review is not required for those antennas to be located in other downtown zones or in commercial or industrial zones.⁴

⁴ Taken together, rules in this Section for “antennas one meter or smaller in diameter” and rules for “antennas two meters in diameter or smaller but larger than one meter in diameter” reflect an anomaly in federal law that the City remains bound to uphold: If the site is a historic landmark or is in a historic district, and the zoning is not residential, an antenna up to one meter in diameter would require SEPA review, while an antenna that is

- *Antennas larger than two meters in diameter:* SEPA review is required unless the antenna qualifies for an exemption under another section of this Rule.

H. *Video Programming Antennas.* Video programming antennas are “over-the-air reception” antennas that allow people to receive satellite television signals. Some video programming antennas are also satellite earth stations, which may qualify for exemption under Section IV.I of this Rule. No SEPA review is required for installation of the following types of antenna, unless the antenna is to be located in a historic district or on a site or structure designated as a historic landmark:

- TBS: An antenna designed to receive television broadcast services.
- DBS: An antenna, one meter or less in diameter, designed to receive direct broadcast satellite service, including direct-to-home satellite service.
- MMDS: An antenna, one meter or less in diameter or on the diagonal, designed to receive video programming services via multi-point distribution services.

Section VI. Other Exemptions

A. *Lot Boundary Adjustments.* Lot boundary adjustments do not require SEPA review, including lots wholly or partly covered by water.

B. *Short Plats.* Short subdivision of land does not require SEPA review except for short subdivision of lands covered by water.

C. *Variances.* Granting of variances based on special circumstances, not including economic hardship and not resulting in any change in land use or density, is exempt from SEPA review.

D. *Repair or Minor Alteration of Structures.* The repair, remodeling, maintenance, enclosure or minor alteration of existing structures, or of portions of existing structures, is exempt from SEPA so long as it does not result in an expansion or change of use. The following list contains examples of accessory features that, when altered, repaired, maintained, or added to an existing facility or structure not located on any lands wholly or partly covered by water, are exempt from SEPA review:

- o Stairways and stairwells;
- o Heating and air conditioning equipment;
- o Porches and decks;
- o Canopies, awnings and marquees;
- o Fences;
- o Landscaping;
- o Signs, other than billboards;
- o Doors, entrances, and windows;
- o Roofing or siding;
- o Painting;

greater than one meter in diameter but less than two meters in diameter would not require SEPA review.
(Compare 47 CFR 25.104 and 47 CFR 1.4000.)

- o Transformer vaults;
- o Mechanical penthouses;
- o Restrooms or;
- o Barrier-free access.

E. *Tanks*. Installation or removal of one or more impervious underground or above-ground tanks is exempt from SEPA review unless the total capacity of the tank or tanks exceeds 60,000 gallons in an Industrial zone or 10,000 gallons in any other zone. Installation of cisterns or other above-ground tanks to hold rainwater will be evaluated for their relationship to SEPA exemptions as specified in Section I.E of this rule, "Area of Use."

F. *Grading*. The grading of 500 cubic yards or less in areas other than those lands wholly or partly covered by water is exempt from SEPA review. Excavation, fill, landscaping or grading necessary for an exempt project is exempt from SEPA review regardless of the grading quantity. Landscaping that is part of a vegetation management plan according to SMC 25.09.070 is exempt from SEPA.

G. *Interior Demolition and Structural Reinforcement*. In nonexempt projects, any associated interior demolition and structural reinforcement activities shall be considered exempt activities and shall be permitted under SMC 25.05.305 unless:

1. The activities may alter designated or eligible historical features; or
2. The activities will eliminate the effective maintenance of a use in the current use category.

The approval of these exempt activities does not constitute approval of nonexempt activities.

H. *Farmer's Markets*. An intermittent retail sales use occurring not more often than two days per week, providing opportunities to purchase produce, art/craft items, and similar goods from temporary facilities such as tables and covered areas, is exempt from SEPA review.

I. *Solar energy equipment*. The installation of accessory solar energy generation equipment on or attached to existing structures and facilities is exempt from SEPA review if there is no other change to the envelope or footprint of the existing structure or facility.