

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE related to environmental review; amending Section 25.05.800 of the Seattle Municipal Code to update categorical exemptions for “infill” development consistent with changes to the State Environmental Policy Act regulations.

..body

WHEREAS, in 2003, regulations governing the State Environmental Policy Act (SEPA)

categorical exemptions for infill development was enacted by the state of Washington to encourage growth consistent with the Growth Management Act (Chapter 36.70A RCW);

and

WHEREAS, RCW 43.21C.229 authorizes cities planning under RCW 36.70A.040 to establish

categorical exemptions from the State Environmental Policy Act (RCW 43.21C) that

differ from the exemptions in RCW 43.21.C.110(1)(a); and

WHEREAS, in 2016, pursuant to the provisions of RCW 43.21C.229, The City of Seattle

adopted infill development exemptions for urban centers that were higher than the

categorical exemptions that the Washington State Department of Ecology (Ecology) had

promulgated pursuant to RCW 43.21C.110; and

WHEREAS, in March of 2022, the Washington State Legislature passed Substitute Senate Bill

5818 (SSB 5818) and it was signed by the Governor, directing the Washington State

Department of Ecology (Ecology) to conduct expedited rulemaking to raise certain rule-

based categorical exemption thresholds to the SEPA regulations at WAC 197-11-800;

and

WHEREAS, on December 20, 2022, Ecology adopted expedited rulemaking with new and

higher infill development exemptions in its SEPA rules (WAC 197-11-800) consistent

1 with SSB 5818, and The City of Seattle wishes to recognize those limits in its SEPA
2 regulations; and

3 WHEREAS, development in Downtown Seattle has exceeded the growth estimates adopted for
4 the Urban Center, and the current exemptions in Seattle’s regulations are unreasonably
5 low; and

6 WHEREAS, the City has the opportunity to update its regulations for Downtown Seattle to make
7 sure that development in the Downtown Urban Center does not need to undertake lengthy
8 and costly environmental review in cases where other regulations will appropriately
9 mitigate impacts of that development; NOW, THEREFORE,

10 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

11 Section 1. The City Council finds and declares:

12 A. Infill development categorical exemptions are authorized by the State, and have been
13 effective as a factor to encourage new development to locate within urban areas consistent with
14 the City’s Comprehensive Plan.

15 B. Environmental analysis, protection, and mitigation for impacts to elements of the
16 environment are adequately addressed through existing codes and regulations as demonstrated in
17 Attachment 1 to this ordinance.

18 C. Seattle Municipal Code subsection 25.05.800.B.7 requires that buildings that may
19 have historical significance be reviewed by the City’s Department of Neighborhoods whether or
20 not proposed development exceeds SEPA thresholds set forth elsewhere in Section 25.05.800.

21 Section 2. Section 25.05.800 of the Seattle Municipal Code, last amended by Ordinance
22 126509, is amended as follows:

23 **25.05.800 Categorical exemptions**

1 The proposed actions contained in this Section 25.05.800 are categorically exempt from
2 threshold determination and environmental impact statement requirements, subject to the rules
3 and limitations on categorical exemptions contained in Section 25.05.305.

4 A. Minor new construction; flexible thresholds

5 1. The exemptions in this subsection 25.05.800.A apply to all licenses required to
6 undertake the construction in question. To be exempt under this Section 25.05.800, the project
7 shall be equal to or smaller than the exempt level. For a specific proposal, the exempt level in
8 subsection 25.05.800.A.2 shall control. If the proposal is located in more than one city or county,
9 the lower of the agencies' adopted levels shall control, regardless of which agency is the lead
10 agency. The exemptions in this subsection 25.05.800.A apply except when the project:

- 11 a. Is undertaken wholly or partly on lands covered by water;
- 12 b. Requires a license governing discharges to water that is not exempt
13 under RCW 43.21C.0383;
- 14 c. Requires a license governing emissions to air that is not exempt under
15 RCW 43.21C.0381 or WAC 197-11-800(7) or 197-11-800(8); or
- 16 d. Requires a land use decision that is not exempt under subsection
17 25.05.800.F.

18 2. The following types of construction are exempt, except when undertaken
19 wholly or partly on lands covered by water:

- 20 a. The construction or location of residential or mixed-use development
21 containing no more than the number of dwelling units identified in Table A for 25.05.800

22 ((below)):

Table A for 25.05.800 Exemptions for residential uses
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Zone	Number of exempt dwelling units		
	Outside urban centers and urban villages	Within urban centers and urban villages where growth estimates have not been exceeded	Within urban centers and urban villages where growth estimates have been exceeded
NR and RSL	4	4	4
LR1	4	200 ¹	20
LR2	6	200 ¹	20
LR3	8	200 ¹	20
NC1, NC2, NC3, C1, and C2	4	200 ¹	20
MR, HR, and Seattle Mixed zones	20	200 ¹	20
MPC-YT	NA	30 ¹	20
Downtown zones	NA	250 ¹	((20)) <u>200</u>
Industrial zones	4	4	4

Footnotes to Table A for 25.05.800

NA = not applicable

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

¹ Pursuant to RCW 43.21C.229, new residential development or the residential portion of new mixed-use development located in an urban center or in an urban village is categorically exempt from the State Environmental Policy Act, unless the Department has determined that residential growth within the urban center or village has exceeded exemption limits for the center that the Department has established pursuant to subsection 25.05.800.A.2.i.

1
 2 b. The construction of a barn, loafing shed, farm equipment storage
 3 building, produce storage or packing structure, or similar agricultural structure, covering 10,000
 4 square feet or less, and to be used only by the property owner or the property owner's agent in
 5 the conduct of farming the property. This exemption does not apply to feed lots;

6 c. The construction of office, school, commercial, recreational, service, or
 7 storage buildings, containing no more than the gross floor area listed in Table B for 25.05.800
 8 ((below)):

Table B for 25.05.800

Exemptions for non-residential uses

Zone	Exempt area of use (square feet of gross floor area)
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	Outside urban centers and hub urban villages	Within urban centers and hub urban villages where growth estimates have not been exceeded	Within urban centers and hub urban villages where growth estimates have been exceeded
NR, RSL, and LR1	4,000	4,000	4,000
LR2 and LR3	4,000	12,000 ¹ or 30,000 ²	12,000
MR, HR, NC1, NC2, and NC3	4,000	12,000 ¹ or 30,000 ²	12,000
C1, C2, and Seattle Mixed zones	12,000	12,000 ¹ or 30,000 ²	12,000
Industrial zones	12,000	12,000	12,000
MPC-YT	NA	12,000	12,000
Downtown zones	NA	((12,000 ¹ or) 30,000(²))	((12,000)) <u>30,000</u>

Footnotes to Table B for 25.05.800
 NA = not applicable
 Urban centers and urban villages are identified in the Seattle Comprehensive Plan
¹ New non-residential development that is not part of a mixed-use development and that does not exceed 12,000 square feet in size is categorically exempt from the State Environmental Policy Act (SEPA).
² Pursuant to RCW 43.21C.229, new non-residential development that does not exceed 30,000 square feet and that is part of a mixed-use development located in an urban center or in a hub urban village is categorically exempt from SEPA, unless the Department has determined that employment growth within the urban center or village has exceeded exemption limits for the center that the Department has established pursuant to subsection 25.05.800.A.2.i.

- 1
- 2 d. The construction of a parking lot designed for 40 or fewer automobiles,
- 3 as well as the addition of spaces to existing lots up to a total of 40 spaces;
- 4 e. Any fill or excavation of 500 cubic yards or less throughout the total
- 5 lifetime of the fill or excavation; and any excavation, fill, or grading necessary for an exempt
- 6 project in subsections 25.05.800.A.2.a, 25.05.800.A.2.b, 25.05.800.A.2.c, or 25.05.800.A.2.d
- 7 shall be exempt;
- 8 f. Mixed-use construction, including but not limited to projects combining
- 9 residential and commercial uses, is exempt if each use, if considered separately, is exempt under
- 10 the criteria of subsections 25.05.800.A.2.a through 25.05.800.A.2.d, unless the uses in

1 combination may have a probable significant adverse environmental impact in the judgment of
2 an agency with jurisdiction (see subsection 25.05.305.A.2.b);

3 g. In zones not specifically identified in this subsection 25.05.800.A, the
4 standards for the most similar zone addressed by this subsection 25.05.800.A apply;

5 h. For the purposes of this subsection 25.05.800.A, "mixed-use
6 development" means development having two or more principal uses, one of which is a
7 residential use comprising 50 percent or more of the gross floor area;

8 i. To implement the requirements of Table A for 25.05.800 and Table B
9 for 25.05.800, the Director shall establish implementation guidance by rule for how growth is
10 measured against exemption limits and how changes to thresholds will occur if exemption limits
11 are reached. The exemption limits shall consist of the growth estimates established in the
12 Comprehensive Plan for a given area, minus a "cushion" of ten percent to assure that
13 development does not exceed growth estimates without SEPA review; and

14 j. The Director shall monitor residential and employment growth and
15 periodically publish a determination of growth for each urban center and urban village.
16 Residential growth shall include, but need not be limited to, net new units that have been built
17 and net new units in projects that have received a building permit but have not received a
18 certificate of occupancy. Per implementation guidance established by rule, if the Director
19 determines that exemption limits have been reached for an urban center or urban village
20 subsequent development will be subject to the lower thresholds as set forth in Table A for
21 25.05.800 and Table B for 25.05.800.

22 * * *

1 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the _____ day of _____, 2023,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2023.

7 _____
8 President _____ of the City Council

9 Approved / returned unsigned / vetoed this ____ day of _____, 2023.

10 _____
11 Bruce A. Harrell, Mayor

12 Filed by me this _____ day of _____, 2023.

13 _____
14 Elizabeth M. Adkisson, Interim City Clerk

15 (Seal)

16 Attachments:
17 Attachment 1 – Summary of environmental protections in other codes and rules for each of
18 SEPA’s elements of the environment