

**PLANNING COMMISSION AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

**AGENDA TITLE:** Development Code Amendments – Light Rail Systems and Facilities Permitting Process and Applicable Regulations  
**DEPARTMENT:** Planning & Community Development  
**PRESENTED BY:** Rachael Markle, AICP, Director

Public Hearing  
 Discussion

Study Session  
 Update

Recommendation Only  
 Other

**INTRODUCTION**

Light rail is on its way to Shoreline beginning service in 2023. Based on Sound Transit’s latest schedule, permit review will begin as early as 2016. While the City’s Development Code includes the permit types needed to approve the construction activities associated with the light rail systems and facilities, the City does not have a process to approve a light rail system/ facility in the existing zones.

Most of the land that Sound transit will be constructing its stations, parking garages, and rail upon is zoned Residential 6 dwelling units per acre (R-6). Obviously, a light rail transit system/ facility will not be able to comply with the limitations of that zone.

Currently, the Code specifies that light rail transit facilities/systems require a Development Agreement. The Development Agreement as defined by State law is not designed to accommodate deviations or variances from the underlying zone’s regulations.

Staff recommends using the process identified in the Comprehensive Plan for siting essential public facilities (LU60 through LU65), a Special Use Permit process, instead of the Development Agreement process.

The purpose of this study session is to:

- Have a collaborative discussion with the Commission about proposed amendments
- Respond to questions regarding the proposed amendments
- Receive feedback from the Commission on the merits of the amendments
- Determine what amendments need more research/analysis

- Identify if there is a need for additional amendments
- Deliberate and, if necessary, ask further questions of staff
- Develop a recommended set of Development Code Amendments for the Public Hearing

Amendments to Shoreline Municipal Code (SMC) Title 20 (Development Code) are processed as legislative decisions. Legislative decisions are non-project decisions made by the City Council under its authority to establish policies and regulations. The Planning Commission is the reviewing authority for legislative decisions and is responsible for holding an open record Public Hearing on the official docket of proposed Development Code Amendments and making a recommendation to the City Council on each amendment.

## **BACKGROUND**

The Planning Commission spent multiple meetings discussing draft amendments regarding the land use entitlement process that will allow Sound Transit's development activities. The Planning Commission studied these amendments on May 7, June 4, and September 3, 2015. On October 1, the Commission held a public hearing on the draft amendments and it was at this meeting staff recommended removing Sound Transit related amendments to be brought back at a later date.

Further review of existing Development Code and proposed amendments has revealed potential gaps in the City's process for permitting Sound Transit's light rail transit system/facility. The Code currently specifies that light rail transit facilities/systems require a Development Agreement. The Development Agreement as defined by State law is not designed to be a tool to accommodate deviations or variances from the underlying zone's regulations. The light rail transit facility/system is an essential public facility, and therefore, it is appropriate to allow for deviations or variances from underlying zoning to accommodate the use in certain situations. The recommendation is to instead use the process identified in the Comprehensive Plan for siting essential public facilities, a Special Use Permit Process.

The Special Use Permit process would be used to:

- Locate the light rail systems/facilities as an essential facility in zones where this use would be prohibited;
- Through the application of criteria, condition the light rail systems/facilities to be more compatible with adjacent land uses;
- Establish which regulations apply to Sound Transit projects, especially when the project is located in unclassified land. Unclassified land, is land that is not zoned which is primarily various types of right of way; and
- Approve deviations from the regulations as appropriate to accommodate the light rail systems/facilities as essential public facilities.

Additionally, the City Attorney’s Office advised that the light rail transit facility/system use should not be approved as a legislative action even though Development Agreements, the current process for approving these uses is legislative. Quasi-judicial processes are to be used when processing applications that involve a single entity, actions that are not wide in scope and based on a specific proposal. The following chart provides options for how to process a Special Use Permit for a light rail transit system/facility:

<b>Quasi Judicial Review &amp; Approval Authority OPTIONS</b>	<b>PROS</b>	<b>CONS</b>
1. Hearing Examiner in an <u>Open Record Hearing</u> makes recommendation to the <b>Council</b> and <b>Council</b> in a <u>Closed Record Hearing</u> approves/denies permit	<ul style="list-style-type: none"> <li>• Thorough review and analysis prior to <b>Council</b> review stage</li> <li>• Examiner knows how to manage the hearing process and create the necessary record to make an informed recommendation on a project permit application</li> <li>• <b>Citizens</b> would be involved and able to testify in the open record Hearing, and present argument in the closed record <b>Council</b> hearing process</li> <li>• Limits time commitment of <b>Council</b> if <b>Council</b> is willing to place strict time</li> </ul>	<ul style="list-style-type: none"> <li>• Does not follow current Code process for SUP decisions, but a special process could be created in the code amendments</li> <li>• <b>Council</b> would be prohibited from discussing matter with <b>Citizens</b> or <b>Sound Transit</b> under the Appearance of Fairness Doctrine (or, if they did have such conversations, they would need to be disclosed on the record in the hearing)</li> <li>• <b>Citizens</b> will likely be confused about difference between “open record” evidentiary</li> </ul>

	<p>limits on <b>Citizen</b> argument based on Hearing Examiner record</p> <ul style="list-style-type: none"> <li>• Keeps <b>Council</b> involved with the ultimate decision without getting bogged down in the minutiae, so long as <b>Council</b> is willing to place strict time limits on <b>Citizen</b> argument based on Hearing Examiner record</li> <li>• <b>Council</b> does not have to manage the open record evidentiary hearing process and potentially shut-down abusive, overlong, or irrelevant public testimony</li> <li>• If the current Code amendment process sets forth sufficient criteria and a clear process for approval, and <b>Sound Transit</b> meets those criteria, then basis for decision should be clear and, easy for <b>Council</b> to articulate.</li> <li>• Clear process provided for <b>Sound Transit</b></li> </ul>	<p>hearing and “closed record” argument before <b>Council</b></p>
<p>2. Planning Commission in an <u>Open Record Hearing</u> makes recommendation to <b>Council</b> and <b>Council</b> in a <u>Closed Record Hearing</u> approves/denies permit</p>	<ul style="list-style-type: none"> <li>• Would provide <b>Council</b> with an analysis and recommendation prior to final decision</li> </ul>	<ul style="list-style-type: none"> <li>• Doesn't follow current Code process for SUP decisions, but a special process could be created in the code amendments</li> <li>• Not typically the Planning Commission's role to issue a recommendation on a project specific permit—that is something the Hearing Examiner would be better suited for</li> <li>• Would be incongruous</li> </ul>

		<p>with existing code to make the Planning Commission the recommendation authority for a project permit</p> <ul style="list-style-type: none"> <li>• Planning Commission (made up of <b>Citizens</b>) might be more easily swayed by public opinion than the Hearing Examiner, who is independent and familiar with such reviews and public testimony regarding specific projects</li> <li>• <b>Council</b> would be prohibited from discussing matter with <b>Citizens</b> or <b>Sound Transit</b> under the Appearance of Fairness Doctrine (or, if they did have such conversations, they would need to be disclosed on the record in the hearing)</li> <li>• <b>Citizens</b> will likely be confused about difference between “open record” evidentiary hearing and “closed record” argument before <b>Council</b></li> </ul>
<p>3. <b>Council</b> in an <u>Open Record Hearing</u> takes testimony, comments and then makes decision</p>	<ul style="list-style-type: none"> <li>• <b>Council</b> gets a lot of face time with <b>Citizens</b></li> <li>• Places nearly the entire responsibility for the decision (for better or worse) squarely on the shoulders of the <b>Council</b></li> <li>• <b>Citizens</b> like the ability to directly address <b>Council</b></li> </ul>	<ul style="list-style-type: none"> <li>• Doesn't follow current Code process for SUP decisions, but a special process could be created in the code amendments</li> <li>• Most intense time commitment from the <b>Council</b> from among the options</li> <li>• Places nearly the entire</li> </ul>

		<p>responsibility for the decision (for better or worse) squarely on the shoulders of the <b>Council</b></p> <ul style="list-style-type: none"> <li>• Likely to be a frustrating process for <b>Sound Transit</b>, given the likely politicization of the process</li> <li>• <b>Citizens</b> likely to be frustrated by amount of time they need to sit in what will likely be a protracted <b>Council</b> hearing.</li> <li>• Difficult for <b>Council</b> members to assert control over <b>Citizen</b> comments that may be off topic, overlong, abusive or otherwise contrary to a well-run process</li> <li>• Potential for less well-developed record</li> <li>• <b>Council</b> would be prohibited under the Appearance of Fairness Doctrine from discussing matter with <b>Citizens</b> or <b>Sound Transit</b> outside the hearing process (or, if they did have such conversations, they would need to be disclosed on the record in the hearing)</li> </ul>
<p>4. Hearing Examiner after an <u>Open Record Hearing</u> makes final decision. (current process for SUP)</p>	<ul style="list-style-type: none"> <li>• <b>Council</b> would not need to spend time on permit decision process</li> <li>• <b>Council</b> would not be viewed as the permitting authority and therefore would not receive blame for the decision</li> </ul>	<ul style="list-style-type: none"> <li>• Prevents <b>Council</b> from making the final decision</li> <li>• <b>Council</b> would not be viewed as the permitting authority and therefore would not receive or credit for the decision</li> <li>• Prevents <b>Council</b> from</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Council</b> would NOT be prohibited from discussing matter with <b>Citizens</b> and <b>Sound Transit</b>, but would have no decision-making authority to change the Examiner's decision</li> <li>• <b>Citizens</b> can freely communicate with <b>Council</b></li> <li>• <b>Sound Transit</b> would likely perceive this as best process</li> </ul>	<p>being involved in the permitting process</p>
<p>5. Director <u>without a hearing</u> makes decision at administrative level (appealable to Hearing Examiner)</p>	<ul style="list-style-type: none"> <li>• <b>Council</b> would not need to spend time on permit decision process</li> <li>• <b>Council</b> would not be viewed as the permitting authority and therefore would not receive blame for the decision</li> <li>• <b>Council</b> would NOT be prohibited from discussing matter with <b>Citizens</b> and <b>Sound Transit</b>, but would have no decision-making authority to change the Examiner's decision</li> <li>• <b>Citizens</b> can freely communicate with <b>Council</b></li> </ul>	<ul style="list-style-type: none"> <li>• Doesn't follow current Code process for SUP decisions, but a special process could be created in the code amendments</li> <li>• Essentially no <b>Citizen</b> involvement without an appeal to the Hearing Examiner</li> <li>• Much greater likelihood for appeal, and frustration from <b>Citizens</b></li> </ul>

**The Draft amendments in Attachment A are utilizing Option 4, the current process for a Special Use Permit.**

Finally, the City Attorney's office noted that the majority of the light rail transit facility/system will be located in unclassified ROW. Unclassified ROW is not zoned. This may present a problem in identifying which regulations will apply to various portions of the Sound Transit project because most of the City's regulations are tied to

zones. The proposed amendments list the sections of the Development Code that are to be applied to light rail transit systems/facilities regardless of zone, and use the Special Use Permit process to refine these regulations as necessary to locate an essential public facility.

### **Consistency of Application Amendment**

#### **20.50.480 Street trees and landscaping within the right-of-way – Standards.**

The Code section noted below needs to be updated to clearly apply to light rail systems/facilities. It really doesn't need to be "zone" based and does not directly correspond to existing zones. Commercial, office, industrial, public facility and multifamily more aptly describes broad categories of uses.

A. When frontage improvements are required by Chapter [20.70](#) SMC, street trees are required ~~in~~ for all commercial, office, industrial, public facility, multifamily ~~zones~~ developments, and for single-family subdivisions on all arterial streets.

### **TIMING AND SCHEDULE**

- January 21, 2016 - Planning Commission Public Hearing
- February 8, 2016 - City Council discussion
- February 29, 2016 - City Council adoption

### **RECOMMENDATION**

No recommendation is provided for this study session. Staff may make revisions based on tonight's discussion and bring a recommended set of amendments to Commission on January 21, 2016.

### **ATTACHMENT**

Attachment A – Draft Development Code Amendments related to Light Rail Systems/Facilities