

DIRECTOR'S INTERPRETATION: IMPLEMENTATION OF RETROACTIVITY FOR O2026-597

ISSUE AND REQUEST SUMMARY

The City Council adopted Ordinance No. O2026-597, amending SMC 21.10, to make the inclusionary affordable housing program less burdensome for homeowners who are adding to or expanding their existing housing units or for those having to rebuild their housing unit(s) involuntarily due to unexpected structural loss. To provide relief to permit applicants who had submitted applications under previous versions of the program, the ordinance made the amended exemptions retroactive to January 1, 2025.

Specifically, the adopting clause of Ordinance No. O2026-597 includes a partial retroactivity statement that provides as follows:

Section 3. Retroactivity of Exemptions. The exemptions as set forth in Attachment A to this Ordinance shall be retroactive to January 1, 2025 (effective date of the affordable housing fee-in-lieu program). To consistently apply said exemption to align with the legislative intent of this Ordinance, the City shall fully refund all affordable housing in-lieu fees collected from and paid by permit applicants who would have qualified for the exemptions had they been in effect at the time they submitted their permit between January 1, 2025 and the effective date of this Ordinance; further, the City shall not assess or collect in-lieu fee obligations from any current permit applicants who are determined to qualify for the exemptions.

To date, there have been three versions of SMC chapter 21.10 since its creation on January 1, 2025 (O2024-578, O2025-583, O2026-597). Each version included a different method of fee calculation and a different list of exemptions. With the adoption of Ordinance No. O2026-597 on August 29, 2026, the intent of the retroactivity statement was to ensure that fees calculated as part of permit applications submitted between January 1, 2025 and August 29, 2026, were either maintained or reduced, consistent with the Council's intent of providing relief under new exemptions.

In some instances, fees calculated under prior versions of the code resulted in a lower fee obligation than if they were calculated under the new code. In other instances, the fee calculated under the new code resulted in a lower fee obligation. The retroactivity clause provides 'the better of' option for applicants who submitted applications under prior versions of SMC 21.10.

Interpretation Request: Staff have asked how the retroactivity statement included with Ordinance No. O2026-597 applies and how fees should be calculated for permit applications received under prior versions of SMC 21.10.

Code Reference

[SMC 21.10 – Inclusionary Affordable Housing Program](#)

Resources

[King County iMap](#)
[Sammamish Property Tool](#)

Questions?

[Submit Project Guidance](#)
[Visit the Permit Center](#)

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INTERPRETATION

For permit applications submitted between January 1, 2025 and August 29, 2026, the exemptions adopted by Ordinance No. O2026-597 shall be applied retroactively to reduce or eliminate, but not increase, the affordable housing fee-in-lieu obligation that would have applied under the version of Chapter 21.10 in effect when the application was submitted.

Staff shall first determine the fee-in-lieu obligation under the previously-applicable version of chapter 21.10 SMC, then determine the obligation after applying any retroactive exemption provided by O2026-597. Where the two calculations produce different fee-in-lieu obligations, the City shall assess the lesser amount.

David Pyle

David Pyle, Director of Community Development

CONTEXT, FACTS, AND FINDINGS

The City Council provided clear policy direction during its consideration of the amendments adopted in O2026-597. The Council intended to reduce or eliminate the burden of the affordable housing program under certain scenarios, primarily for homeowners who must involuntarily rebuild their homes due to structural damage or loss caused by an act of nature, and those seeking to add to or expand existing structures.

As the amendments to SMC 21.10 considered through O2026-597 were the City Council's response to fee-in-lieu payments being assessed as unfairly high or misaligned with the program's intent, the Council included a retroactivity clause in the ordinance intended to expand the instances in which the new exemptions may provide applicants relief. This is supported by the text in Section 3 of the ordinance, which provides "[t]he exemptions" shall be retroactive and describes retroactive implementation in terms of refunds and relief from assessment. Section 3 does not direct the City to retroactively recalculate all fee-in-lieu obligations under the amended Chapter 21.10. Rather, it expressly makes the amended exemptions retroactive and describes their retroactive application in terms of refunds and relief from assessment or collection.

The ordinance further provides the objective of consistent and fair application of Council policy. As the legislative and policy intent is to provide applicants with relief from overly burdensome fees in specific exemption scenarios, an interpretation under which some preexisting applicants receive substantial relief while others incur higher fees would not align with the Council's stated policy intent.

Accordingly, the retroactivity provision is reasonably interpreted to extend the benefit of the amended exemptions to previously submitted applications, rather than to replace a previously applicable fee calculation with a new one that results in a greater obligation.

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Therefore, staff interprets the retroactivity provisions of O2026-597 as providing relief from previously applicable fee-in-lieu obligations, rather than increasing those obligations, and staff finds that the retroactivity clause provides ‘the better of’ option for applicants who submitted applications under prior versions of chapter 21.10 SMC.