



**City of Seattle  
Office of Housing**

**DIRECTOR'S RULE**

**Housing Rule 01-2015**

**Exceptions to Ineligibility of Subsidized Low-Income Housing for Downtown Nonresidential Bonus Floor Area**

**Ordinance Authority:**

Seattle Municipal Code 23.49.012.D, 3.14.740.G

**Code and Section Reference:**

Seattle Municipal Code 23.49.012

**1. Introduction**

Development in certain Downtown zones may be allowed additional chargeable floor area above the base floor area ratio on certain conditions, which include providing low-income housing and child care to mitigate the impacts of development, or making cash contributions to support low-income housing and child care, under SMC 23.49.012. Subsection 23.49.012.D.3 generally provides that no bonus floor area may be earned by providing low-income housing if any person is receiving or will receive with respect to the low-income housing any charitable contributions or public subsidies for the development or operation of the low-income housing, including, but not limited to, "tax exempt bond financing, tax credits, federal loans or grants, City of Seattle housing loans or grants, County housing funds, State of Washington housing funds, or property tax exemptions or other special tax treatment..." SMC 23.49.012.D.4 authorizes the Director of Housing ("Director") to establish terms and conditions under which exceptions to the restriction on subsidies may be allowed. The purpose of this Director's Rule is to set forth those terms and conditions.

**2. Tax-Exempt Bonds in Conjunction with 4% Low Income Housing Tax Credit Generally Allowed**

An exception to the restriction on subsidies in SMC 23.49.012.D generally will be allowed for the use of tax-exempt bonds as prescribed under Section 142 of the Internal Revenue Code together with federal low income housing tax credits as allowed for under Section 42 of the Internal Revenue Code (generally referred to as "bonds with 4 percent credits"). An exception granted under this Section 2 may be conditioned on the determination by the Director, at the time of approval of an agreement for the use of the housing to meet bonus floor area conditions for a nonresidential project, that applicable federal and state laws respecting such bonds and credits remain in effect substantially as on the effective date of this rule, and that the availability of tax-exempt private activity bond capacity for issuers in Seattle as it exists on the effective date of this rule is not significantly reduced or constrained. As a condition to the exception, the covenant required by SMC 23.49.012 must have priority over any mortgages or deeds of trust on the

housing site for the bonds and any other financing, and over any options or other interests related to the tax credits, unless the Director waives that condition for good cause.

### **3. Multifamily Property Tax Exemption**

A. An exception to the restriction on subsidies in SMC 23.49.012.D may be allowed for use of the multifamily property tax exemption (“MFTE”) under SMC Ch. 5.73 pursuant to an application for the MFTE after the effective date of this rule. The exception for MFTE may be allowed only if either:

(i) The units that will satisfy the MFTE program’s affordable housing set-aside will not include any of the residential square footage to be provided to satisfy the low-income housing conditions related to bonus non-residential floor area, or

(ii) Each of the following three conditions is met:

(a) The low-income housing is provided as all or part of Multifamily Housing, as defined in SMC 5.73.010, that includes at least the minimum number of dwelling units with two or more bedrooms determined for purposes of SMC 5.73.040.B.1 under Table A for 5.73.040;

(b) The low-income housing will provide sufficiently greater housing affordability benefit, as determined by the Director, than would otherwise be required to satisfy both the conditions of SMC 23.49.012 and the requirements of the MFTE; and

(c) The low-income housing is located within the Downtown Urban Center or within an Urban Center adjacent to the Downtown Urban Center.

B. In order to satisfy the condition in subsection 3.A(ii)(b) above, the applicant for exception must demonstrate, at a minimum, that the income and rent limits and duration of affordability for a specified number of units with specified minimum net rentable floor area will provide additional public benefit that is at least equivalent to that which would be provided under the MFTE if all units to be restricted under the MFTE were in addition to the floor area that is proposed to be used to satisfy conditions in SMC 23.49.012 (that is, if there were a larger Multifamily Housing development and no overlapping units). If the exception is granted, the additional affordability terms must be satisfied by terms included in the covenant recorded under SMC 23.49.012. If the housing will also receive an exception for use of bonds and tax credits under this rule, then the additional affordability benefits resulting from conditions of bond financing, tax credits, or related requirements of the Washington State Housing Finance Commission do not count towards satisfying subsection 3.A(ii)(b).

**4. Restrictions Based on Permitted Subsidies Allowed.** If exceptions for subsidies are granted for any housing under this rule, then the use, occupancy or rent restrictions imposed or agreed to in connection with those subsidies, such as those contained in a regulatory agreement with the Washington State Housing Finance Commission or in a covenant with the City for the MFTE, are considered as restrictions required for the housing receiving those subsidies to qualify for the bonus floor area, so the housing units subject to those restrictions are not thereby disqualified under SMC 23.49.012.D.3 from earning bonus floor area.

### **4. Procedure.**

A. The owner or developer of housing that is intended to satisfy, wholly or in part, the low-income housing condition of SMC 23.49.012 for one or more projects including nonresidential bonus floor area

may apply to the Director for an exception under this rule. The Director may require evidence that the developer of an identified project desiring to use bonus floor area under SMC 23.49.012 has proposed a linkage with the owner of low-income housing, or may, in his or her discretion, consider an application from the owner or developer of housing in advance of any identified linkage with a developer intending to use bonus floor area.

B. The application must include a detailed description of the entire project that will include the low-income housing, evidence of the applicant's ownership or control of the housing site, identification of the units and floor area proposed for exception, identification of the nonresidential project(s) with which linkage is proposed, if known, and other information required by the Director prior to approval.

C. If the application is for use of the MFTE, it must either (i) demonstrate that the units used to satisfy the MFTE program's affordable housing set-aside do not overlap with any of the residential floor area to be used to satisfy the bonus floor area conditions in SMC 23.49.012, or (ii) include a proposal to deliver greater affordability benefits under subsection 3.A(ii)(b) of this rule, with a supporting calculation of the value of those benefits.

D. The Director may grant, condition, or deny an application under this rule. If the exception depends upon a proposal for greater affordability benefits, the Director may consider the adequacy of the proposal based on factors including, without limitation, the supporting calculations and any adjustments or revisions deemed appropriate by the Director; the extent to which the proposal responds to then-existing and projected housing needs, including particularly those created by Downtown nonresidential development; City goals and policies for housing and for the area in which the housing will be located; and the practicability of implementing the proposal and monitoring compliance. The Director's determination whether to allow an exception under this rule is final.

**5. Applicability and Effect of Exception.** Affordable housing that is granted an exception under this Section may be eligible for a linkage agreement with a project seeking bonus floor area under SMC 23.49.012, regardless whether the date as of which the terms of SMC Title 23 apply to that project preceded the effective date of this rule. Exceptions will not be granted for low-income housing that is subject to a recorded covenant for purposes of SMC 23.49.012 dated prior to application for exception. Unless otherwise expressly stated, approval of an exception is not approval of the location of the housing for purposes of any project proposing to use the low-income housing for purposes of bonus floor area, nor is it approval of any linkage of the housing to any project. Exceptions under this rule do not confer any vested rights and are not applicable for purposes of any bonus floor area, incentive, or affordable housing conditions under any other provisions of the SMC or the provisions of any land use action by the City Council, unless expressly stated in those provisions.

Approved: \_\_\_\_\_ Effective \_\_\_\_\_, 2015  
Steve Walker, Director