

## **DIRECTOR'S REPORT AND RECOMMENDATION**

### **2019/2020 Omnibus Ordinance**

### **September 30, 2019**

#### **Introduction**

The Seattle Department of Construction and Inspections (SDCI) is responsible for routine maintenance of the Land Use and other codes. The proposed amendments are called “omnibus” amendments because SDCI packages a collection of amendments for efficiency that are relatively small scale. Such amendments include relatively minor changes that don't warrant independent legislation, correcting typographical errors and incorrect section references, as well as clarifying or correcting existing code language. Following is a section-by-section description of the proposed amendments. Where the only changes are minor grammatical corrections to existing language or corrections of typographical errors, the descriptions are limited or omitted.

#### **22.214.040 Rental Registration and Inspection Ordinance – Rental housing registration, compliance declaration, and renewals**

Three changes are proposed.

The first change, to Subsection 22.214.040.A, would add language to clarify that Rental Registration and Inspection Ordinance (RRIO) inspections in rented condominiums include common areas that the tenant can access, such as entry areas and stairways. These areas should be safely maintained for the tenant occupying the condo unit.

The second change, to Subsection 22.214.040.E, would add language to clarify that registration is not complete and a registration certificate will not be issued until all fees are paid. Fees are a required element of compliance with the RRIO program.

The third change would strike existing language requiring submittal of a rental housing registration renewal application at least 30 days before the current registration expires. The thirty-day period is not needed to process renewals. Renewal can happen instantaneously via SDCI's online system and even a paper renewal requires only a few days to process.

#### **22.214.050 Rental Registration and Inspection Ordinance – Inspection and certificate of compliance required**

Two changes are proposed.

A recent change to a two-year registration cycle for RRIO also reduced the inspection exemption period for new or substantially altered properties from five years to two years. The proposed change to subsection 22.214.050.A returns the exemption to five years, which was the intent even with the change in the registration cycle.

A second change, to subsection 22.214.050.E, would clarify that an inspection is not complete, and a certificate of compliance will not be issued, until all fees are paid. Fees are a required element of compliance with the RRIO program.

### **23.22.062 Subdivisions – Preliminary Plat Considerations – Unit lot subdivisions**

The proposed change would clarify that each proposed unit lot is limited to one dwelling unit per unit lot. Existing apartment structures eligible for unit lot subdivision would be excepted. Additional language would also allow unit lots to be designated as undeveloped open space or to be developed with an accessory use only, provided that all development standards applicable to the parent lot are met. The issue arises from submission of unit lots that sometimes include two units on one unit lot to sidestep a full unit lot subdivision. Some disagreement has also occurred about whether unit lots must contain dwelling units or may be set aside as open space (such as non-disturbance area in an ECA) or just developed with accessory structures and uses (parking spaces, swimming pools, etc.). The change is consistent with existing interpretation and practice and makes the practice explicit in the Code.

### **23.22.100 Subdivisions – Design standards**

See the discussion under 23.24.040 below.

### **23.24.040 Short Plats – Criteria for approval**

Current language for the special exception to the standard limiting new lots to six sides hinders SDCI's ability to consider a range of reasons for relief from strict application of the Code. The proposed amendment to subsection 23.24.040.B.1.a would broaden the criterion to allow somewhat more discretion to approve a plat. The current language limits the relief criterion to "natural" topography, while the change would allow consideration of historic platting patterns or configuration and angled or irregular street alignment that could also cause a challenge in configuring a proposed plat to six sides.

### **23.24.045 Short Plats – Unit lot subdivisions**

See explanation under entry for 23.22.062 above.

### **23.28.030 Lot boundary adjustments - Criteria for approval**

Two changes are proposed.

The first proposed change, to subsection 23.28.030.A.4, would allow modifications to the lot shape standards, such as the requirement that a lot have no more than six sides, based on existing irregular lot shapes or if the proposed lot boundary adjustment (LBA) is establishing an irregular lot line resulting from a claim of adverse possession. The rationale for the change is that the original provisions were intended to prevent developers from intentionally creating odd-shaped parcels that enable them to skirt the application of development standards when the resulting lots are subsequently developed. However, there are other situations where it does not appear that the applicant is trying to create an opportunity to develop in ways that are not intended. Instead, in these cases the inability to meet the standards, in particular the limit on the number of sides of a lot, is the result of existing circumstances. Some but not all of those circumstances are addressed by the current code language. These amendments are meant to provide flexibility in other cases encountered by SDCI reviewers, where that appears reasonable.

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The second proposed change, to subsection 23.28.030.A.5, would require applicants to demonstrate that proposed adjusted lots would be served by existing or extended infrastructure prior to lot boundary adjustment approval. The new language would provide a means to better address issues with utility improvement requirements for LBAs that usually come from Seattle Public Utilities. If lots are reconfigured by LBA and at least one lot no longer fronts on a suitable water or sewer main, for example, the intent of the new language is to avoid a later argument from a developer that they were “surprised” by potentially costly connection requirements. LBAs, as a “Type I” nondiscretionary review, cannot be conditioned like a short subdivision to require utility improvements, but the change would potentially provide authority to require the applicant to show where the utility connection would be located for purposes of evaluating a future building permit application.

#### **23.40.060 Living Building Pilot Program**

Section 23.40.060.B sets forth standards for a project to qualify for the Living Building Pilot Program, which require meeting the International Living Future Institute (ILFI) Living Building Challenge. ILFI has adopted a new version of the Living Building Challenge, version 4.0, that is proposed to be referenced in Section 23.40.060.B. The Living Building Challenge has specific “petal” certification requirements that are different in version 4.0 than in the current version 3.1. Both versions of the Living Building Challenge are in effect during a “grace period” for version 3.1, so the proposed solution to updating the listing of specific requirements or having two listings is to just reference petal certification in general. The change will avoid the need for future Code changes if the Living Building Challenge is changed again in future.

#### **23.41.004 Design Review – Applicability**

Two changes are proposed.

The first change is as follows: The City’s Law Department asked the publisher of the City Code, MuniCode Corporation, to ignore amendments made to 23.41.004.A by Ordinance 125612, because that ordinance used the wrong base code for the amendment. The base Code should have been the Code as amended by Ordinance 125429, which made a variety of changes to the Design Review program and became effective in July 2018. The legislative history shows Ordinance 125612 as the last amending ordinance for 23.41.004 but the actual language in the text reflects the Code prior to Ordinance 125429. The proposed changes are to 23.41.004.A.4 to incorporate the language used in Ordinance 125429.

The second change is to Table A for 23.41.004. Footnote 4 to the table appears in Part B of the table and allows proposals that would otherwise be subject to full design review to go through administrative design review if they elect the Mandatory Housing Affordability (MHA) performance option. The footnote reference does not appear in Part C of the table (which applies to less intensive uses than Part B but otherwise has the same footnotes). Since the square footage thresholds for the various types of design review are the same in both Part B and Part C of the table, the omission of the footnote reference appears to be an oversight and is proposed to be added as a clarification.

#### **23.41.012 Design Review – Development standard departures**

Two changes are proposed.

The first change is to 23.41.012.B.11.a, updating a reference to the NC3-65 zone in the Roosevelt Commercial Core to NC3-75 due to changes to the zone designation, and also updating zoning references on Maps A and B for 23.41.012.

The second change is to subsection 23.41.012.B.11.g. The process for Design Review allows applicants for new structures to propose design departures from many development standards of the Land Use Code, but Section 23.41.012 prohibits departures from specific standards as listed, including height. The Code allows various rooftop features to exceed the structure height limit, provided these features meet certain rooftop coverage limits and requirements for setbacks from a roof edge. SDCI practice has been to allow departures from these coverage and setback limits. The proposed change to Section 23.41.012.B.11 would add language to the Code specifically providing for these departures in Midrise and Highrise multifamily zones and in commercial and Downtown zones. The rationale is that the departure is not from a height limit, but rather from standards intended to regulate appearance of a structure roof, and this is a subject within appropriate purview of a design review board.

#### **23.42.048 General Use Provisions – Configuration of dwelling units**

There is an apparent contradiction between this section and certain definitions. Section 23.42.048 currently says in part: “In all zones a dwelling unit exists if the use meets the requirements of subsection 23.42.048.A.1 or 23.41.48.A.2 **and if the use is not an adult family home, congregate residence, assisted living facility, or nursing home.**” However, under the definitions in Section 23.84A.032, an adult family home is "in a dwelling unit," and an assisted living facility includes "assisted living units, which by definition under Section 23.84A.002 are dwelling units. In addition, certain uses not intended to be regulated as dwelling units, such as hotel rooms and sleeping facilities in fire stations, are of the configurations described in subsections A.1 and A.2.

The proposed change is to modify the language in the introductory paragraph of Section 23.42.048.A to remove adult family homes and assisted living facilities from the list. The change would also expressly exclude hotels, motels, and sleeping areas in fire stations. The change would also clarify whether Mandatory Housing Affordability (MHA) applies, under Section 23.58C.025, to adult family homes and assisted living facilities. Consistent with Council's original intent in adopting MHA, it makes sense to apply MHA to both adult family homes and assisted living facilities because the definitions of these uses clearly describe them as dwelling units or accessory to a dwelling unit, while the definitions of congregate residence and nursing home defines these uses as residential but not specifically as dwelling units, except in the case of a nursing home with eight or fewer persons living as a household..

#### **23.42.112 General Use Provisions – Nonconformity to development standards**

The existing Code allows structures nonconforming to development standards that are occupied or accessory to residential uses to be rebuilt or replaced. The proposed change would add language to clarify that nonconforming development that is not structural, such as existing street access rather than alley access or a parking pad in a required front yard, could be maintained if a residential structure is rebuilt. This change would clarify current interpretive difficulty with the current Code where, for example, a nonconforming garage with street access might be required

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to be rebuilt with an orientation toward an alley, even though the intent of the Code is to allow a nonconforming structure to be rebuilt in its existing configuration.

#### **23.44.008 Residential, Single-Family – Development standards for uses permitted outright**

Section 23.44.008.C says that floating homes are subject to the parking provisions of Section 23.44.008, but there are no parking requirements in that section. Historically, at least as far back as 1987, the Code simply cross referenced to “this chapter,” so the change would simply reference “Chapter 23.44.”

#### **23.44.010 Residential, Single-Family – Lot requirements**

Four changes are proposed to the existing language to address specific issues that have arisen with respect to standards for single-family lots.

The first change is to the “Seventy-Five/Eighty Rule” in subsection 23.44.010.B.1.a, which is a minimum lot area exception allowing lots to qualify as building sites if they are at least 75 percent of the required minimum lot area and have an area at least 80 percent of the mean lot area of the other lots on the same block front and within the same zone. The proposed language clarifies that lots with no frontage on a particular street are not considered a part of the block front on that street for purposes of this exception. This reflects SDCI current and long-standing practice and is consistent with subsection 23.44.010.B.1.a.6, which prohibits lots with no street frontage or with less than 10 feet of street frontage to be used for the calculation of the mean area of lots along a block front.

The second change, also to the “Seventy-Five/Eighty Rule,” would change language that currently exempts lots developed with institutional uses, parks, or nonconforming nonresidential uses from the calculation of the 80 percent part of the test. Instead of listing specific uses, the proposed change would simply exempt publicly owned properties, and lots developed with nonresidential uses, from the test. The change more clearly supports the intent behind the exception, which is to allow creation or development of undersized lots that are in scale with other residentially developed lots on a block front, but not to penalize a property owner if the block front also includes a nonresidential use, such as a church or electrical substation.

The third proposed change is to the “Historic Lot Exception” of subsection 23.44.010.B.1.d, which allows separate development of lots in existence as of July 24, 1957 if they are at least 2,500 square feet in area and established in the public records by deed, platting, or building permit. Prior to amendments to this section enacted in 2014, the public records that could be relied on to establish lots also included contracts of sale. The proposed change would restore contracts of sale to the list of applicable public records that serve as a basis for the exception. The historic lot exception is meant to allow separate development of certain undersized lots that were created before minimum lot area requirements were first imposed and were held with the likely expectation that they could be separately developed. A number of types of public record were eliminated from the list when this provision was reformed in 2014, based on a conclusion that separate description in such documents did not reflect any historical intention that the parcel could be separately developed. However, a developer recently took advantage of an unintended consequence of that amendment: On a single day in the 1920s, the owner of a platted lot deeded

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the north half to the abutting owner to the north and entered into a contract to sell the south half to the abutting owner to the south. That contract was satisfied six years later, and a deed was executed. Because six years passed between the two deeds, the south half of the lot qualified for the exception, even though it likely was never historically contemplated as a separate development site. If contracts of sale were included in the public records that SDCI can rely on, the result in the example would have been to deny the building site, because the transfer of ownership of a portion of the original platted lot was merely to an adjoining landowner and not to an independent third party, and that transfer actually occurred on one day only, rather than six years later.

The fourth change is to the special exception process, requiring public notice and an appealable land use decision for development of lots less than 3,200 square feet in area. The change would reference Section 23.76.006 instead of Section 23.76.004, because the written list in 23.76.006 controls over the table of decisions in 23.76.004. Further, the change specifies that the special exception applies only to parcels that have not been previously developed, as the original regulation was enacted in response to neighborhood concerns that they were surprised by new development of parcels that they had no idea could qualify as separate lots. The special exception process provides timely notice to neighbors that such a lot has been deemed to qualify for separate development. In a case where a lot has less than 3,200 square feet of lot area but has already been separately developed, the potential for surprise to neighbors does not exist.

#### **23.44.014 Residential, Single-Family – Yards**

Eight changes are proposed.

The first change, to Section 23.44.014.C.1, would specify that both attached and detached garages may be located in required yards. There is sometimes confusion about whether the existing language, which just references “garages,” is only for detached garages and does not clearly address attached garages that project into a required yard. Since Section 23.44.016 contains standards for both attached and detached garages, the proposed fix clarifies that both attached and detached garages are regulated by that section.

The second change is to subsection 23.44.014.C.3.b. Subsection 23.44.014.C.3 in general sets forth a yard exception that both a principal residential structure and a detached accessory dwelling unit to be built closer to a lot line than the required 5-foot side yard if there is sufficient space for an easement, known as a side yard easement, that will provide a 10-foot separation between the principal residence or detached accessory dwelling unit and any principal structure or detached accessory dwelling unit on the abutting lot. Subsection 23.44.014.C.3.b further allows certain features of a principal structure or accessory structures other than detached accessory dwelling units, to project into the required side yard but requires that the projections be calculated based on an assumed property line that is 5 feet from the wall of the principal structure. The change would clarify that the assumed property line must also be 5 feet from the wall of a detached accessory dwelling unit.

A third change, to subsection 23.44.014.C.3.c, clarifies the construction of certain structural features within a side yard easement. While subsection 23.44.014.C.3.b allows some structural features such as porches, eaves or chimneys to extend into a side yard easement, the change to

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subsection 23.44.014.C.3.c clarifies that no portion of a structure, including any projections, may cross the actual property line.

The fourth change clarifies the language of a change made to subsection 23.44.014.C.4 by Ordinance 125854, which changed the requirements for accessory dwelling units. In the introductory paragraph of subsection 23.44.014.C.4, the current language allows “certain additions” to either an existing single-family structure or an existing accessory structure to extend into a required yard if the “existing single-family structure” is already nonconforming with respect to that yard. The intent was to allow not only the principal structure but an existing accessory structure to take advantage of this yard exception, but the current language appears to apply to the accessory structure only if the principal structure is nonconforming. The change clarifies that the exception applies if the “existing single-family structure or accessory structure” is already nonconforming to the yard standards.

The fifth change, also needed as a result of a change made to subsection 23.44.014.C.4 by Ordinance 125854, would amend subsection 23.44.014.C.4.b to clarify that, for certain additions to a nonconforming rear wall of an existing accessory structure being converted to a detached accessory dwelling unit, the rear wall must be at least 3 feet from the rear lot line. The current language reads as if the rear wall of the accessory structure must be at least 20 feet from the rear lot line or the centerline of an alley, if there is one. That standard is for principal residences, but the spirit of the code amendments for existing accessory structures suggests that the intent was to allow an existing nonconforming accessory structure to be 3 feet from the rear lot line similar to what is allowed for a side yard, since entirely new detached accessory dwelling units may be constructed to within 5 feet of a rear lot line without an alley or up to the rear lot line if there is an alley.

The sixth change is a minor clarification of subsection 23.44.014.C.5, regulating uncovered porches and steps in yards. The current language states that “no horizontal distance” of these features may be greater than 6 feet in a required yard. A literal reading of “horizontal distance” would allow only a circular porch or steps, so the phrase is proposed to be changed to “width and depth” no greater than 6 feet.

The seventh change clarifies that the yard exceptions for green stormwater infrastructure in 23.44.017.C.17 apply to structures that are no more than 4.5 feet tall and no more than 4 feet wide, rather than “less than” these dimensions.

The eighth change adds a new subsection 23.44.014.C.19, to specifically state that below grade structures are permitted in yards, or rather “under” yards. While Section 23.84A.046 defines “Yard” as the area from the ground upward, it is not intuitive to all code users to look in the definitions to understand that below grade structures may be allowed in required yards.

### **23.44.016 Residential, Single-Family – Parking and garages**

Two changes are proposed.

The first change is to add an introductory paragraph of subsection 23.44.016.D. There is currently a lack of clarity between subsections 23.44.016.D.3 and D.5. The proposed change is

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to add an introductory discussion to subsection D to clarify what the entire subsection is trying to accomplish, and that the intent is to regulate both attached and detached garages except as distinguished in individual subsections D.1 through D.12.

The second change is to subsection 23.44.016.D.3.a, which regulates location of detached garages in side yards that abut the rear or side yard of another lot or the rear yard of a reversed corner lot (a lot on a corner whose side yard abuts the front yard of the lot behind it) within 5 feet of a key lot's (a lot behind a reversed corner lot) side lot line. In a case where the detached garage is located partly in the principal building area and partly in both a required rear yard and the "portion of a side yard that is within 35 feet of the centerline of an alley," a literal read of the Code could lead one to conclude that the detached garage is not permitted unless it's located entirely in the side yard that is within 35 feet of the center line of an alley. This does not make sense because the garage could only be 5 feet wide.

#### **23.44.026 Residential, Single-Family – Use of landmark structures**

The proposal is to change the title and language in the section so that the Code language allowing a conditional use review for a use not otherwise permitted in the zone would apply to both landmark structures, as it does now, and to the "sites" on which they are located, because there are cases where whole sites are landmarked and it may have been the intent of the code to allow for a use on the site, but the code only states "structure." The proposal would be to add "or site" to everywhere the Code language says "structure."

#### **23.44.041 Residential, Single-Family – Accessory dwelling units**

Four changes are proposed to correct minor errors caused by Ordinance 125854, which made a variety of changes to the requirements for accessory dwelling units (ADUs) and detached accessory dwelling units (DADUs).

The first proposed change is to subsection 23.44.041.A.2 to make the language clearer that if a second ADU is proposed within an existing principal residential structure, it can be added without meeting either a green building standard, often difficult for older structures, or an affordable housing requirement for renters. These additional requirements for constructing a second ADU would apply only to new construction.

The second and third proposed changes are to Table A for 23.44.041, line f. Prior to the changes in Ordinance 125854, the features excluded from the maximum size limit included both covered porches and covered decks up to 25 square feet in area. The Ordinance deleted the word "covered" before porches, which appears to allow any porch to be excluded from maximum size limits while continuing to limit the exclusion for decks to covered decks. The change would once again specify that porches must also be covered to qualify for the exclusion. The third change inserts the word "area" following a reference to "gross floor." It is clear the word was left out as the term referenced elsewhere in line f is "gross floor area."

The fourth proposed change is to Table A for 23.44.041, line l. Prior to the changes in Ordinance 125854, the minimum separation requirement for a DADU was 5 feet from a principal structure. The ordinance changed the standard to 5 feet from a principal dwelling unit. However, the change inadvertently narrowed the standard to separation from a dwelling unit, but

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it is possible that separation from a structure containing another type of permitted principal use could be required. The term “principal structure” is broader than “principal dwelling unit,” so the proposal is to change the term back to what it was before the adoption of Ordinance 125854.

#### **23.45.506 Multifamily – Administrative conditional uses**

Existing Section 23.45.506.B provides that uses permitted as administrative conditional uses shall meet development standards, such as height and floor area limits, for uses permitted outright. The proposed change would add a sentence exempting alterations to existing nonconforming structures from conditional use review if existing nonconformity to development standards is not expanded or extended, or if no new nonconformity is created.

#### **23.45.518 Multifamily – Setbacks and separations**

Three changes are proposed.

The first change is to subsection 23.45.518.H.4, which allows decks up to 18 inches above grade to project into required setbacks or separations between structures “to the lot line.” This is confusing because setbacks relate to lot lines, but separations are between structures on a development site, and thus it is unclear how far a deck may project into separations. The change would remove “to the lot line” to allow decks up to 18 inches above grade to project into setbacks and separations to any extent.

The second change would add a new subsection 23.45.518.H.8 to allow mechanical equipment to project into required setbacks if the equipment complies with the Noise Ordinance and is at least 3 feet from a lot line. The language is already in effect for Single-Family zones and applies the same standards to multifamily zones.

The third change, to subsection 23.45.518.I.10, clarifies that the setback exceptions for green stormwater infrastructure apply to structures that are no more than 4.5 feet tall and no more than 4 feet wide, rather than “less than” these dimensions. See also 23.44.014.D.17

#### **23.45.522 Multifamily – Amenity area**

The existing language in subsection 23.45.522.D.4 requires a private amenity area to have a minimum horizontal dimension of 10 feet if it “abuts” a side lot line that is not a side street lot line. The use of the defined term “abut” in this provision results in applicants setting back the imaginary line of their required amenity area a foot or even inches from the side lot line to avoid providing a minimum 10-foot dimension. The change would remove the term “abuts” and require a private amenity area located between a structure and a side lot line that is not a side street lot line to have the minimum 10-foot horizontal dimension. If an area looks and feels like amenity area, then it should be included and be required to meet the dimensional requirements in the code.

#### **23.45.545 Multifamily – Standards for certain accessory uses**

The proposed changes to Subsection 23.45.545.C3 would make the requirements for adding solar collectors on rooftops the same as for Single-Family zones. The first change would strike the requirement that solar collectors placed on roofs must “meet minimum written energy conservation standards administered by the Director” of SDCI so the language matches Single-

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Family zones. The other minor changes would clarify that solar collectors may be added to either stair or elevator penthouses on roofs, rather than to elevator penthouses only as currently stated in the existing Code.

### **23.47A.008 Commercial – Street-level development standards**

Two changes are proposed.

The first change is to new maximum width and depth limits for structures added as a new street level development standard under subsection 23.47A.008.C.5 by Ordinance 125791, the Mandatory Housing Affordability (MHA) legislation. The width and depth are limited to 250 feet. In subsection 23.47A.014.D (the setbacks section), the code requires façade modulation requirements if a building exceeds certain width standards. It appears that the code both prohibits a building longer than 250 feet but also requires mitigation for long buildings. This seems to be internally inconsistent. The proposed change would allow an exception to the structure width limit, but not depth, if the façade is modulated according to subsection 23.47A.014.D.

The second change would correct a cross reference in subsection 23.47A.008.D.2.

### **23.47A.012 Commercial – Structure height**

Subsection 23.47A.012.C as currently written allows rooftop decks to exceed the structure height limit by two feet but also limits railings or parapets that might be placed at the edge of the roof or roof deck to a maximum of four feet above the structure height limit. Thus, railings or parapets are only allowed to extend two feet above a roof deck if the deck is built two feet above the height limit. This limitation prevents construction of roof decks above the height limit because the Building Code requires a minimum 44-inch height for railings or parapets around a roof deck, but this height added to the two-foot allowance for the roof deck results in railings and parapets that are higher than the four-foot maximum currently allowed for them. The change would allow railings and parapets around the perimeter of roof decks to be the minimum height necessary to meet Building Code requirements, even if they would exceed that maximum four-foot height limit that would apply if no roof deck were proposed.

### **23.47A.013 - Floor area ratio**

The proposed change, to 23.47A.013.B, would allow treatment of child care centers in Commercial zones as exempt from floor area ratio (FAR) limits, as is allowed in Downtown zones. In Downtown zones, child care centers are currently listed as required street-level uses and all child care centers, not just required street-level uses, are exempt from FAR calculations. In Commercial zones, institutions, except hospitals and major institutions, are listed as a required use along designated principle pedestrian streets along 80 percent of the street-level, street-facing façade per Section 23.47A.005.D. Child care centers are defined as an institutional use per Section 23.84A.018. Child care centers are not currently exempt from FAR calculations. The change would exempt them to encourage their placement in structures in these zones. A similar proposal is suggested for the Seattle Mixed zones at Sections 23.48.005 and 23.48.020.

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### **23.48.005 Seattle Mixed – Uses**

The proposed change would add child care centers to the list of uses that are required at street level. Child care centers are permitted outright in the Seattle Mixed (SM) zones. Under the SM general provisions for uses, under 23.48.005.D, child care centers are not currently listed as a required street-level use and child care centers are not exempt from FAR calculations; however, child care centers are a required street level use under several area-specific SM zones. In South Lake Union, floor area in child care use is exempt from FAR; in the University District, child care facilities are required street-level uses; in Northgate, child care facilities are required street-level uses; and in Rainier Beach, there is a FAR bonus for child care centers. Recommendations include:

- Amend SMC 23.48.005.D.1 to include child care centers as a required street-level use.
- Amend SMC 23.48.020.B to include child care centers as a use whose floor area is exempt from FAR calculations.

### **23.48.007 Seattle Mixed – Major Phased Developments**

The proposed change would add the Major Phased Development process to Seattle Mixed (SM) zones, providing the same language already in the Code for industrial zones and for all commercial zones other than SM. These provisions, common in zones for nonresidential development, were omitted when the SM zone was originally adopted.

### **23.48.020 Seattle Mixed – Floor area ratio (FAR)**

The proposed change to 23.48.020.A.1 fixes an incorrect cross reference.

Under 23.48.020.B, child care centers would be added to the list of uses exempt from FAR calculations (see detailed explanation under 23.48.005 above).

### **23.48.025 Seattle Mixed – Structure height**

The proposed change, to subsection 23.48.025.C.4.b, would add elevator penthouses to the rooftop features permitted to extend up to 15 feet above the maximum height limit. This is a clarification only, since the lead paragraph of subsection C.4 already mentions elevator penthouses but they are left out of the list of specific features following the lead paragraph.

### **23.48.220 Seattle Mixed – Floor area ratio (FAR) in South Lake Union Urban Center**

The proposed change would clarify the difference between “Base FAR” and “Maximum FAR” in Table A for 23.48.220 by adding language stating that non-exempt floor area above the base FAR is considered extra floor area, which may be obtained only by providing public amenities per Section 23.48.021 and Chapter 23.58A. This explanation is found in all other FAR regulations elsewhere in the Code that establish both a base and maximum FAR.

### **23.48.225 Seattle Mixed – Structure height in South Lake Union Urban Center**

The proposed change clarifies subsection 23.48.225.A.1. The subsection explains the difference between the base and maximum height limits, but the current Code structure leads to the conclusion that if any design departures were granted from street-level or upper-level development standards in Sections 23.48.240 or 23.48.245, a project could not use incentive zoning to gain extra floor area above a height limit. This is inconsistent with the intent of the provisions and historic practice. The solution is to strike the last part of the section that requires

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compliance with .240 and .245 clarifying that departures to these standards may be granted and the project may participate in incentive zoning.

### **23.48.245 Seattle Mixed – Upper-level development standards in South Lake Union Urban Center**

Five changes are proposed.

The first change is to correct a cross reference in subsection 23.48.245.B.1.d.2.

The second and third changes clarify podium standards under subsection 23.48.245.B.4.

The second change is to the height limit for podiums in subsection 23.48.245.B.4.a. The existing language says that the height limit extends from the street lot line to a parallel alley lot line or, if there is no alley parallel to the street lot line, to a distance of 120 feet from the street lot line or to the rear lot line if the lot is less than 120 feet deep. This standard assumes a straight street lot line but does not provide guidance on how to measure the height limit from a curved or irregular street lot line. The change would add language explaining that the measurement from a street lot line that is not straight is from the point where the distance between the street lot line and the rear lot line is the narrowest.

The third change is to podium floor area limits under subsection 23.48.245.B.4.b. The current language presents two issues. The subsection refers to "average floor area *coverage*". Also, in discussing an average floor area limit for the *podium*, it refers to standards that apply to the average floor area limit for the *tower*.

#### Issue 1:

"Coverage" is not a good term to use. Elsewhere in the code, "lot coverage" controls the area of the lot that may be covered with a structure. This provision is not regulating lot coverage. If floor plates were somehow offset, cantilevering every which way, "coverage" would include the outer bounds of the whole structure, projected to the ground plane. Instead, this regulation is revised to measure the outer bounds of each floor plate, averaged against all other floor plates.

#### Issue 2:

The subsection refers back to subsection A, "pursuant to". But subsection A addresses a tower, and this subsection addresses a podium. They are different parts of the building.

The proposed change is to remove reference to "coverage" and instead use the term "average gross floor area", as is reference elsewhere in Section 23.48.245. The change also removes the confusing reference to subsection 23.48.245.A.

The fourth change is to upper-level setback standards in subsection 23.48.245.C for development of structures on sites with frontage on certain streets listed in Table A for 23.48.245. The proposal would raise the height limit for imposing upper-level setbacks on structures containing non-residential uses from 85 feet to 95 feet to match the 95-foot limit in Section 23.48.231, which allows non-residential buildings in zones with 85-foot height limits for those structures to

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go to 95 feet without being considered a tower, if they are otherwise precluded from achieving tower heights by tower spacing or other regulations.

The fifth change is to tower limits per block or block front in 23.48.245.F. John Street is interrupted in South Lake Union between Terry and Boren because of the grade. The proposed changes clarify that “block front” on the east side of Terry does not stretch all the way from Denny to Thomas, but rather it was intended that John St (if extended) would separate two block fronts there, and thus the undedicated area is also regarded as separating the two block fronts.

#### **23.48.720 Seattle Mixed – Floor area ratio (FAR) in SM-UP zones**

In the Uptown neighborhood, street level uses are exempt from FAR limits in subsection 23.48.720.C.4, but the exemption language does not specifically say that the exemption applies to all street level uses “whether required or not,” as similar exemptions in other neighborhoods zoned Seattle Mixed do. The proposed change would allow the exemption for any street level use, as the omission of that clarifying language in the Uptown regulations appears to have been an oversight rather than intentional. We assume this was an oversight.

#### **23.48.724 Seattle Mixed – Extra floor area for open space amenities in SM-UP 160 zone**

Section 23.48.722 provides methods to achieve extra floor area in the SM-UP 160 zone (Seattle Mixed Uptown, with a structure height limit of 160 feet). This extra floor area is to be achieved by providing affordable housing for 65 percent of the extra floor area, and the remaining 35 percent is to be achieved by transfer of development rights or transfer of development potential (TDR or TDP) within the Uptown Urban Center, or by providing open space amenities per Section 23.48.724. Currently there are no TDR's or TDP's in Uptown. Section 23.48.724 allows only green street improvements or a mid-block corridor as a choice of open space amenities. The proposed change would include neighborhood open space in a new subsection of 23.48.724, as neighborhood open space is also included as an open space amenity in the incentive zoning chapter under Section 23.58A.040.

#### **23.48.740 Seattle Mixed – Street-level development standards in SM-UP zones**

The changes correct a typo and a cross reference in subsection 23.48.

#### **23.49.008 Downtown Zoning – Structure height**

The proposed change to subsection 23.49.008.B would add the Downtown Office Core 2 (DOC2) zone to the eligible zones allowing 10 percent extra height for an interesting roof and to accommodate mechanical and common recreation area. Similar development types and scale are allowed in the DOC2 zone and the Downtown Mixed Commercial (DMC) zone where this allowance currently applies.

#### **23.49.011 Downtown Zoning – Floor area ratio**

Traditionally, mezzanine spaces are considered to be “chargeable” FAR, because they are, in fact, floor area as defined in the Land Use Code. However, mezzanines in spaces that are otherwise FAR exempt such as street-level use spaces should also be considered exempt. Currently they don't meet the definition of “street-level” so they would be chargeable. This impacts buildings with existing spaces that would like to build out retail but may not have FAR to spare. A mezzanine should be able to be added that does not interrupt the

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required floor to floor heights, for the minimum depth from the façade, so that the space can be used. Otherwise there is no point in having tall ceilings if they cannot be utilized with retail space. Accordingly, a new exemption from FAR for mezzanines is proposed if they do not interrupt required minimum depth for floor to floor ceiling heights on the street level of a retail structure.

**23.49.014 Downtown Zoning – Transfer of development rights**

The proposed change would amend Table A for 23.49.014 to strike footnote 2, which limits transfer of development rights (TDRs) in a Downtown Retail Core (DRC) zone from lots in DRC zones only to lots also in DRC. This has been in the Code since amendments were made in 2001 (Ord. 120443), that were the product of the Downtown Urban Center Planning Group (DUCPG) planning study. While limiting transfers in DRC zones only from sites also zoned DRC may have made sense when the language was added to the Code, there is now only one building in the zone, the Mann Building, that still has TDRs available. The proposed change would provide increased flexibility to allow transfers to lots in DRC zones from other Downtown zones.

**23.49.056 Downtown Zoning – Downtown Office Core 1 (DOC1), Downtown Office Core 2 (DOC2), and Downtown Mixed Commercial (DMC) street facade, landscaping, and street setback requirements**

The change is to fix an incorrect height limit reference in a zone designation in subsection 23.49.056.B.1.d. The zone is now DMC 170 rather than DMC 160.

**23.49.166 Downtown Zoning – Downtown Mixed Residential, side setback and green street setback requirements**

One proposed change fixes references to a zoning designation, Downtown Mixed Residential (DMR/R 85/65), that no longer exists. All of these designations were changed to DMR/R 95/65 zones. As part of the ordinance implementing MHA in Downtown, the DMR/R 85/65 zones were rezoned to DMR/R 95/65. Section 23.49.166.A states that buildings in zones that are DMR/R 85/65 are exempt from the side setback requirements in Table A. The subsection should have been changed so that DMR/R 85/65 was updated to DMR/R 95/65. The intent was that DMR/R 95/65 is exempt from the side setback requirements in Table A.

The second change designates current Table C for 23.49.166 as Table B for 23.49.166, since there are only two tables in the section.

**23.54.015 Quantity and Design Standards for Access and Off-Street Parking – Required parking and maximum parking limits (*including bike parking*)**

Six changes are proposed.

The first proposed change would remove the language stating that the parking waivers for the first 1,500 square feet of each business establishment or the first 15 fixed seat in theaters apply in pedestrian-designated zones and simply say that the waivers apply in all commercial zones, which includes pedestrian-designated zones. The current language leads some readers to believe that the waivers apply only in zones that are both commercial and pedestrian-designated.

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A second change would add a reference to existing footnote 3 in Table B for 23.54.015 to line K, the parking standard for single-family dwelling units. Footnote 3 is the exemption from parking requirements for single-family residential uses on lots less than 3,000 square feet or less than 30 feet wide where access to parking is permitted through a required yard or setback abutting a street. While the footnote exists, it currently has no reference in the table.

The third change would remove the reference to small efficiency dwelling units (SEDUs) from bicycle parking requirements for multifamily structures in Table D for 23.54.015. The bicycle parking standards for multifamily structures currently lists SEDUs separately from dwelling units for long-term parking but omits SEDUs from short term parking. Having SEDUs in long-term is unnecessary since they are dwelling units by definition and have the same bicycle parking standard as regular units.

The fourth change is a series of amendments to the bicycle parking requirements in subsection 23.54.015.K as follows:

23.54.015.K Introductory paragraph (delete “off-street”) – The change reflects the City’s intent for required short-term bicycle parking to be possible at on-street locations near the property under review, as well as features on the site, at the applicant’s discretion and with approval by SDOT.

Subsection 23.54.015.K.2.b (location and manner of egress for bicyclists and pedestrians) – These edits clarify the intent for separate marked entry requirements for bicyclists and pedestrians to apply to parking garages serving multiple residents and not individual garages or small garages shared by two units. These give flexibility to avoid possible design complications or property constraints, which might otherwise affect availability of housing.

Subsection 23.54.015.K.2.d (wayfinding signage visibility) – These edits clarify that bicycle parking signage visible from adjacent streets is primarily addressed to short-term bicycle parking users, but that other signage for long-term bicycle parking users should also be located appropriately in a building.

Subsection 23.54.015.K.2.e (stairs clarification) – Adding the word “interior” clarifies the intent for bicycle parking not to be located where bikes must be carried down indoor flights of stairs. The current code language inadvertently creates permitting and design concerns relating to exterior stairs and the varied ways in which Seattle lots topographically relate to streets.

Subsection 23.54.015.K.3 and K.6.c (option for short-term bicycle parking on adjacent rights-of-way) – This accomplishes the intent to allow on-street short-term bicycle parking, with SDOT’s approval, for residential and non-residential uses. This would aid design flexibility and bike parking usability, in a manner already possible in Downtown zones.

Subsection 23.54.015.K.4 (clarify bicycle parking for small efficiency dwelling units) – Given other code edits, this clarifies an existing requirement as applying to long-term required bicycle parking and not short-term parking.

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Subsection 23.54.015.K.7 (public place term edit) – Substituting the term “right-of-way” instead of “public place.” The latter term is not defined in Title 23, and “right-of-way” is more commonly understood and accurate for the purposes of this code.

23.54.015.K.8 (accessible shower facilities in large buildings) – This clarification allows required shower facilities for bicyclists to be provided where “easily accessible,” which should include places accessible via elevator. This gives design flexibility and would continue to disallow unusual or inconvenient routes for bicyclists to shower facilities.

The fifth change would add a new footnote to Table D for 23.54.015 to indicate that there is no minimum bicycle parking required for income-restricted housing serving households at 60 percent of median income, when that housing has rent- and income-restriction commitments for at least 40 years. Also, an edit to a similar footnote clarifies a similar flexibility for congregate housing and supportive housing for seniors or those with disabilities. This is meant to bring parity to the treatment of parking requirements for automobiles and bicycles in these kinds of housing and avoid design challenges that could affect space for tenant amenities and services.

The sixth change clarifies the term “flexible-use parking” in Table D for 23.54.015 that addresses bike parking requirements. Because this item was intended to refer only to garage and surface parking lots that solely consist of flexible-use parking (e.g., a stand-alone parking garage or lot), the change adds that description to help distinguish it from flexible-use parking in other types of buildings.

#### **23.54.025 Quantity and Design Standards for Access and Off-Street Parking – Off-site required parking**

The current Code language in 23.54.025.A.2 says that “all applicable standards for parking accessory to the use for which the parking is required” shall be met on a site where off-site accessory parking is proposed. The suggested change would clarify that the “standards” referred to in 23.54.025.A.2 are limited to size, location, and other requirements in Chapter 23.54 and thus do not include parking standards found elsewhere in the Code. For example, standards for parking location and access in 23.45.510.C.3 apply to multi-family projects seeking a higher floor area ratio limit in Lowrise zones, but it makes no sense to impose these standards, such as requiring that parking be enclosed within the same structure as the residential use, if the parking is off-site, where it might be either on a surface lot or in a different building.

#### **23.54.030 Quantity and Design Standards for Access and Off-Street Parking – Parking space and access standards**

Subsection 23.54.030.F.2.a.3 gives SDCI the discretion to determine number and location of curb cuts in Commercial 1 and 2 zones and also suggests that both number and location of curb cuts may be determined in Seattle Mixed (SM) zones. However, Section 23.48.085.E sets forth specific requirements in SM zones limiting sites to one two-way curb cut. Thus, for SM zones, there is no intent to allow SDCI Type I discretion to determine the number of curb cuts. The change to 23.54.F.2.a.3 would continue to allow discretion to determine location of curb cuts in SM zones but not numbers.

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### **23.54.040 Quantity and Design Standards for Access and Off-Street Parking – Solid waste and recyclable materials storage and access**

Two changes are proposed.

The first change, to the standards in subsection 23.54.040.F, governing access by service providers to the storage space for solid waste and recyclable materials, would change 23.54.040.F.1.c and add a new subsection F.2.e, to specify that access ramps to both storage space and collection locations shall not exceed a 6 percent grade. This standard currently applies only to access ramps to the storage space of containers 2 cubic yards or smaller, but the grade maximum should apply to all containers and to both storage space and collection location.

The second change, also to the standards in subsection 23.54.040.F, would amend subsection 23.54.040.F.2.d for containers larger than 2 cubic yards and all compacted refuse containers, to require a 24-foot overhead clearance if direct access to the storage space by a collection vehicle is proposed.

### **23.58C.040 Mandatory Housing Affordability for Residential Development – Affordable housing—payment option**

Current code requires that gross floor area to be used in calculating the payment option be determined by dividing the total gross floor area in a development by the total number of units in a development and then multiplying that average floor area in the development by the net increase in units in "the structure". It seems more appropriate to take the net increase in total number of units in the development, not per structure, to determine the square footage to use for the MHA contribution. The proposal is to align the calculation to always use the development and not introduce a per structure number into the calculation.

### **23.58D.006 Green Building Standard – Penalties**

The proposed change is to remove the penalty section in subsection 23.58D.006.D making an applicant as well as a property owner responsible for meeting the green building commitment and liable for penalties for failing to do so. The amendment would focus the responsibility on the applicant, consistent with the other enforcement provisions.

### **23.66.342 International Special Review District – Parking and access**

Amendments are proposed to standards for accessory parking and loading in the International District to clarify that bicycle parking is eligible for waiver of the parking quantity requirements.

### **23.69.032 Major Institution Overlay District – Master plan process**

The proposed change to subsection 23.69.032.E.3 would remove references to specific comprehensive plan policies required to be considered in the Director's Report on an application for a master plan and instead simply reference the Human Development Element of the comprehensive plan to avoid the need to update the names of the specific policies when the plan is updated as it was in 2017.

### **23.73.009 Pike/Pine Conservation Overlay District – Floor area**

Two changes are proposed. The first change fixes incorrect cross references in subsection 23.73.009.C that were inserted by Ordinance 125791, the city-wide Mandatory Housing Affordability (MHA) ordinance.

The second change, to subsection 23.73.009.D, clarifies that the specific floor area exemptions for street-level uses allowed by the Pike/Pine Overlay in addition to the regular exemptions allowed by the underlying zoning only apply if a character structure, as defined by the Overlay regulations, is retained on the lot. The policy intent all along was not to allow street-level uses to be exempt if a character structure is not retained. The idea is that if a character structure is not retained, then the FAR that can be built on the property is relatively restricted.

#### **23.73.012 Pike/Pine Conservation Overlay District – Structure width and depth limits**

Minor changes to subsection 23.73.012.A. would remove references to block “face,” which is a term no longer defined in the Land Use Code and change the terminology to block “front” to reflect current definitions.

#### **23.84A.004 - “B”**

The previous omnibus ordinance (Ord. 125603) changed the definition of "block" to include references to side lot lines as possible boundaries of a block, along with alleys, rear lot lines, or the centerlines of platted streets. The same reference to side lot lines is now proposed to be included in the definition of “block front,” so it is in agreement with the definition of “block.”

#### **23.84A.032 Definitions - “R”**

In the definition of “townhouse development,” one requirement is that no portion of a dwelling unit occupy space above or below another dwelling unit. An exception is provided for units that are constructed over a shared parking garage. Since other Code provisions allow parking garages to be both under ground or to project up to 4 feet above grade, a clarification is proposed to allow townhouses to be constructed over shared parking garages that project up to 4 feet above grade.

#### **23.84A.036 Definitions - “S”**

There is some confusion about whether a street-level setback, as described in various Code sections, applies just to a portion of a structure façade that is at street level, like the first floor, or to an entire street-facing façade. Based on discussion with the original legislation drafters, the intent was to apply these setbacks to an entire structure façade. Rather than amend individual Code sections where the term appears and either strike the term “street-level” or reorganize the references so they appear only under setback standards rather than in “street-level development standards,” the suggested change is to add “street-level setback” and “upper-level setback” to the definitions to clarify what is intended.

#### **23.86.007 Measurements – Gross floor area and floor area ratio (FAR) measurement**

Two changes are proposed. The first change, to subsection 23.86.007.A.3, clarifies that bicycle parking that is covered by a structure or portion of a structure is exempt from measurement of gross floor area but, like motor vehicle parking, is counted in gross floor area if within a fully enclosed parking area.

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The second change clarifies subsection 23.86.007.C. This subsection used to relate to floor area ratio (FAR) only. In 2015, Ordinance 124883 updated this subsection to also address gross floor area not subject to FAR for residential uses in downtown and SM-SLU zones. This insertion has created some confusion about how to read the subsection. Its intent is to apply to both FAR and, separately, to gross floor area for residential development in downtown or SM-SLU. However, it reads as applying to FAR or to gross floor area allowed for residential development not subject to FAR in those zones. The phrasing causes reviewers to conclude that the provision doesn't apply to FAR outside of these zones. The proposed change would clarify that the subsection applies to calculation of FAR in all zones and applies to calculation of gross floor area in downtown and SM-SLU zones for residential development that is not subject to FAR

### **23.90.018 Enforcement of the Land Use Code - Civil enforcement proceedings and penalties**

The proposed change would add a new subsection 23.90.018.B.6 to the existing list of penalties for specific violations. This addition would label unpermitted outdoor storage as a nuisance if, after enforcement action has been taken, there continues to be a violation. The change would authorize abatement by the City in the manner authorized by law.

### **25.09.060 Regulations for Environmentally Critical Areas – General development standards**

Under subsection 25.09.060.G, Environmentally Critical Areas are subject to yearly seasonal grading restrictions that run from October 31 through April 1. Liquefaction-prone areas, peat settlement prone areas, and abandoned landfills are exempt from the restriction. The proposed change would add flood-prone areas to the exempted critical areas. The rationale is that any time-related restrictions are typically already dealt with through the critical areas fish and wildlife habitat reviews or are subject to limitations that the Washington State Department of Fish and Wildlife places on the development through their Hydraulic Project Approval, and the floodplain ordinance already requires confirmation by SDCI reviewers that the Hydraulic Project Approval has been obtained.

### **Recommendation**

Adoption of these Land Use Code amendments will help to facilitate easier understanding and improved administration and application of the Land Use and other codes. SDCI recommends approval of the proposed legislation.