

Director's Report and Recommendation

Amendments to incentive provisions in the Downtown Harborfront 2 (DH2) and the Pioneer Square Mixed (PSM) 85-120 Zones

August 28, 2012

I. INTRODUCTION

The Department of Planning and Development (DPD) is proposing minor amendments to Section 23.49.011, 23.49.013, 23.49.014, and 23.49.181 of the Downtown Chapter of the City's Land Use Code (SMC, Title 23) to correct omissions and facilitate the use of incentive provisions within two downtown zones, the Downtown Harborfront 2 (DH2) zone and the Pioneer Square Mixed (PSM) 85-120 zone.

Downtown Harborfront 2 (DH2) zone. The changes to 23.49.011, 23.49.013, and 23.49.014 would reestablish incentive provisions in the DH2 zone to enable projects to gain the extra floor area permitted above the current base floor area ratio (FAR) limit. Previous Code amendments inadvertently eliminated the original provisions that regulated how projects could gain extra floor area above the base FAR and did not substitute alternative provisions for gaining the extra floor area. Section 23.49.011 Floor area ratio would be amended to include the DH2 zone among the other downtown zones that exempt residential use from FAR calculations, thereby making it unnecessary for residential development to use incentives to gain extra floor area. Sections 23.49.011 Floor area ratio, 23.49.013 Bonus floor area for amenities and 23.49.014 Transfer of development rights would also be amended to include the DH2 zone among the other downtown zones where non-residential uses must achieve extra floor area above the base FAR through the use of incentives established in the Downtown Code.

Pioneer Square Mixed (PSM) 85-120 zone. Section 23.49.181 Bonus floor area for affordable housing in the PSM 85-120 zone applies to a specific mapped area within the PSM 85-120 zone in the Pioneer Square Special Review District, and establishes the affordable housing bonus provisions that enable development in this mapped area to gain added height and extra residential floor area. The amendments to Section 23.49.181 would accomplish the following:

- Clarify that the starting point for a 50-year affordability term attaches to the structure in which the affordable housing is provided, rather than the structure proposing to use the bonus floor area; and
- Remove an existing cap on the number of off-site units that can satisfy City-required developer contributions to affordable housing. This amendment has no impact on any other developer obligations to provide on-site affordable housing as may be imposed by other jurisdictions.

II. BACKGROUND AND ANALYSIS

The Downtown Chapter for the Land Use Code has a long history with incentive zoning. The roots of the current incentive programs, which include provisions for both floor area bonuses and the use of transfer of development rights (TDR), can be traced to the adoption of Title 23 zoning to implement the 1985 Downtown Land Use and Transportation Plan. Over the years, these provisions, along with the downtown zoning in general, have been amended many times to adapt to changes in public policy and changing development conditions.

The City conducted a major overhaul of the incentive provisions in 2001 to implement proposals in downtown neighborhood plans developed in conjunction with Seattle's Comprehensive Plan. Additional revisions occurred with amendments adopted in 2006 to implement increases in development density and height limits in several downtown zones, and again in 2011 to implement proposals developed as part of the Livable South Downtown initiative. Incentive zoning has also extended beyond downtown, and incentive provisions are now being consolidated in a new Chapter of the code, Chapter 23.58A. As a result of these changes, a few omissions or discrepancies have arisen that require attention. The amendments discussed in this Director's Report primarily address oversights that have recently surfaced as a result of omissions in previous amendments, or to respond to new conditions that make minor adjustments necessary.

DH2 zone

Background. The Downtown Harborfront 2 (DH2) zone applies to an area abutting the waterfront that is one-block deep between Alaskan Way and Elliott Avenue and that extends from Pike Street to Broad Street (See Exhibit 1 below, where the DH2 zone is shown in the area bounded by a thick black line). The zone is intended to accommodate a mix of uses at a scale that complements shoreline development and enhances public access to the waterfront. The height limits in the zone range from 55 feet to 85 feet. The base FAR in the zone is 2.5 FAR and the maximum limit on floor area is established by height and bulk limits. Much of the area was redeveloped in the mid-1990s as part of the Port of Seattle's Upland Development, including the Waterfront Landings Condominiums, Marriott Hotel, and World Trade Center. Other existing uses include Real Networks, the Seattle Art Institute, and at the extreme north end of the zone, the Spaghetti Factory, located in a structure recently nominated for designation as a Seattle Landmark (Ainsworth and Dunn Warehouse).

When the DH2 zone was established in 1985, the original provisions allowed development to exceed a base FAR of 2.5 by providing open space and/or contributing to amenities that would help implement the Harborfront Improvement Plan, Resolution 277794. Many of the elements of the Harborfront Improvement Plan were put into place through redevelopment of the Port of Seattle properties in the upland area just east of the Bell Harbor shoreline development. In 2001, the incentive provisions in the Downtown Code were substantially revised to implement Downtown Neighborhood Plans. The ordinance enacting these changes, Ordinance #120443, repealed several sections that addressed the use of incentives in individual zones to consolidate

these provisions in a new section. The section related to open space bonuses in the DH2 zone, including the Harborfront Open Space bonus, was one of the sections repealed. The effect of removing the open space bonuses was that development in the zone could no longer achieve the maximum floor area that the Code continued to indicate was allowed. With the proposed amendments, the extra floor area would be able to be gained in a manner similar to other downtown zones.

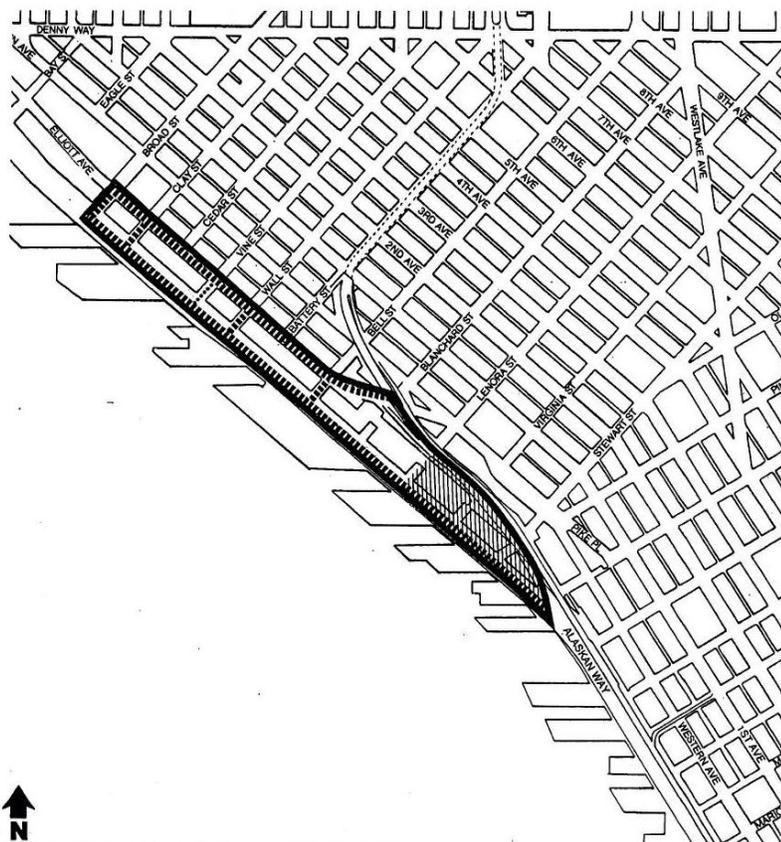


EXHIBIT 1: DH2 ZONE

Amendments to DH2 zone. To address the current lack of a mechanism that would enable development in the DH2 zone to exceed the base FAR limit and gain the additional floor area permitted under current zoning, amendments to Section 23.49.011 Floor area ratio, Section 23.49.013 Bonus floor area for amenities, and Section 23.49.014 Transfer of development rights are proposed. In terms of establishing the maximum amount of floor area allowed in a project, the Downtown Code generally treats residential and nonresidential uses differently, and the proposed amendments would apply a similar approach to the DH2 zone.

- **Residential use.** Section 23.49.011 would be amended to include the DH2 zone as one of the downtown zones where residential use is exempt from the calculation of chargeable

floor area in a project. Currently, residential use is exempt from FAR calculations in all downtown zones except the Pike Market Mixed (PMM) and DH2 zones. In the PMM zone, which has an 85 foot height limit, the FAR limit for all uses, including residential use, is 7 FAR—considerably greater than the base 2.5 FAR that applies in the DH2 zone. Development in the PMM zone is also subject to conditions in the Pike Place Market Urban Renewal Plan, but there are no requirements under any circumstances for a project to use bonuses or other incentives to gain the maximum amount of floor area allowed.

In the DH2 zone, exempting residential use from FAR limits would allow for a density of residential development that is the same as that permitted in DMR and DMC zones with similar height limits in the adjacent Belltown area. As in these zones, the maximum amount of residential use allowed in a project would be limited only by height and bulk limits, including applicable view corridor setbacks, and the use of bonuses is not required to achieve the maximum amount of floor area permitted.

- Nonresidential use. To address increases in floor area for nonresidential uses, the proposal would treat the DH2 zone the same as other downtown zones, where floor area above the base 2.5 FAR would be gained by participating in the downtown incentive programs, with 75 percent of the extra floor area gained through the use of affordable housing TDR or the housing/childcare bonus options, and the remaining 25 percent of extra floor area gained through the use of non-housing TDR and/or bonuses for amenities. The opportunities for contributions to amenities, such as green street improvements on Clay, Vine, Cedar or Wall Streets, or other off-site open space amenities, is consistent with the intent of the original bonus provisions that encouraged development in this zone to increase open space amenities and enhance access to the waterfront. To codify this change, Sections 23.49.011, 23.49.013 and 23.49.014 would be amended to include the DH2 zone among the zones subject to the provisions for gaining extra floor area above the base FAR through the use of floor area incentives, either through the use of bonuses, as established in Section 23.49.013, or TDR, as addressed in Section 23.49.014.

Implications on future development. The proposed amendments would not result in changes to the current height limits or provisions that specify the maximum amount of floor area to be permitted on a lot in this zone. The proposal would, however, reestablish a mechanism for development to achieve the limits currently specified in the Code. Remaining redevelopment opportunities in the area are limited. Of the 13.2 acres of parcel area within the zone, the combined area of parcels identified as potential redevelopment sites in 2004 was about 1.4 acres, and all of the parcels are in locations where the height limits are either 55 or 65 feet. Furthermore, the pending designation of the Ainsworth and Dunn Warehouse as a Seattle Landmark will reduce the amount of parcel area regarded as potentially available for redevelopment to about one acre.

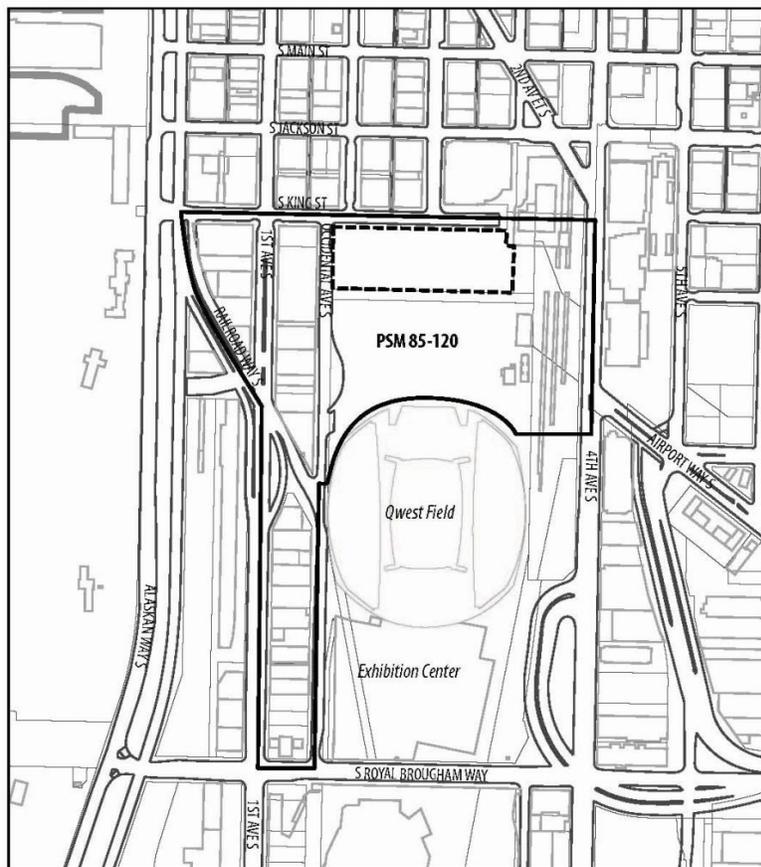
Because residential use would not be required to gain extra floor area through the use of incentives, residential projects may be a more attractive option for future development. In addition to being consistent with the treatment of residential uses in the surrounding area, this

more flexible treatment of residential use in the DH2 zone also supports the direction of the waterfront planning initiative, Waterfront Seattle, now underway, promotes increased residential development on the eastern edge of the waterfront.

PSM 85-120 zone

Background. The proposed amendments to Section 23.49.181 address development within a mapped area of about 3.85 acres that includes the former North Lot of the Kingdome site, now zoned Pioneer Square Mixed (PSM) 85-120, one of the Downtown zones established in the Land Use Code for the Pioneer Square Preservation District (See Exhibit 2 below, where the PSM 85-120 zone is shown in the area bounded by the solid black line).

Map for 23.49.180



 Area where additional height is permitted according to the provisions of Section 23.49.180 of the Seattle Municipal Code

EXHIBIT 2: PSM 85-120 ZONE

In 2009, Ordinance 123034 was adopted, allowing the proposed mixed-use development and associated bonus floor area on the North Lot (North Lot development). The legislation added two new sections, 23.49.180 and 23.49.181, to the Pioneer Square Mixed zone (Subchapter V). Section 23.49.180 included provisions for achieving additional height in a specific mapped area within the PSM 85-120 zone, including an affordable housing bonus that would be used to gain any bonus floor area above the base FAR. The affordable housing bonus provisions were included in a new Section 23.49.181. Under these provisions, the incentive was limited to an “on-site performance option,” which required all the affordable housing provided for the bonus to be located on the project site.

The North Lot development is being constructed on land provided to the developer via a purchase-and-sale agreement with King County (County), which required the developer to provide at least 100 units of affordable housing.

The first phase of the North Lot development, now called Stadium Place (201 S. King Street), is under construction (The Land Use permit was issued 4/16/2010 and the construction permit was issued 2/16/2011). The proposed FAR for the project is 6.69. The project proposes to achieve “bonus floor area” above the base FAR of 4, which, under the provisions of Section 23.49.181, would require construction of “affordable housing” totaling 63,197 square feet of net rentable floor area. This housing would be at least part of the 100 affordable housing units required by the County as a condition of the property-and-sale agreement. Since the amount of floor area in the portion of the project now under construction is below the base FAR, there has not yet been the need to use bonus floor area.

Subsequent amendments to Section 23.49.181 (Ordinance 123589, adopted in 2011) expanded the permissible location of the affordable housing to include off-site locations in the broader South Downtown area, in addition to within development on the mapped North Lot site (“off-site performance and “on-site performance,” respectively). At the time of the 2011 amendments, the “off-site” performance option was already available to development in other zones that had affordable housing incentive provisions. Section 23.49.181 limited the number of affordable housing units that could be located off-site to 70 units, in addition to the limitation that any off-site location for affordable units had to be within the South Downtown area. This is unique to the PSM 85-120 zone. The intent was to ensure that the affordable housing units provided by the mixed-use project would continue to contribute to the supply of affordable housing within South Downtown.

The origin of the 70-unit cap established in 2011 under Ordinance 123589 warrants further discussion. At the time this amendment was being proposed, the applicant for the North Lot project and the County were discussing amendments to the purchase-and-sale agreement that would permit up to 70 of the County’s required affordable housing units to be constructed off-site by an affordable housing developer. There was a potential off-site project being planned in the International District that was likely to be able to offer 70 affordable units. Given the City’s interest in retaining some of the affordable units on the project site, these conditions were used to establish the 70 unit maximum on the number of off-site units permitted in Section 23.49.181. Consequently, under Ordinance 123589, the City of Seattle permitted any and all on-site units

and up to 70 off-site units to satisfy both the terms of the developer's purchase-and-sale agreement with the County, and the City's requirement for affordable housing upon which the provision of bonus floor area would be conditioned.

Since the 2011 legislation, plans for the off-site affordable housing development have been altered, with the unit count rising from 70 to an estimated 85 units. Because the development, in its entirety, is intended to satisfy some or all of the 63,197 square feet of affordable housing required in exchange for the North Lot developer's receipt of bonus floor area, it is necessary to remove the 70-unit cap. At least 30 units of on-site affordable housing are still expected to be included in the mixed-use development, pursuant to the developer's purchase-and-sale agreement with the County. Removing the 70 unit cap will provide additional flexibility for the developer and the non-profit housing provider to arrive at a workable financial arrangement that provides the developer with the desired amount of bonus floor area on the mixed-use project site while maximizing contributions to the off-site low-income housing project, thereby enhancing its economic feasibility.

The proposed amendments would address the issues with Section 23.49.181 discussed above.

Amendments to the PSM 85-120 zone. The existing Code language presents two problems, one related to timing and location, and the other related to a cap on the number of off-site units that can satisfy the affordable housing requirement.

- **Timing and location.** The first problem concerns provisions in subsection 23.49.181.E.2.a. Because the original legislation envisioned on-site performance, it made sense for the 50-year term of affordability to attach to the building receiving bonus floor area, meaning that the clock would start on the 50 years at the point that DPD issued the building's final certificate of occupancy. Subsequent amendments in 2011 permitting off-site performance (Ordinance 1223589) inadvertently introduced a disconnect: the term of affordability attached to the building receiving bonus floor area rather than the actual location of the affordable housing. The proposed amendments would remedy this problem by attaching the 50-year affordability term to the required affordable housing itself, regardless of location.
- **Cap on units.** The 2011 amendments to Section 23.49.181 added language to permit the developer seeking bonus floor area to apply a maximum of 70 off-site units and any number of on-site units to count towards the affordable housing requirements so long as those units adhered to other performance requirements (e.g., the 50 year affordability term).¹ The 70-unit limit, however, has created an obstacle for the developer who is seeking to gain all of the bonus floor area currently needed in the project through contributions to one proposed low-income housing project. However, the number of units that could be accommodated in the amount of floor area required in the off-site

¹ The language in question appearing at 23.49.181.E.5.b.1 is structured as an exception to a general prohibition on public subsidy for the required affordable housing; however, its practical effect is to permit the same units to satisfy both City and County requirements for the developer's provisions of affordable housing.

housing project to cover the total amount of bonus floor area sought would exceed the 70 unit limit.

As noted above, the origin of the 70-unit cap established in 2011 under Ordinance 123589 came to be when 30 of these units were expected to be constructed on the site and the remaining 70 units would be constructed off-site by an affordable housing developer.

Since the 2011 legislation, plans for the off-site affordable housing development have changed from 70 units to an estimated 85 units. Because the development, in its entirety, is intended to satisfy some or all of the 63,197 square feet of affordable housing required in exchange for the North Lot developer's receipt of bonus floor area, it is necessary to remove the 70-unit off-site cap. At least 30 units of on-site affordable housing are still expected to be included in the mixed-use development, pursuant to the developer's purchase-and-sale agreement with the County.

Implications on future development. The proposed amendments to Section 23.49.181 are intended to make the incentive provisions more adaptable to accommodating the needs of both the desired mixed use development in the PSM 85-120 zone and the off-site project providing the required affordable housing units needed to permit the additional bonus floor area in that development.

The total amount of potential bonus floor area that could be permitted on the lot within the mapped area of the PSM 85-120 zone is approximately 672,000 square feet (this assumes a project develops all the bonus floor area permitted between the base FAR of 4 and the maximum FAR of 8).. Under the performance option, this would translate into a maximum of about 94,000 net square feet of affordable housing that could be provided on-site or at an off-site location to meet City requirements for affordable housing. The current project proposes to provide around 63,000 net square feet of affordable housing (the approximate amount necessary to gain bonus floor area above the base FAR of 4 to the 6.69 FAR proposed for the project), all of which could be located off-site under the proposed amendment. If additional floor area were added to the project, more affordable units would need to be provided on or off site. Units provided on-site to meet County requirements for affordable housing could potentially be used to gain additional bonus floor area on the project site if needed.

The proposal would affect zoning in the Pioneer Square Preservation District. However, discussion with DON staff to the Pioneer Square Preservation Board indicates that, while the Board would have concerns about Code changes that would affect the physical features of the project, changes to the housing bonus program would not be an issue, and the Board generally supports actions that would facilitate housing development in the South Downtown area. The proposed amendments would not result in any alterations to the approved design of the project.

RECOMMENDATION

DPD, in making the proposed recommendations to amend the provisions of the City's Land Use Code, has considered comments from citizens, affected departments, and other agencies and interests. These comments, as well as all environmental documentation that was prepared relevant to the proposed amendments, are available upon request.

In the DH2 zone, the proposed amendments will allow for orderly development by reestablishing provisions that enable projects to achieve the maximum amount of floor area originally intended for the zone. These provisions are consistent with floor area regulations and incentive provisions that apply in other, similar downtown zones that allow for additional floor area above a base FAR limit.

In the PSM 85-120 zone, the proposed amendments will clarify existing regulations and provide additional flexibility to allow a major mixed use project to secure needed bonus floor area for future phases of development while providing funding for an affordable housing project being undertaken by a housing non-profit at a nearby off-site location. In terms of mitigating the impacts on affordable housing in South Downtown, the mixed use project will contribute the same amount of affordable housing as originally required, but will be permitted to provide the total amount of the floor area required for affordable housing at a nearby location, rather than on the project site. This option for "off-site performance" is available to development using incentive provisions in other zones.

By facilitating the use of existing incentive provisions, the proposed amendments for both zones do not represent departures from adopted policies in the City's Comprehensive Plan, and in many instances reinforce neighborhood plan policies in the Comprehensive Plan for the specific neighborhoods affected. Future development using these provisions will be subject to SEPA, as required, to address potential adverse impacts. Therefore, no mitigation pursuant to SEPA policies is warranted.

DPD recommends approval of the proposed amendments.