

ORDINANCE _____

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2 AN ORDINANCE related to land use and zoning; amending Sections 23.58A.004, 23.58A.013
3 and 23.58A.014, and adding new Sections 23.58A.016 and 23.58A.018 to Chapter
4 23.58A, Incentive Zoning, in the Seattle Municipal Code in order to add provisions for
5 open space and landmarks incentives, including open space bonuses and transfer of
6 residential development potential, and to revise provisions for housing incentives, and
7 to implement Comprehensive Plan policies.

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9 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

10 Section 1. Subsection B of Section 23.58A.004, which section was enacted by
11 Ordinance 122882, is amended as follows:

12 **23.58A.004 Definitions**

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14 B. Defined Terms - General.

15 "Affordable housing" means a unit or units of low-income housing provided as
16 a condition to bonus floor area.

17 "Base FAR" or "Base floor area ratio" means the nonresidential floor area that
18 may be allowed under the provisions of the zone limiting floor area, expressed as a multiple of
19 the lot area, without use of any bonuses, transfer of development capacity, other incentive
20 provisions, or any departures, waivers, variances or special exceptions.

21 "Base residential floor area" means the amount of residential floor area
22 allowable on a lot under the provisions of the zone that expressly limit floor area, excluding
23 any floor area exempted from ~~((such))~~ the limits, without use of any bonuses, transfer of
24 development capacity, other incentive provisions, or any departures, waivers, variances or
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1 special exceptions, and before giving effect to any transfer of residential development potential
2 to another lot.

3 "Base height limit" means the height limit that would apply under the provisions
4 of the zone based upon the proposed uses in a structure, if the applicant did not qualify for any
5 additional height dependent on the provisions of this chapter, after giving effect to any
6 additional height that is actually allowed for the pitched roof of a structure and any additional
7 height that is or would be allowed under the provisions of the zone because of the slope of the
8 lot, but before giving effect to any allowance for rooftop features or any departure, waiver,
9 variance or special exception.
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12 "Bonus floor area" means bonus residential floor area or bonus nonresidential
13 floor area.
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15 "Bonus nonresidential floor area" means extra nonresidential floor area allowed
16 pursuant to any bonus provisions in this chapter.
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18 "Bonus residential floor area" means extra residential floor area allowed
19 pursuant to the bonus provisions in subchapter II of this chapter. It includes, without limitation,
20 housing bonus residential floor area. It does not include extra floor area gained through TDP.
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22 "Certificate of occupancy" means the first certificate of occupancy issued by the
23 City for a project, whether temporary or permanent, unless otherwise specified.
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1 "Extra floor area" means extra residential floor area or extra nonresidential floor
2 area.

3 "Extra residential floor area" means the gross floor area of all residential
4 development allowed in addition to a base height limit or base floor area limit, or both, under
5 the provisions of this chapter or under any other provisions of this title referring to this chapter
6 that allow a bonus or a transfer of development rights or development capacity. It includes,
7 without limitation, gross floor area in residential use in all stories wholly or in part above the
8 base height limit, and all bonus residential floor area.
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11 "Extra nonresidential floor area" means the nonresidential floor area of all
12 nonresidential development allowed in addition to base FAR or to a base height limit for
13 nonresidential use, or both, under the provisions of this chapter or under any other provisions
14 of this title referring to this chapter that allow a bonus or a transfer of development rights or
15 development capacity. It includes, without limitation, gross floor area in nonresidential use in
16 all stories wholly or in part above the base height limit for nonresidential use, and all bonus
17 nonresidential floor area.
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20 "Housing bonus residential floor area" means extra residential floor area
21 allowed on condition that low-income housing be provided, or that a payment in lieu thereof be
22 made, under subchapter II of this chapter.
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24 "Income-eligible households" means:
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1 1. In the case of rental housing units, households with incomes no higher than
2 the lower of (a) ~~((eighty))~~ 80 percent of ~~((annual))~~ median ~~((family income for the statistical~~
3 ~~area or division thereof including Seattle for which median family income is published from~~
4 ~~time to time by the U.S. Department of Housing and Urban Development, with adjustments~~
5 ~~according to household size in a manner determined by the Director of the Office of Housing))~~
6 income as defined in Section 23.84A.025; or (b) the maximum level permitted for rental
7 housing by RCW 36.70A.540 as in effect when the agreement for the ~~((units))~~housing to serve
8 as affordable housing ~~((units))~~ is executed.

10 2. In the case of owner occupancy housing units, ~~((housing affordable to and~~
11 ~~occupied by))~~ households with incomes no higher than the lesser of (a) ~~((annual))~~ median
12 ~~((family))~~ income ~~((for the statistical area or division thereof including Seattle for which~~
13 ~~median family income is published from time to time by the U.S. Department of Housing and~~
14 ~~Urban Development, with adjustments according to household size in a manner determined by~~
15 ~~the Director of the Office of Housing))~~, as defined in Section 23.84A.025, or (b) the maximum
16 level permitted for owner-occupied housing by RCW 36.70A.540 as in effect when the
17 agreement for the ~~((units))~~ housing to serve as affordable ~~((units))~~ housing is executed.

20 “Landmark TDP” means TDP transferred from, or transferable from, a
21 Landmark TDP site.

22 “Landmark TDP site” means a lot, in an area where the applicable provisions of
23 the zone permit Landmark TDP to be transferred from a lot, that includes one or more
24 structures designated wholly or in part as a landmark under Chapter 25.12 or its predecessor
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1 ordinance, and which lot includes no other structure that is not accessory to one or more of
2 such structures.

3 "Low-income housing" means housing affordable to and occupied by "income-
4 eligible households."

5 "Net bonus residential floor area" means gross square footage of "housing bonus
6 residential floor area,"((;)) multiplied by an efficiency factor of 80 percent.

7 "Open space TDP" means TDP transferred from, or transferable from, an open
8 space TDP site.

9 "Open space TDP site" means a lot, in an area where the provisions of the zone
10 permit open space TDP to be transferred from a lot, that satisfies the applicable standards for
11 an open space TDP site in this chapter and the provisions of the zone to the extent that an
12 exception from those standards has not been granted.

13 "Payment option" means making a payment to the City in lieu of providing low-
14 income housing, child care, or any amenity or feature, in order to qualify for bonus floor area.

15 "Performance option" means providing or committing to provide a physical
16 facility, or a portion or feature of a project, such as low-income housing, in order to qualify for
17 bonus floor area.

18 "Provision of the zone" means a provision of another chapter of this title
19 relating to allowable floor area or height, or to the allowance of extra floor area or additional

1 height, or both, for the area in which the lot on which extra floor area is used or proposed is
2 located.

3 “TDP” or “transferable development potential” means base residential floor area
4 that may be transferred from one lot to another pursuant to provisions of the zone that refer to
5 this chapter, measured in square feet.

6 Section 2. Section 23.58A.013 of the Seattle Municipal Code, which Section was
7 enacted by Ordinance 122882, is hereby reenacted and amended as follows:

9 **23.58A.013 Affordable housing incentive programs: purpose and findings**

10 A. Purpose; Scope of provisions; State Law Controlling. The provisions of this chapter
11 related to housing bonus residential floor area are intended to implement affordable housing
12 incentive programs authorized by RCW 36.70A.540, as it may be amended. ~~((The purpose of~~
13 ~~affordable housing incentive programs is to encourage higher density residential development~~
14 ~~in appropriate areas while ensuring that a portion of the additional development will be~~
15 ~~affordable housing, pursuant to authority granted in RCW 36.70A.540.)) In case of any
16 irreconcilable conflict between the terms of this ~~((section))~~ chapter related to housing bonus
17 residential floor area and the authority granted in RCW 36.70A.540, as it may be amended, the
18 provisions of RCW 36.70A.540, as it may be amended, shall supersede and control. Unless the
19 context otherwise clearly requires, references to RCW 36.70A.540 in this subchapter mean that
20 section as in effect on the date as of which the provisions of this title apply to the application
21 for a use permit for the project using the bonus floor area.~~

22 B. Findings. Pursuant to the authority of RCW 36.70A.540, the City finds that the
23 higher income levels specified in the definition of "income-eligible households" in Section
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1 23.58A.004, rather than those stated in the definition of "low-income households" in RCW
2 36.70A.540, are needed to address local housing market conditions throughout the City.

3 Section 3. Subsections B and C of Section 23.58A.014 of the Seattle Municipal Code,
4 which Section was enacted by Ordinance 122882, are amended as follows:

5 **23.58A.014 Bonus residential floor area for affordable housing**

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8 B. Performance option.

9 1. An applicant using the performance option shall provide low-income housing
10 with a gross floor area at least equal to the greatest of (a) 17.5 percent of the net bonus
11 residential floor area obtained through the performance option, except that an applicant may
12 elect to provide low-income housing equal to 10 percent of the net bonus residential floor area
13 obtained through the performance option if the housing is affordable to, and restricted to
14 occupancy by, households with incomes no higher than 50% of median income as defined by
15 Section 23.84A.025; or (b) 300 net residential square feet; or (c) any minimum floor area
16 specified in the provisions of the zone. The percentage of net bonus residential floor area
17 obtained through the performance option to be provided as low-income housing may be
18 reduced by the Council below 17.5 percent of the net bonus residential floor area to no less
19 than 15 percent of the net bonus residential floor area as a Type V decision on an official land
20 use map amendment or text amendment when the Council determines that the reduction is
21 needed to accomplish Comprehensive Plan goals and policies or to reflect economic conditions
22 of the area. Applicants may provide low- income housing as part of the project using extra
23 floor area, or by providing or contributing to a low-income housing project at another location,
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1 subject to requirements in subsection 23.58A.014.B.5 of this section and approval~~((ed))~~ in
2 writing by the ~~((Housing Director))~~Director of Housing prior to issuance of the first building
3 permit for the development using the bonus floor area.

4 2. Affordable housing shall serve only income-eligible households for a
5 minimum period of 50 years from the later of the date when the agreement between the
6 housing owner and the City, as referenced in subsection 23.58A.014.B.5, is recorded, or the
7 date when the affordable housing becomes available for occupancy as determined by the City.
8 For rental housing, rent shall be limited so that housing costs, including rent and basic utilities,
9 shall not exceed 30 percent of the ~~((applicable income limit))~~income limit for the unit under
10 this section, all as determined by the ~~((Housing Director))~~Director of Housing, for a minimum
11 period of 50 years. For owner-occupied housing, the initial sale price shall not exceed an
12 amount determined by the ~~((Housing Director))~~Director of Housing to be consistent with
13 affordable housing for an income-eligible household with the average family size expected to
14 occupy the unit based on the number of bedrooms, and the units shall be subject to recorded
15 instruments satisfactory to the ~~((Housing Director))~~Director of Housing providing for sales
16 prices on any resale consistent with affordability on the same basis for at least 50 years.

17 3. Affordable housing shall be provided in a range of sizes consistent with RCW
18 36.70A.540. The affordable housing shall comply with all requirements of RCW 36.70A.540.

19 4. If the affordable housing is developed within the project using the bonus floor
20 area:

21 ~~((a))~~a. The affordable housing must serve income-eligible households
22 for the minimum time period referred to in this section.

1 ~~((b))~~b. The affordable housing shall be completed and ready for
2 occupancy at or before the time when a certificate of occupancy is issued for any other units in
3 the project using the bonus residential floor area, and as a condition to any right of the
4 applicant to such a certificate of occupancy.

5 5. If the affordable housing is not being developed within the project using the
6 bonus residential floor area:

7 ~~((a))~~a. Proposals for affordable housing at a location other than within
8 the project using the bonus floor area are subject to approval by the ~~((Housing~~
9 ~~Director))~~Director of Housing. Approval requires a determination by the ~~((Housing~~
10 ~~Director))~~Director of Housing that the affordable housing will (1) be located within the same
11 neighborhood where the development using the bonus residential floor area is located, except
12 as otherwise provided in subsection 23.58A.014.B.5.b~~((B5(b) of this section))~~; (2) provide a
13 public benefit~~((, the value of which, as demonstrated by the applicant, exceeds the amount of~~
14 ~~the payment in lieu that would otherwise be paid))~~; and (3) be more affordable than market
15 rents or sale prices, as applicable, for housing in the neighborhood in which the affordable
16 housing is located.

17 ~~((b))~~b. If the applicant demonstrates to the satisfaction of the
18 ~~((Housing Director))~~Director of Housing that it is infeasible for the off-site affordable housing
19 to be located within the same neighborhood where the development using the bonus residential
20 floor area is located, then (1) ~~((i))~~the~~((Housing Director))~~ Director of Housing may allow the
21 affordable housing to be provided elsewhere ~~((in the City))~~ within the Seattle city limits, which
22 is deemed within the general area of the development using the bonus residential floor area in
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1 accordance with RCW 36.70A.540, provided that the affordable housing is within 0.5 mile of a
2 light rail or bus rapid transit station, or ~~((ii))~~ (2) if the applicant demonstrates that providing
3 the affordable housing in such a location is also infeasible, then the ~~((Housing~~
4 Director))Director of Housing may allow the ~~((off-site))~~ affordable housing to be provided
5 within .25 mile of a bus or streetcar stop~~((elsewhere within the same City sector, as delineated~~
6 by Interstate 5, the Ship Canal and Interstate 90 (as projected to Elliott Bay), where the
7 development using the bonus residential floor area is located)).

9 ~~((c))~~c. The affordable housing must serve income-eligible households
10 for the minimum time period referred to in this section pursuant to an agreement between the
11 housing owner and the City.

12 ~~((d))~~d. The agreement required by subsection 23.58A.014.B.5.c~~((e))~~
13 must be executed and recorded prior to issuance, and as a condition to issuance, of the first
14 building permit for the project using the bonus residential floor area, and in any event before
15 any permit for any construction activity other than excavation and shoring is issued.

17 ~~((e))~~e. The applicant shall provide to the City an irrevocable letter of
18 credit, or other sufficient security approved by the ~~((Housing Director))~~Director of Housing,
19 prior to and as a condition of issuance of the first building permit, other than for grading and
20 shoring, for the project using the bonus residential floor area, unless completion of the
21 affordable housing has already been documented to the satisfaction of the ~~((Housing~~
22 Director))Director of Housing and the affordable housing is subject to recorded restrictions
23 satisfactory to the ~~((Housing Director))~~Director of Housing. The letter of credit or other
24 security shall be in an amount equal to the Payment Option amount calculated according to
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1 provisions in subsection 23.58A.014.C (~~(of this section)~~), plus an amount equal to interest on
2 such payment, at the rate equal to the prime rate quoted by Bank of America or its successor at
3 the time the letter of credit or other security is provided, plus 3 percent per annum, from the
4 date of issuance of the first building permit, other than for excavation and shoring, for the
5 project using the bonus residential floor area. The letter of credit or other security shall be on
6 terms such that when a certificate of occupancy is issued for the project using the bonus
7 residential floor area, or on any earlier date 30 days before the letter of credit or other security
8 will expire, if the required quantity of affordable housing is not completed and ready for
9 occupancy or the affordable housing is not all subject to a recorded agreement sufficient to
10 satisfy the terms of this section, the City shall have a right to draw on the letter of credit or
11 other security. If and when the City becomes entitled to realize on any such security, the
12 ~~((Housing Director))~~Director of Housing shall take appropriate steps to collect the amount
13 calculated pursuant to the ~~((p))~~Payment ~~((o))~~Option provisions in subsection 23.58A.014.C (~~(of~~
14 ~~this section)~~) (after allowing credit for any affordable housing then provided and accepted by
15 the ~~((Housing Director))~~Director of Housing), with interest for the period and at the rate
16 determined pursuant to this subsection, and the amounts realized, net of any costs to the City,
17 shall be used in the same manner as cash payments for housing made under this section. To the
18 extent the City receives payment through a letter of credit or other security, the obligation of
19 the applicant to provide affordable housing will be deemed satisfied and the applicant shall be
20 deemed to have elected the payment option. The applicant shall not be entitled to any refund
21 based on later completion of affordable housing.
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1 the lot upon which the affordable housing is located agree not to seek or accept any subsidies,
2 including without limitation those items referred to subsection 23.58A.014.B.6.b.1 ~~((B6(b)(i) of~~
3 ~~this section))~~, related to housing, except for any subsidies that may be allowed by the
4 ~~((Housing Director))~~ Director of Housing under ~~((that))~~ subsection 23.58A.014.B.6.d. The
5 Director may require that such agreement provide for the payment to the City, for deposit in an
6 appropriate subfund or account, of the value of any subsidies received in excess of any
7 amounts allowed by such agreement.
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9 ~~((b))~~ b. In general, and except as may be otherwise required by
10 applicable federal or state law, no bonus residential floor area may be earned by providing
11 housing if:

12 ~~((i))~~ 1) Any person is receiving or will receive with respect to
13 the housing any charitable contributions or public subsidies for housing development or
14 operation, including, but not limited to, tax exempt bond financing, tax credits, federal loans or
15 grants, City of Seattle housing loans or grants, county housing funds, and State of Washington
16 housing funds; or

17 ~~((i))~~ 2) The housing is or would be, independent of the
18 requirements for the bonus residential floor area, subject to any restrictions on the income of
19 occupants, rents or sale prices.
20

21 ~~((e))~~ c. For the purpose of this subsection 23.58A.014.B.6, the
22 qualification for and use of property tax exemptions pursuant to Chapter 5.73 SMC, or any
23 other program implemented pursuant to Chapter 84.14 RCW, does not constitute a subsidy,
24 and any related conditions regarding incomes, rent or sale prices do not constitute restrictions.
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1 from 2008 to the year in which the sale or transfer is made, for the review and processing of
2 documents to determine compliance with income and affordability restrictions.

3 C. Payment option. The payment option is available only where the maximum height
4 for residential use under the provisions of the zone is more than 85 feet.

5 1. Amount of payments. In lieu of all or part of the performance option, an
6 applicant may pay to the City \$18.94 per square foot of net bonus residential floor area.

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8 2. Timing of payments. Cash payments shall be made prior to issuance, and as
9 a condition to issuance, of any building permit after the first building permit for a project, and
10 in any event before any permit for any construction activity other than excavation and shoring
11 is issued, unless the applicant elects in writing to defer payment. If the applicant elects to defer
12 payment, then the issuance of any certificate of occupancy for the project shall be conditioned
13 upon payment of the full amount of the cash payment determined under this section, plus an
14 interest factor equal to that amount multiplied by the increase, if any, in the Consumer Price
15 Index, All Urban Consumers, West Region, All Items, 1982-84=100, as published monthly,
16 from the last month prior to the date when payment would have been required if deferred
17 payment had not been elected, to the last month for which data are available at the time of
18 payment. If the index specified in this subsection is not available for any reason, the Director
19 shall select a substitute cost of living index. In no case shall the interest factor be less than
20 zero.
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23 3. Deposit and use of payments. Payments in lieu of affordable housing shall be
24 deposited in a special account established solely to support the development of low-income
25 housing as defined in this chapter. Earnings on balances in the special account shall accrue to
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1 that account. The ~~((Housing Director))~~ Director of Housing shall use cash payments and any
2 earnings thereon to support the development ~~((or preservation))~~ of low-income housing in any
3 manner now or hereafter permitted by RCW 36.70A.540, including renter or owner housing for
4 income-eligible households. Uses of funds may include ~~((land purchase for the purpose of
5 providing low income housing;))~~ the City's costs to administer projects, not to exceed 10
6 percent of the payments into the special account ~~((loans or grants to public or private owners or
7 developers of housing; and loans or grants to affordable households for home purchases. The
8 location of a)).~~ Affordable housing funded wholly or in part with cash payments shall be
9 located within eligible areas within the Seattle city limits, which is deemed the general area of
10 the development using the bonus residential floor area in accordance with RCW 36.70A.540.
11 Eligible areas shall be prioritized in the following order: (1) within the same neighborhoods
12 where the developments using the bonus residential floor area are located; (2) ((in the City))
13 within 0.5 mile of light rail or bus rapid transit stations; and (3) within 0.25 mile of a bus or
14 streetcar stop~~((the same City sectors delineated by Interstate 5, the Ship Canal and Interstate~~
15 ~~90 (as projected to Elliott Bay) where the developments using the bonus residential floor area~~
16 ~~are located))~~.

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20 Section 4. A new Section 23.58A.016 is added to Subchapter II of Chapter 23.58A of
21 the Seattle Municipal Code, as follows:

22 **23.58A.016 Bonus residential floor area for amenities**

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25 A. Findings. The City Council finds that:
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1 1. Amenities, including public open space, are an important aspect of livability
2 in areas targeted in the Comprehensive Plan for concentrated housing and employment growth.
3 To address this need, the Comprehensive Plan establishes goals for the amount and distribution
4 of open space. These goals are consistent with national standards developed to assist
5 communities with planning to provide adequate open space serving specified population needs.

6 2. Projects that add density will increase demand for public open space. If
7 additional public open space is voluntarily provided to offset additional demand, the impacts
8 on available open space resources will be mitigated.

9 3. The average amount of public open space, including breathing room open
10 space, needed to accommodate residential development is at least 0.14 square feet of open
11 space per gross square foot of residential floor area in a project.
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13 B. Voluntary agreements for amenities. Where expressly permitted by the provisions of
14 the zone, an applicant may achieve bonus residential floor area in part through a voluntary
15 agreement for provision of amenities to mitigate impacts of the project, subject to the limits in
16 this chapter.
17

18 1. Amenities that may be provided for bonus residential floor area include:

- 19 a. neighborhood open space, and
- 20 b. green street setbacks on lots abutting designated green streets.

21 2. The amenities listed in subsection 23.58A.016.B.1 are referred to as “open
22 space amenities” in this Section 23.58A.016. Mitigation of impacts identified in subsection
23 23.58A.016.A above may be achieved by the performance option, by the payment option, or by
24 a combination of the performance and payment options.
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1 C. Performance option.

2 1. General. An applicant electing to use the performance option shall provide
3 the amenity on the same lot as the development using the bonus floor area, except to the extent
4 a combined lot development is expressly permitted by the provisions of the zone. The
5 maximum area of any amenity or combination of amenities provided on a lot eligible for a
6 bonus is established in this subsection 23.58A.016.C and may be further limited by Section
7 23.58A.012 or the provisions of the zone. Open space amenities must meet the standards of
8 this subsection 23.58A.016.C in order to qualify for bonus residential floor area, except as may
9 be authorized by the Director under (~~that~~) subsection 23.58A.016.C.4. An open space
10 amenity may also qualify as a required residential amenity to the extent permitted by the
11 provisions of the zone.
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13 2. Maximum open space amenity for bonus. Unless otherwise specified in the
14 provisions of the zone, the amount of open space amenity for which bonus residential floor
15 area may be allowed shall not exceed the lesser of the amount required to mitigate the impact
16 created by the total bonus residential floor area in the project, or 15,000 square feet. For
17 purposes of this Section 23.58A.016, the amount of open space required to mitigate that impact
18 is 0.14 square feet of open space amenity per square foot of bonus residential floor area, unless
19 the Director determines, as a Type I decision, that a different ratio applies based on
20 consideration of one or both of the following:
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22 a. the overall number or density of people anticipated to use or occupy
23 the structure(s) in which bonus residential floor area will be located, in relation to the total
24 floor area of the structure(s), is different from the density level of approximately 1.32 persons
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1 per 1,000 gross square feet, which was used to establish the ratio in subsection 23.58A.016.C,
2 such that a different amount of open space is needed to mitigate the project impacts;

3 b. characteristics or features of the project mitigate the impacts that the
4 anticipated population using or occupying the structure(s) in which bonus residential floor area
5 will be located would otherwise have on open space needs.

6 3. Bonus Ratio. Neighborhood amenities may be used to gain bonus residential
7 floor area according to the following ratios and subject to the limits of this Section 23.58A.016:
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9 a. For a neighborhood open space, 7 square feet of bonus residential
10 floor area per 1 square foot of qualifying neighborhood open space area (7:1).

11 b. For a green street setback, 5 square feet of bonus residential floor area
12 per 1 square foot of qualifying green street setback area (5:1).

13 4. Standards for open space amenities. The following standards apply to all
14 open space amenities identified in this subsection 23.58A.016.C.4 except as otherwise
15 specifically stated in this subsection 23.58A.016.C.4 or in the provisions of the zone.

16 a. Public Access. The open space must be open during daylight hours
17 and accessible to the general public, without charge, for reasonable and predictable hours, for a
18 minimum of 10 hours each day of the year, except that access may be limited temporarily as
19 required for public safety and maintenance reasons. Within the open space, property owners,
20 tenants and their agents shall allow members of the public to engage in activities allowed in the
21 public sidewalk environment, except that those activities that would require a street use permit
22 if conducted on the sidewalk may be excluded or restricted. Free speech activities such as hand
23 billing, signature gathering, and holding signs, all without obstructing access to the space, any
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1 building, or other adjacent features, and without unreasonably interfering with the enjoyment
2 of the space by others, shall be allowed. While engaged in allowed activities, members of the
3 public may not be asked to leave for any reason other than conduct that unreasonably interferes
4 with the enjoyment of the space by others unless the space is being closed to the general public
5 consistent with this subsection 23.58A.016.C. No parking, storage or other use may be
6 established on or above the surface of the open space except as provided in subsection
7 23.58A.016.C.4.b.6. Use by motor vehicles of open space for which bonus residential floor
8 area is granted is not permitted. The open space shall be identified clearly with the City's
9 public open space logo on a plaque placed at a visible location at each street entrance providing
10 access to the feature. The plaque shall indicate, in letters legible to passersby, the nature of the
11 bonus feature, its availability for general public access, and additional directional information
12 as needed.
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15 b. Standards for Neighborhood Open Space. Neighborhood open space
16 used to qualify for bonus floor area must satisfy the conditions in this subsection
17 23.58A.016.C.4.b, unless an exception is granted by the Director as a Type I decision, based on
18 the Director's determination that, relative to the strict application of the standards, the
19 exception will result in improved public access and use of the space or a better integration of
20 the space with surrounding development:
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22 1) The open space must be improved in compliance with the
23 applicable provisions of this Section 23.58A.016. The open space must consist of one
24 continuous area with a minimum of 3,000 square feet and a minimum horizontal dimension of
25 10 feet.
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1 tables, or both, may be provided and reserved for customers of restaurants or other uses
2 abutting the open space, but the area reserved for customer seating shall not exceed 15 percent
3 of the open space area or 500 square feet, whichever is less.

4 c. Standards for green street setbacks.

5 1) Where permitted by the provisions of the zone, bonus
6 residential floor area may be gained for green street setbacks by development on lots abutting
7 those street segments that are listed or shown as green streets in the provisions of the zone.
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9 2) A green street setback must be provided as a setback from a
10 lot line abutting a designated green street. The setback must be continuous for the length of the
11 frontage of the lot abutting the green street, and a minimum of 50 percent of the setback area
12 eligible for a bonus shall be landscaped. The area of any driveways in the setback area is not
13 included in the bonusable area. For area eligible for a bonus, the average setback from the
14 abutting green street lot line shall not exceed 10 feet, with a maximum setback of 15 feet. The
15 design of the setback area shall allow for public access, such as access to street level uses in
16 abutting structures or access to areas for seating. The Director may grant an exception to the
17 standards in this subsection 23.58A.016.C.4.c as a Type I decision, based on the Director's
18 determination that the exception is consistent with a green street concept plan, if one exists,
19 established in accordance with DR 11-2007, or a successor rule.
20
21

22 d. Declaration. When open space is to be provided for purposes of
23 obtaining bonus residential floor area, the owner(s) of the lot using the bonus residential floor
24 area, and of the lot where the open space is provided, if different, shall execute and record a
25 declaration and voluntary agreement in a form acceptable to the Director identifying the
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1 features; acknowledging that the right to develop and occupy a portion of the gross floor area
2 on the lot is based upon the long-term provision and maintenance of the open space and that
3 development is restricted in the open space; and committing to provide and maintain the open
4 space.

5 e. Identification. The open space shall be identified clearly with the
6 City’s public open space logo on a plaque placed at a visible location at each street entrance
7 providing access to the feature. The plaque shall indicate, in letters legible to passersby, the
8 nature of the bonus feature, its availability for general public access, and additional directional
9 information as needed.
10

11 f. Duration; Alteration. Except as provided for in this subsection
12 23.58A.016.C.4.f, the owners of the lot using the bonus residential floor area and of the lot
13 where the open space amenity is located, if different, including all successors, shall provide
14 and maintain the open space amenities for which bonus residential floor area is granted, in
15 accordance with the applicable provisions of this Section 23.58A.016, for as long as the bonus
16 residential floor area gained by the open space amenities exists. An open space amenity for
17 which bonus residential floor area has been granted may be altered or removed only to the
18 extent that either or both of the following occur, and alteration or removal may be further
19 restricted by the provisions of the zone and by conditions of any applicable permit:
20
21

22 1) The bonus residential floor area permitted in return for the
23 specific open space amenity is removed or converted to a use for which bonus residential floor
24 area is not required under the provisions of the zone; or
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1 c. Cash payments shall be made prior to issuance, and as a condition to
2 issuance, of the first building permit for a project, and in any event before any permit for any
3 construction activity other than excavation and shoring is issued.

4 d. Any payment in lieu of providing neighborhood open space shall be
5 deposited in a dedicated fund or account solely to support acquisition or development of public
6 open space within 0.25 mile of the lot using the bonus floor area, or within another area
7 prescribed by the provisions of the zone, or at another location where the applicant and the
8 Director agree that it will mitigate the direct impacts of the project, and the payment shall be
9 expended within five years of receipt for such purposes.
10

11 Section 5. A new Section 23.58A.018 is added to Subchapter II of Chapter 23.58A of
12 the Seattle Municipal Code, as follows:

13 **23.58A.018 Transfer of residential development potential**
14

15 A. Scope and Applicability.

16 1. This Section 23.58A.018 contains rules for transfer of residential
17 development potential to lots in areas for which other provisions of this title specifically refer
18 to provisions of this Section 23.58A.018.

19 2. Whether a lot may be eligible as a TDP sending site is determined by the
20 provisions of the zone in which the lot is located. To be eligible as a sending lot for a specific
21 category of TDP defined in this Chapter 23.58A, the lot must satisfy the applicable conditions
22 of this Section 23.58A.018 except to the extent otherwise expressly stated in the provisions of
23 the zone. Whether a lot is eligible as a TDP receiving lot, and whether the lot may receive
24 TDP from another lot, and what categories of TDP the lot may receive, are determined by the
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1 provisions of the zone. The transfer of TDP and use of TDP on any receiving lot is subject to
2 the limits and conditions in this chapter, the provisions of the zone, and all other applicable
3 provisions of this title.

4 B. TDP Required Before Construction. No permit after the first building permit, and in
5 any event, no permit for any construction activity other than excavation and shoring, and no
6 permit for occupancy of existing floor area by any use based upon TDP, will be issued for
7 development that includes TDP until the applicant's possession of TDP is demonstrated to the
8 satisfaction of the Director.
9

10 C. General Standards for Sending Lots.

11 1. TDP Calculation. The maximum amount of floor area that may be transferred
12 is the amount by which the base residential floor area of the sending lot exceeds the sum of:

- 13 a. any nonexempt residential floor area existing on the sending lot; plus
- 14 b. any existing floor area of uses accessory to nonexempt residential
15 uses, except to the extent that floor area is exempt from floor area limits under the provisions
16 of the zone; plus
- 17 c. any TDP previously transferred from the sending lot.
18

19 2. Floor Area Limit After Transfer. After TDP is transferred from a sending lot
20 the amount of residential floor area that may then be established on the sending lot, other than
21 floor area exempt from limits on residential floor area under the provisions of the zone, shall be
22 equal to the base residential floor area, plus any net amount of TDP previously transferred to
23 that lot, minus the total of (a) the existing residential floor area on the lot, plus (b) the amount
24 of TDP transferred from the lot.
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1 D. Standards for Landmark TDP sending lots. Landmark structures on sending lots
2 from which Landmark TDP is transferred shall be rehabilitated and maintained as required by
3 the Landmarks Preservation Board.

4 E. Standards for open space TDP sending lots. The following standards apply unless
5 provisions of the zone state otherwise:

6 1. General conditions. Open space TDP sites must satisfy the conditions of this
7 subsection 23.58A.018. E.1, unless an exception is granted by the Director:

8 a. Each portion of the open space shall be accessible from each other
9 portion of the open space without leaving the open space.

10 b. The open space shall have a minimum area of 5,000 square feet.

11 c. The open space shall be directly accessible from the sidewalk or
12 another public open space, including access for persons with disabilities.

13 d. The open space shall be at ground level, except that in order to
14 provide level open spaces on steep lots, some separation of multiple levels may be allowed,
15 provided they are physically and visually connected.

16 e. No more than 20 percent of the lot may be occupied by any above
17 grade structures.

18 f. The lot shall be located a minimum of 0.25 mile from the closest lot
19 approved by the Director as a separate open space TDP site, unless the lot is abutting another
20 TDP site and is designed to integrate with the other TDP site.

21 g. The open space shall be open during daylight hours and accessible to
22 the general public, without charge, for reasonable and predictable hours, for a minimum of 10
23

1 hours each day of the year, except that access may be limited temporarily as required for public
2 safety and maintenance reasons. Within the open space, property owners, tenants and their
3 agents shall allow members of the public to engage in activities allowed in the public sidewalk
4 environment, except that those activities that would require a street use permit if conducted on
5 the sidewalk may be excluded or restricted. Free speech activities such as hand billing,
6 signature gathering, and holding signs, all without obstructing access to the space, any
7 building, or other adjacent features, and without unreasonably interfering with the enjoyment
8 of the space by others, shall be allowed. While engaged in allowed activities, members of the
9 public may not be asked to leave for any reason other than conduct that unreasonably interferes
10 with the enjoyment of the space by others unless the space is being closed to the general public
11 consistent with this subsection 23.58A.018.E.1.g.
12

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14 h. The open space shall be identified clearly with the City’s public open
15 space logo on a plaque placed at a visible location at each street entrance providing access to
16 the feature. The plaque shall indicate, in letters legible to passersby, the nature of the bonus
17 feature, its availability for general public access, and additional directional information as
18 needed.
19

20 i. Unless the open space will be in public ownership, the applicant shall
21 make adequate provision to ensure the permanent maintenance of the open space.

22 2. Special exception for open space TDP sites. The Director may grant, or grant
23 with conditions, an exception to the standards for open space TDP sites in this subsection
24 23.58A.018.E and any applicable Director’s Rule(s), as a special exception pursuant to Chapter
25 23.76, Procedures for Master Use Permit and Council Land Use Decisions. In determining
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1 whether to grant, grant with conditions, or deny a request for special exception under this
2 subsection, the Director shall consider:

3 a. the extent to which the exception would result in an open space TDP
4 site that better meets the intent of the provisions of this subsection 23.58A.018.E; and

5 b. the extent to which the exception would allow the design of the open
6 space to take advantage of unusual site characteristics or conditions in the surrounding area,
7 such as views and relationship to surroundings.
8

9 3. After any TDP is transferred from an open space TDP site, lot coverage by
10 structures shall be permanently limited to 20 percent, or any greater amount that was allowed
11 as a special exception prior to the transfer, and no development shall be permitted that would
12 be inconsistent with the standards under which it was approved as an open space TDP sending
13 site.
14

15 F. Time of Determination of TDP Eligible for Transfer. The eligibility of a sending lot
16 to transfer TDP, and the amount transferable from a sending lot, shall be determined as of the
17 date of transfer from the sending lot and shall not be affected by the date of any application,
18 permit decision or other action for any project seeking to use the TDP.
19

20 G. Reservation in Deed. Any TDP eligible for transfer may instead be reserved in the
21 conveyance of title to an eligible sending lot, by the express terms of the deed or other
22 instrument of conveyance reserving a specified amount of TDP, provided that an instrument
23 acceptable to the Director is recorded binding the lot to the terms and conditions for eligibility
24 to send TDP under this section 23.58A.018. Any TDP so reserved shall be considered
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1 transferred from that lot and later may be conveyed by deed without participation of the owner
2 of the lot.

3 H. TDP Deeds and Agreements.

4 1. The fee owners of the sending lot shall execute a deed, and shall obtain the
5 release of the TDP from all liens of record and the written consent of all holders of
6 encumbrances on the sending lot other than easements and restrictions, unless the requirement
7 for a release or consent is waived by the Director for good cause. The deed shall be recorded in
8 the King County real property records. When TDP is conveyed to the owner of a receiving lot
9 described in the deed, then unless otherwise expressly stated in the deed or any subsequent
10 instrument conveying the lot or the TDP, the TDP shall pass with the receiving lot whether or
11 not a structure using the TDP shall have been permitted or built prior to any conveyance of the
12 receiving lot. Any subsequent conveyance of TDP previously conveyed to a receiving lot shall
13 require the written consent of all parties holding any interest in or lien on the receiving lot from
14 which the conveyance is made. If the TDP is transferred other than directly from the sending
15 lot to the receiving lot using the TDP, then after the initial transfer, all subsequent transfers
16 also shall be by deed, duly executed, acknowledged and recorded, each referring by King
17 County recording number to the prior deed.
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21 2. Any person may purchase any TDP that is eligible for transfer by complying
22 with the applicable provisions of this Section 23.58A.018, whether or not the purchaser is then
23 an applicant for a permit to develop real property or is the owner of any potential receiving lot.
24 Any purchaser of the TDP (including any successor or assignee) may use the TDP to obtain
25 floor area above the applicable base height limit or base floor area limit on a receiving lot to
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1 the extent that use of TDP is permitted under the Land Use Code provisions applicable with
2 respect to the issuance of permits for development of the project intended to use the TDP. The
3 Director may require, as a condition of processing any permit application using TDP or for the
4 release of any security posted in lieu of a deed for TDP to the receiving lot, that the owner of
5 the receiving lot demonstrate that the TDP has been validly transferred of record to the
6 receiving lot, and that the owner has recorded in the real estate records a notice of the filing of
7 such permit application, stating that the TDP is not available for retransfer.
8

9 3. As a condition to the effective transfer of Landmark TDP, except from a
10 City-owned sending lot, the fee owner of the sending lot shall execute and record an agreement
11 running with the land, in form and content acceptable to, and accepted in writing by, the
12 Director of the Department of Neighborhoods, providing for the rehabilitation and maintenance
13 of the historically significant or other relevant features of the structure or structures on the lot
14 and acknowledging the restrictions on future development resulting from the transfer. The
15 Director may require evidence that each holder of a lien has effectively subordinated the lien to
16 the terms of the agreement, and that any holders of interests in the property have agreed to its
17 terms. To the extent that a Landmark structure on the sending lot, or an historically significant
18 structure on a sending lot in a special review district, the presence of which is a condition to
19 eligibility to transfer TDP under the provisions of the zone, requires restoration or
20 rehabilitation for the long-term preservation of the structure or its historically or architecturally
21 significant features, the Director of the Department of Neighborhoods may require, as a
22 condition to acceptance of the necessary agreement, that the owner of the sending site apply for
23 and obtain a certificate of approval from the Landmarks Preservation Board, or from the
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1 Department of Neighborhoods Director after review by the Pioneer Square Preservation Board
2 or International Special Review District Board, as applicable, for the necessary work, or post
3 security satisfactory to the Director of the Department of Neighborhoods for the completion of
4 the restoration or rehabilitation, or both.

5 Section 6. The provisions of this ordinance are declared to be separate and severable.
6 The invalidity of any particular provision, or its invalidity as applied in any circumstances,
7 shall not affect the validity of any other provision or the application of the particular provision
8 in other circumstances.
9

1 Section 7. This ordinance shall take effect and be in force thirty (30) days from and
2 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
3 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the ____ day of _____, 2009, and signed by me in
5 open session in authentication of its passage this ____ day of _____, 2009.

6 _____
7
8 _____

9 President _____ of the City Council

10
11 Approved by me this ____ day of _____, 2009.

12
13
14 _____

15 Gregory J. Nickels, Mayor

16
17 Filed by me this ____ day of _____, 2009.

18
19
20 _____

21 City Clerk

22 (Seal)