

DPD/OH

Director's Rule 22-2006

Applicant: CITY OF SEATTLE Department of Planning and Development (DPD) Office of Housing (OH)	Page 1 of 7	Supersedes: N/A				
	Publication: 7/24/06; 2/8/07	Effective: 3/1/07				
Subject: Housing Bonus for Additional Residential Floor Area in DOC 1, DOC 2, DMC 240/400, and DMC 340/400 zones	Code and Section Reference: SMC 23.49.015					
	Type of Rule: Code Interpretation					
	Ordinance Authority: SMC 3.06.040 and 3.14.740					
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Index: Land Use Code, Technical and Procedural Requirements	<table border="1"><thead><tr><th>Approved</th><th>Date</th></tr></thead><tbody><tr><td colspan="2">Diane M. Sugimura, Director, DPD</td></tr></tbody></table>		Approved	Date	Diane M. Sugimura, Director, DPD	
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Background

SMC 23.49.015 allows additional residential gross floor area and height in developments on sites zoned DOC-1, DOC-2, DMC 240/290-400, and DMC 340/290-400 when housing affordable for low- and moderate-income households, or payment in lieu thereof, is provided. Such housing mitigates a portion of the housing-related impacts of higher-density residential development, as quantified by a City-commissioned study, Residential Nexus Analysis City of Seattle prepared by Keyser Marston Associates, Inc.

SMC 23.49.015 was enacted pursuant to RCW 36.70A.540, and in case of any conflict, the requirements of that statute control. This Rule does not restate all of the provisions of SMC 23.49.015 or RCW 36.70A.540.

The affordable housing may be provided on or adjacent to the development site (performance option), or a developer may make a financial contribution to a fund for affordable housing (payment option), or the two options may be combined. In order to qualify, the housing must be affordable and available to low- and/or moderate-income households for a minimum period of 50 years from the date on which the final certificate of occupancy for the affordable housing is issued.

Rule

I. MUP Application and DPD Decision on Bonus Development

Any Master Use Permit application to establish bonus development under SMC 23.49.015 must include a calculation of the amount of square footage of bonus development sought and the manner in which the applicant intends to qualify for bonus development. The applicant may specify alternative means, such as sole use of the cash option or performance option, or some combination, so long as each alternative would satisfy the conditions of the Land Use Code and this Rule.

If the applicant specifies the performance option, the applicant shall specify:

- whether the affordable housing will be within the building(s) using the bonus development or in one or more adjacent buildings;
- whether the affordable housing will be developed by the applicant;
- estimated number of units and square footage of affordable housing;
- the proposed distribution of affordable units by number of bedrooms and location within the building(s); and
- if applicable, the amount and terms of any financial contribution by the applicant to the affordable housing developed or being developed under separate ownership.

If the DPD Director makes a Master Use Permit decision approving all or part of the proposed bonus development, the DPD Director shall also issue a Type I decision (not subject to public notice and comment or appealable to the City's Hearing Examiner) as to the amount of bonus development and the conditions to be satisfied by the applicant, which may include alternatives and may include adjustments to the applicant's proposal.

II. Performance Option

The following provisions apply to any housing an applicant provides, or is considered to provide under SMC 23.49.015B3, within or adjacent to the residential tower using the bonus development.

A. General Guidelines

- **Type of affordable housing:** To the extent practicable, affordable housing provided to qualify for a bonus must include a range of unit sizes (e.g. studio, 1-bedroom, 2-bedroom, etc.) in the same proportion as those within the entire building, except that affordable units may be smaller than market-rate units in terms of square footage.

- **Siting of affordable housing:** All affordable housing must be situated either in the same building where the bonus development is used or on an adjacent lot. The availability of any amenities (e.g. open space, community rooms, athletic facilities) must be the same for residents of both market-rate and affordable units in the highrise development.
- **Design, construction, and maintenance standards:** Affordable units shall be comparable in design and general appearance to market-rate units, except that affordable units may have different interior finishes and features provided that such finishes and features are durable, of good quality and consistent with contemporary standards for new housing. Affordable rental units must be maintained in the same manner as market-rate rental units.
- **Other Subsidies:** Exceptions to restrictions on use of other subsidies for bonused housing outlined in SMC 23.49.015D may be allowed if deemed appropriate by the Housing Director to facilitate creative approaches to the provision of affordable housing resulting in higher quality or quantity of housing than would otherwise be developed.
- **Casualty loss/replacement:** The following terms shall apply so long as the maintenance of the affordable housing then remains as a permit condition pursuant to SMC 23.49.015, and similar provisions shall be included in the recorded agreements binding on the owners of the affordable housing. In the event that all or part of the development containing the affordable housing is damaged or destroyed by fire or other casualty, or is taken by condemnation or deed in lieu of condemnation, then the owner(s) of the lot or unit where the affordable housing is located must cause the repair or restoration of the affordable units within 3 years, unless the Housing Director agrees to accept a cash payment in lieu of replacement as specified below, and such payment is timely made. If any casualty loss or condemnation results in the loss of use of more than 10% of the affordable units for a period of one year or more, the 50 year term with respect to the number of affordable units lost shall be automatically extended beyond the original 50 year term for a period equal to the period of time for which such affordable units are not in service. In repairing, restoring or providing replacement units, the housing owner shall not use any direct or indirect public subsidies, except (1) to replace any loan amounts repaid to public entities out of insurance or condemnation proceeds and (2) received due to state or national disaster, and shall not be entitled to any additional benefits from City, King County, or State of Washington programs or from the federal Low Income Housing Tax Credit Program with respect to the provision of the replacement units, unless otherwise agreed to at the sole discretion of the Housing Director.

The Housing Director, upon a showing that replacement or restoration of the affordable housing would be impracticable, or for other good cause, may agree, upon request of the owner(s) of the affordable units that are destroyed, damaged, or taken by condemnation, to accept a cash contribution to the City in lieu of replacement or restoration. The amount of such payment shall be based upon the amount of cash contribution that would have been required in lieu of providing such affordable units, as determined by the Housing Director, increased by the consumer price index as applicable to deferred payments under SMC 23.49.015, and then reduced in

proportion to the percentage of the fifty (50) year commitment period for which the affordable units were provided.

- **Fees:** An initial monitoring fee (see Code for amount) per affordable unit will be assessed as a one-time charge to cover costs for developing the compliance monitoring plan, computer database program, and reporting system, and training sessions for the housing owner/manager. Additional annual fees will be assessed for monitoring of affordable rental units, and upon sale or transfer of a homeowner unit a review and processing fee applies (see Code for amounts).

B. Guidelines for Affordable Rental Housing

The provisions in this subsection apply to affordable rental housing provided to mitigate housing-related impacts pursuant to SMC 23.49.015. These provisions must be reflected in an agreement or instrument, satisfactory to the Housing Director, recorded against the property where the affordable units are located.

- **Affordability:** Rents must remain at levels affordable to households with incomes at or below 80% of median income. Rent includes all amounts paid directly or indirectly for the use or occupancy of the affordable unit and common areas for residents of the development. Rent does not include any fee paid for optional parking. Estimated cost of basic utilities paid directly by tenants must be subtracted from prescribed rent limits to determine the maximum monthly rent. An annually updated table showing maximum monthly rent limits and a table that may be used to estimate monthly utility costs are available on Office of Housing's (OH) Downtown Residential Bonus Program webpage at http://seattle.gov/housing/incentives/residential_bonus.htm.
- **Income limits:** The annual income of each household at the time of its initial occupancy of an affordable unit must not exceed 80% of the median income, as adjusted for the actual size of the household. Annual income is a household's anticipated total or gross income, including the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, compensation for personal services, retirement benefits, social security, child support, and unemployment benefits. An annually updated table showing maximum incomes by household size is available on OH's Downtown Residential Bonus Program webpage.
- **Annual report/monitoring:** The owner of the affordable housing must submit an annual report in a format acceptable to OH in order to document compliance with voluntary agreements. The first report is due annually on June 30th, starting after the first full year of operation of the development where the affordable housing is located. The report must include the following information, for the calendar year prior to the year in which the annual report is submitted, for each unit subject to affordability restrictions pursuant to a voluntary agreement:
 - Unit #
 - Resident name
 - Move-in date
 - Income certification date(s)
 - Move-out date

- If the unit was vacant at 12/31
- Household size
- Maximum annual household income (based on income limits table for the calendar year prior to year in which annual report is submitted)
- Actual annual gross income of household
- Square footage
- Number of bedrooms
- Maximum allowed rent
- Utility allowance
- Monthly rent paid by tenant

The housing owner shall maintain all certifications and documentation obtained for annual report and monitoring purposes for at least 5 years after they are obtained, and shall make them available to OH for inspection and copying promptly upon request.

C. Provisions for Affordable For-Sale Housing

All provisions outlined in this subsection apply to for-sale housing provided as a condition to bonus development under SMC 23.49.015.

- **Affordability:** Sale price limits shall be calculated periodically, upon request, by OH based on: current median income, adjusted for household size; housing ratio (percent of household income designated for housing costs); allowance for estimated real estate taxes, insurance, and condominium homeownership fees (if applicable); and prevailing 30-year mortgage interest rate.
- **Income limits:** The annual income of each buyer household as of a date no more than 180 days before the closing of the purchase of a home must not exceed 100% of the median income, as adjusted for the actual size of the household. Annual income is a household's anticipated total or gross income, including the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, compensation for personal services, retirement benefits, social security, child support, and unemployment benefits.
- **Monitoring:** The applicant shall substantiate that the sales price, and that each prospective buyer, meets eligibility requirements to the satisfaction of OH. Applicants shall submit documentation acceptable to OH for a determination of buyer eligibility at least 30 working days prior to closing the sale of each home.
- **Tenure:** Affordable homes are to be occupied only by the owner's household. Affordable homes purchased by eligible households may not be rented unless OH is contacted in advance and the Housing Director determines in writing that an exception is necessary, for such period as the Housing Director may specify, due to demonstrated hardship. Such determinations will be made on a case-by-case basis.
- **Resale restrictions:** The formula for the maximum sales price permitted on resale of homes designated for owner-occupancy shall ensure that the home is affordable on the same basis as required for initial sale under "Affordability" above. Deed restrictions will be required to help ensure resale restrictions are enforced. Please contact OH for additional information on resale restrictions.

- **Changes in title:** Title to a home may change due to changes in circumstance, including death, marriage and divorce. Except as otherwise provided by this Subsection, if a change in title is occasioned by an event that renders the household no longer income-eligible, then the property must be sold to an income-eligible household within 180 days, unless an extension is granted in writing by the Housing Director. Upon the death of the owner, title in the property may transfer to the surviving household member(s) residing in the home without respect to the income eligibility of the household. Upon the death of a sole owner or all owners, (a) if title passes to one or more persons, all of whom occupy the home as, or as part of, a moderate-income household, then the home need not be sold; (b) if title passes wholly or in part to a child or stepchild of one or more owners, there will be a 1-year compassion period between the time when the estate is settled and the time when the home must be sold to a moderate-income eligible household; and (c) otherwise, the home must be sold to a moderate-income eligible household as soon as is feasible but not more than 180 days after title passes, unless an extension is granted in writing by the Housing Director.

D. Voluntary Agreement

No permit for any construction activity other than excavation and shoring may be issued until a voluntary agreement is signed by the applicant and accepted in writing by the Housing Director. Any such acceptance shall be subject to compliance with all conditions of the applicable permit, the Land Use Code, this Rule and applicable State law. Such agreement must contain all of the relevant terms as outlined above, in addition to the following information, in form and content satisfactory to the Housing Director:

- Basic highrise development details (zone, gross floor area by use, # residential units, building height and number of floors, DPD project number);
- Regarding affordable housing to be provided as a condition to bonus development pursuant to SMC 23.49.015
 - The number, size (# bedrooms), location, affordability, and tenure (rental vs. for-sale)
 - Nature and amount of any funding or other incentives provided by the City or other public entity (if any)
 - Provisions and/or documents for resale restrictions, including an option in favor of the City, exercisable after any non-qualifying sale, unless the Housing Director approves other City enforcement remedies.

III. Payment Option

- **Voluntary agreement:** The voluntary agreement for a cash contribution must be in the form of a letter signed by the applicant or the owner of the site of the proposed residential tower. The letter shall include the following information:

- Basic highrise development details (zone; gross floor area by use; # residential units, building height and number of floors; DPD project number);
- Contact information for DPD planner and developer representative(s);
- Gross and net square feet of bonus residential floor area sought pursuant to SMC 23.49.015 and total cash contribution to be made;
- Estimated project schedule (including dates for issuance of MUP and building permits); and
- Whether the applicant elects the payment deferral option described under SMC 23.49.015 C2.

The letter is due prior to the issuance of any building permit for activity beyond excavation and shoring for the highrise development using the bonus, and in advance of payment of the cash contribution. If accepted, the letter will be countersigned by the Housing Director and the DPD Planner assigned to the project. Copies will be transmitted to the developer and DPD.

- **Form of payment:** The cash payment must be made in the form of a check payable to the "City of Seattle" and delivered to OH at Seattle Municipal Tower, 700 5th Avenue, Suite 5700 or mailed to P.O. Box 94725, Seattle 98124-4725.
- **Use of funds:** OH will use such payments to fund the costs of developing housing for low- and moderate-income households as set forth in SMC 23.49.015. Funds generally will be awarded through OH's Multifamily and/or Homebuyer Notice of Funding Availability (NOFA) processes to housing developers for construction of affordable housing within the Downtown Urban Center and the adjacent First Hill/Capitol Hill Urban Center.
- **Land dedication:** The applicant may offer to dedicate real property located within the Downtown Urban Center to the City in lieu of all or part of the cash payment. The City may, at its discretion, approve by ordinance the acceptance of specific real property in lieu of all or part of the cash payment.