

**ORDINANCE \_\_\_\_\_**

AN ORDINANCE related to land use and zoning; enacting a new Chapter 23.58A in the Seattle Municipal Code in order to support workforce housing incentives and other incentives, and to implement Comprehensive Plan policies.

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

Section 1. A new Chapter 23.58A, “Incentive Provisions” is added to the Seattle Municipal Code, including subchapters I, II and III as follows:

***Chapter 23.58A Incentive Provisions***

***Subchapter I General provisions***

**23.58A.002 Scope of chapter; general rules**

A. This chapter contains rules for workforce housing and other incentive programs in areas for which the provisions of the zone specifically refer to this chapter. This chapter does not apply to Downtown zones. The provisions in this chapter specify conditions under which extra floor area may be allowed, as exceptions to the otherwise applicable floor area or base height limit, or both, subject to the maximum limits stated in the provisions of the zone and to all other applicable requirements and approvals. Nothing in this chapter authorizes allowance of extra floor area, or the construction or use of any structure, contrary to any other provisions of this title or Title 25. Projects for which extra floor area is sought may be subject to conditions under other chapters and titles of this Code, including without limitation conditions imposed pursuant to Chapter 25.05, Environmental Policies and Procedures.

B. The provisions of this subchapter apply generally to projects using any of the incentive provisions in this chapter, unless otherwise expressly provided in the applicable subchapter of this chapter or in the provisions of the zone.

1 C. Nothing in this chapter shall be construed to confer on any owner or developer any  
2 development rights or property interests. The availability and terms of any allowance of extra  
3 floor area depend on the regulations in effect on the relevant date for consideration of a permit  
4 application for the project proposing to use such extra floor area, pursuant to Section  
5 23.76.026, notwithstanding any prior approvals, interpretations or agreements by the Director,  
6 Housing Director or other official regarding the eligibility of any actual or proposed facility or  
7 feature to satisfy conditions for extra floor area.  
8

9 **23.58A.004 Definitions**

10 A. Scope and Applicability.

11 1. General Rule. The terms set forth in quotations in this section, when used in  
12 this chapter, have the meanings set forth in this section unless the context otherwise requires.  
13

14 2. Definitions in Chapter 23.84A. Definitions in this chapter or in the applicable  
15 provisions of the zone supersede any definitions of the same terms in Chapter 23.84A for  
16 purposes of the provisions of this chapter, unless specified otherwise in this chapter.  
17

18 B. Defined Terms - General.

19 “Affordable housing” means a unit or units of low-income housing provided as  
20 a condition to bonus floor area.

21 “Base FAR” or “Base floor area ratio” means the nonresidential floor area that  
22 may be allowed under the provisions of the zone limiting floor area, expressed as a multiple of  
23 the lot area, without use of any bonuses, transfer of development capacity, other incentive  
24 provisions, or any departures, waivers, variances or special exceptions.  
25  
26  
27

1                   “Base residential floor area” means the amount of residential floor area  
2 allowable on a lot under the provisions of the zone that expressly limit floor area, excluding  
3 any floor area exempted from such limits, without use of any bonuses, transfer of development  
4 capacity, other incentive provisions, or any departures, waivers, variances or special  
5 exceptions, and before giving effect to any transfer of residential development potential to  
6 another lot.  
7

8                   “Base height limit” means the height limit that would apply under the  
9 provisions of the zone based upon the proposed uses in a structure, if the applicant did not  
10 qualify for any additional height dependent on the provisions of this chapter, after giving effect  
11 to any additional height that is actually allowed for the pitched roof of a structure and any  
12 additional height that is or would be allowed under the provisions of the zone because of the  
13 slope of the lot, but before giving effect to any allowance for rooftop features or any departure,  
14 waiver, variance or special exception.  
15

16                   “Bonus floor area” means bonus residential floor area or bonus nonresidential  
17 floor area.  
18

19                   “Bonus nonresidential floor area” means extra nonresidential floor area allowed  
20 pursuant to the bonus provisions in subchapter III of this chapter. It includes, without  
21 limitation, floor area allowed for voluntary agreements to provide housing and child care. It  
22 does not include extra floor area gained through TDR.  
23

24                   “Bonus residential floor area” means extra residential floor area allowed  
25 pursuant to the bonus provisions in subchapter II of this chapter. It includes, without limitation,  
26 housing bonus residential floor area. It does not include extra floor area gained through TDR.  
27

1 “Certificate of occupancy” means the first certificate of occupancy issued by the  
2 City for a project, whether temporary or permanent, unless otherwise specified.

3 “Extra floor area” means extra residential floor area or extra nonresidential floor  
4 area.

5 “Extra residential floor area” means the gross floor area of all residential  
6 development allowed in addition to a base height limit or base floor area limit, or both, under  
7 the provisions of this chapter or under any other provisions of this title allowing a bonus or a  
8 transfer of development rights or development capacity. It includes, without limitation, gross  
9 floor area in residential use in all stories wholly or in part above the base height limit, and all  
10 bonus residential floor area.  
11

12 “Extra nonresidential floor area” means the nonresidential floor area of all  
13 nonresidential development allowed in addition to base FAR or to a base height limit for  
14 nonresidential use, or both, under the provisions of this chapter or under any other provisions  
15 of this title allowing a bonus or a transfer of development rights or development capacity. It  
16 includes, without limitation, gross floor area in nonresidential use in all stories wholly or in  
17 part above the base height limit for nonresidential use, and all bonus residential floor area.  
18

19 “Housing bonus residential floor area” means extra residential floor area  
20 allowed on condition that low-income housing be provided, or that a payment in lieu thereof be  
21 made, under subchapter II of this chapter.  
22

23 “Housing and child care bonus nonresidential floor area” means extra  
24 nonresidential floor area allowed on condition that low-income housing and child care  
25

1 facilities be provided, or that a payment in lieu thereof be made under subchapter III of this  
2 chapter.

3 “Income-eligible households” means:

4 1. In the case of rental housing, households with incomes no higher than  
5 the lesser of (a) 80 percent of median income, as defined in Section 23.84A.025; or (b) the  
6 maximum level permitted by RCW 36.70A.540 for rental housing as in effect when the  
7 agreement for the housing to serve as affordable housing is executed.  
8

9 2. In the case of owner occupancy housing units, households with  
10 incomes no higher than the lesser of (a) median income, as defined in Section 23.84A.025, or  
11 (b) the maximum level permitted for owner-occupied housing by RCW 36.70A.540 as in effect  
12 when the agreement for the housing to serve as affordable housing is executed.  
13

14 “Landmark TDP” means TDP transferred from, or transferable from, a  
15 Landmark TDP site.

16 “Landmark TDP site” means a lot, in an area where the applicable provisions of  
17 the zone permit Landmark TDP to be transferred from a lot, that includes one or more  
18 structures designated wholly or in part as a landmark under Chapter 25.12 or its predecessor  
19 ordinance, and which lot includes no other structure that is not accessory to one or more of  
20 such structures.  
21

22 “Low-income housing” means housing affordable to and occupied by “income-  
23 eligible households.”  
24

25 “Net bonus residential floor area” means gross square footage of “housing  
26 bonus residential floor area”, multiplied by an efficiency factor of 80 percent.  
27

1                   “Open space TDP” means TDP transferred from, or transferable from, an open  
2 space TDP site.

3                   “Open space TDP site” means a lot, in an area where the provisions of the zone  
4 permit open space TDP to be transferred from a lot that satisfies the standards for an open  
5 space TDP site in this chapter to the extent that an exception from such standards has not been  
6 granted.  
7

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

10                  “Performance option” means providing or committing to provide a physical  
11 facility, or a portion or feature of a project, such as low-income housing or a child care facility,  
12 in order to qualify for bonus floor area.  
13

14                  “Provision of the zone” means a provision of another chapter of this title  
15 relating to allowable floor area or height, or to the allowance of extra floor area or additional  
16 height, or both, for the area in which the lot on which extra floor area is used or proposed is  
17 located.  
18

19                  “TDP” or “transferable development potential” means base residential floor  
20 area that may be transferred from one lot to another pursuant to this chapter, measured in  
21 square feet.  
22

23                  “TDR site, housing” means a lot meeting the following requirements:

- 24                         1. The lot is eligible as a sending site for housing TDR under Section  
25 23.58A.028;  
26  
27

1                               2. Each structure on the lot has a minimum of 50 percent of total gross  
2 above-grade floor area committed to low-income housing, as defined in Chapter 23.84A, for a  
3 minimum of 50 years;

4                               3. The lot has above-grade gross floor area equivalent to at least 1 FAR  
5 committed to use as very low-income housing, as defined in Chapter 23.84A, for a minimum  
6 of 50 years;

7                               4. The above-grade gross floor area on the lot committed to satisfy the  
8 conditions in subsections 2 and 3 of this definition is contained in one or more structures  
9 existing as of the date of passage of the ordinance adding this chapter to the Land Use Code,  
10 and such area was in residential use as of such date, as demonstrated to the satisfaction of the  
11 Housing Director; and  
12

13                              5. The low-income housing and very low-income housing commitments  
14 on the lot comply with the standards in Section 23.58A.028 and are memorialized in a recorded  
15 agreement between the owner of such low-income and very low-income housing and the  
16 Housing Director.  
17

18 **23.58A.006 Permitting conditions—Incentive Plans**  
19

20                           A. Master Use Permit. The Master Use Permit application to establish any extra floor  
21 area under this chapter shall include a calculation of the total amount of extra floor area sought  
22 and shall identify the manner in which the conditions to such extra floor area shall be satisfied.  
23 If the applicant seeks bonus floor area under any provisions allowing the option of  
24 performance or a payment in lieu thereof, the applicant shall indicate whether it intends to  
25 pursue the payment option or the performance option, or what combination of the two options.  
26  
27

1 If any performance option is to be used, the application shall include the proposed location of  
2 the affordable housing or other facilities, including the proposed location or distribution within  
3 the proposed building(s), and if not to be provided on the same lot as the development using  
4 the extra floor area, the address, legal description, dimensions and ownership of the other  
5 lot(s). The Director shall, at the time of issuance of any Master Use Permit decision approving  
6 any such extra floor area, issue a Type I decision as to the amount of extra floor area to be  
7 allowed and the conditions to such extra floor area, which decision may include alternative  
8 means to achieve extra floor area, at the applicant's option, if each alternative would be  
9 consistent with the provisions of this chapter, the applicable provisions of the zone, and any  
10 other conditions of the permit, including Design Review conditions if applicable.  
11  
12

13 B. First Building Permit. Prior to issuance, and as a condition to issuance, of the first  
14 building permit for a project, and in any event before any permit for any construction activity  
15 other than excavation and shoring is issued, the applicant shall execute and record a  
16 declaration in a form acceptable to the Director that shall commit the applicant to satisfy the  
17 conditions to establishing extra floor area as approved by the Director at the time of the Master  
18 Use Permit decision. Such declaration may also serve as the declaration for amenities required  
19 pursuant to subsections 23.58A.016 F4 and 23.58A.026 B6, as applicable.  
20

21 **23.58A.008 Limits on use of incentives**

22 No extra floor area under this chapter shall be granted to any proposed development  
23 that would result in significant alteration to any designated feature of a Landmark structure  
24 unless a Certificate of Approval for the alteration is granted by the Landmarks Preservation  
25 Board.  
26  
27



1 ***Subchapter II: Extra residential floor area***

2 **23.58A.010 Scope of subchapter**

3 This subchapter II includes provisions under which applicants may gain extra  
4 residential floor area in development for which the applicable provisions of the zone expressly  
5 refer to this chapter.

6 **23.58A.012 Methods to achieve extra residential floor area**

7  
8 All or a percentage of the extra residential floor area on a lot shall be housing bonus  
9 residential floor area pursuant to Section 23.58A.014. Unless otherwise expressly provided in  
10 the provisions of the zone:

11 A. If the maximum height limit for residential use is 85 feet or less, all extra residential  
12 floor area shall be housing bonus residential floor area.

13  
14 B. If the maximum height limit for residential use is greater than 85 feet, the applicant  
15 shall use housing bonus residential floor area to achieve at least 60 percent of total the extra  
16 residential floor area on the lot, and, to the extent permitted under the provisions of the zone  
17 and this subchapter, shall use other bonus residential floor area pursuant to Section 23.58A.016  
18 or transfer of residential development potential pursuant to Section 23.58A.018, or both, for  
19 the balance of the extra residential floor area.  
20

21 **23.58A.013 Affordable housing incentive program: purpose and findings**

22 A. Purpose; Scope of provisions; State Law Controlling. The purpose of affordable  
23 housing incentive programs is to encourage higher density residential development in  
24 appropriate areas while ensuring that a portion of the additional development will be affordable  
25 housing, pursuant to authority granted in RCW 36.70A.540. In case of any irreconcilable  
26  
27

1 conflict between the terms of this section and the authority granted in RCW 36.70A.540, as it  
2 may be amended, the provisions of RCW 36.70A.540, as it may be amended, shall supersede  
3 and control. Unless the context otherwise clearly requires, references to RCW 36.70A.540 in  
4 this subchapter mean that section as in effect on the date as of which the provisions of this title  
5 apply to the application for a use permit for the project using the bonus residential floor area.

6  
7 B. Findings. Pursuant to the authority of RCW 36.70A.540, the City finds that the  
8 higher income levels specified in the definition of “income-eligible households” in Section  
9 23.58A.004, rather than those stated in the definition of “low-income households” in RCW  
10 36.70A.540, are needed to address local housing market conditions throughout the City.

11 **23.58A.014 Bonus residential floor area for affordable housing**

12  
13 A. Scope; General Rule. This section applies to bonus residential floor area allowed on  
14 lots for which applicable sections of this title expressly refer to this chapter. Bonus residential  
15 floor area may be allowed when the applicant qualifies by using the performance option, the  
16 payment option, or a combination of these options, in accordance with this section and subject  
17 to the provisions of the zone.

18 B. Performance option.

19  
20 1. An applicant using the performance option shall provide low-income housing  
21 with a gross floor area at least equal to the greatest of (a) 11 percent of the net bonus  
22 residential floor area obtained through the performance option; or (b) 300 net residential square  
23 feet; or (c) any minimum floor area specified in the provisions of the zone. Applicants may  
24 provide low-income housing as part of the project using bonus development, or by providing  
25 or contributing to a low-income housing project at another location, subject to requirements in  
26  
27

1 subsection B5 of this section and approved in writing by the Housing Director prior to issuance  
2 of the first building permit for the development using the bonus floor area.

3           2. Affordable housing shall serve only income-eligible households for a  
4 minimum period of 50 years from the later of the date when the agreement between the  
5 housing owner and the City, as referenced in subsection B5, is recorded, or the date when the  
6 affordable housing becomes available for occupancy as determined by the City. For rental  
7 housing, rent shall be limited so that housing costs, including rent and basic utilities, shall not  
8 exceed 30 percent of the applicable income limit for the unit under this section, all as  
9 determined by the Housing Director, for a minimum period of 50 years. For owner-occupied  
10 housing, the initial sale price shall not exceed an amount determined by the Housing Director  
11 to be consistent with affordable housing for an income-eligible household with the average  
12 family size expected to occupy the unit based on the number of bedrooms, and the units shall  
13 be subject to recorded instruments satisfactory to the Housing Director providing for sales  
14 prices on any resale consistent with affordability on the same basis for at least 50 years.  
15  
16

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

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

22                   (a) The affordable housing must serve income-eligible households for  
23 the minimum time period referred to in this section.  
24

25                   (b) The affordable housing shall be completed and ready for occupancy  
26 at or before the time when a certificate of occupancy is issued for any other units in the project  
27

1 using the bonus residential floor area, and as a condition to any right of the applicant to such a  
2 certificate of occupancy.

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

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

15                           (b) If the applicant demonstrates to the satisfaction of the Housing  
16 Director that it is infeasible for the off-site affordable housing to be located within the same  
17 neighborhood where the development using the bonus residential floor area is located, then (i)  
18 the Housing Director may allow the affordable housing to be provided elsewhere in the City  
19 within 0.5 mile of a light rail or bus rapid transit station, or (ii) if the applicant demonstrates  
20 that providing the affordable housing in such a location is also infeasible, then the Housing  
21 Director may allow the off-site housing to be provided elsewhere within the same City sector,  
22 as delineated by Interstate-5, the Ship Canal and Interstate-90 (as projected to Elliott Bay),  
23 where the development using the bonus residential floor area is located.  
24  
25  
26  
27

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

4 (d) The agreement required by subsection (c) must be executed and  
5 recorded prior to issuance, and as a condition to issuance, of the first building permit for the  
6 project using the bonus residential floor area, and in any event before any permit for any  
7 construction activity other than excavation and shoring is issued.

8 (e) The applicant shall provide to the City an irrevocable letter of credit,  
9 or other sufficient security approved by the Housing Director, prior to and as a condition of  
10 issuance of the first building permit, other than for grading and shoring, for the project using  
11 the bonus residential floor area, unless completion of the affordable housing has already been  
12 documented to the satisfaction of the Housing Director and the affordable housing is subject to  
13 recorded restrictions satisfactory to the Housing Director. The letter of credit or other security  
14 shall be in an amount equal to the Payment Option amount calculated according to provisions  
15 in subsection C of this section, plus an amount equal to interest on such payment, at the rate  
16 equal to the prime rate quoted by Bank of America or its successor at the time the letter of  
17 credit or other security is provided, plus 3 percent per annum, from the date of issuance of the  
18 first building permit, other than for excavation and shoring, for the project using the bonus  
19 residential floor area. The letter of credit or other security shall be on terms such that when a  
20 certificate of occupancy is issued for the project using the bonus residential floor area, or on  
21 any earlier date 30 days before the letter of credit or other security will expire, if the required  
22 quantity of affordable housing is not completed and ready for occupancy or the affordable  
23  
24  
25  
26  
27

1 housing is not all subject to a recorded agreement sufficient to satisfy the terms of this section,  
2 the City shall have a right to draw on the letter of credit or other security. If and when the City  
3 becomes entitled to realize on any such security, the Housing Director shall take appropriate  
4 steps to collect the amount calculated pursuant to the payment option provisions in subsection  
5 C of this section (after allowing credit for any affordable housing then provided and accepted  
6 by the Housing Director), with interest for the period and at the rate determined pursuant to  
7 this subsection, and the amounts realized, net of any costs to the City, shall be used in the same  
8 manner as cash payments for housing made under this section. To the extent the City receives  
9 payment through a letter of credit or other security, the obligation of the applicant to provide  
10 affordable housing will be deemed satisfied and the applicant shall be deemed to have elected  
11 the payment option. The applicant shall not be entitled to any refund based on later completion  
12 of affordable housing.  
13  
14

15 (f) If the Housing Director certifies to the Director that either (i) the  
16 applicant has provided the City with a letter of credit or other sufficient security pursuant to  
17 subsection B5(e) of this section; or (ii) there have been recorded one or more agreements or  
18 instruments satisfactory to the Housing Director providing for occupancy and affordability  
19 restrictions on affordable housing with the minimum floor area determined under this section,  
20 all affordable housing have been completed, and the affordable housing is on a different lot  
21 from the bonus residential floor area or are in one or more condominium units separate from  
22 the bonus development under condominium documents acceptable to the Housing Director,  
23 then any failure of the affordable housing to satisfy the requirements of this subsection B shall  
24 not affect the right to maintain or occupy the bonus residential floor area.  
25  
26  
27

1 (g) Unless and until the Housing Director shall certify as set forth in  
2 clause (i) or (ii) of subsection B5(f) of this section, it shall be a continuing permit condition,  
3 whether or not expressly stated, for each project obtaining bonus residential floor area based on  
4 the provision of housing to which this section applies, that the affordable housing shall be  
5 maintained in compliance with the terms of this section and any applicable provisions of the  
6 zone, as documented to the satisfaction of the Housing Director.  
7

8 6. No subsidies for bonused housing; Exception.

9 (a) The Housing Director may require, as a condition of any bonus  
10 residential floor area under the performance option, that the owner of the lot upon which the  
11 affordable housing is located agree not to seek or accept any subsidies, including without  
12 limitation those items referred to subsection B6(b)(i) of this section, related to housing, except  
13 for any subsidies that may be allowed by the Housing Director under that subsection. The  
14 Director may require that such agreement provide for the payment to the City, for deposit in an  
15 appropriate subfund or account, of the value of any subsidies received in excess of any  
16 amounts allowed by such agreement.  
17

18 (b) In general, and except as may be otherwise required by applicable  
19 federal or state law, no bonus residential floor area may be earned by providing housing if:  
20

21 (i) Any person is receiving or will receive with respect to the  
22 housing any charitable contributions or public subsidies for housing development or operation,  
23 including, but not limited to, tax exempt bond financing, tax credits, federal loans or grants,  
24 City of Seattle housing loans or grants, county housing funds, and State of Washington housing  
25 funds; or  
26  
27

1 (ii) The housing is or would be, independent of the requirements  
2 for the bonus residential floor area, subject to any restrictions on the income of occupants,  
3 rents or sale prices.

4 (c) As an exception to the restriction on subsidies, the Housing Director  
5 may allow the building or buildings in which the affordable housing is located to be financed  
6 in part with subsidies based on the determination that (1) the total amount of affordable  
7 housing is at least 300 net residential square feet greater than the amount otherwise required  
8 through the performance option under this section; (2) the public benefit of the affordable  
9 housing net of any subsidies, as measured through an economic analysis, exceeds the amount of  
10 the payment-in-lieu that would otherwise be paid; and (3) the subsidies being allowed would not  
11 be sufficient to leverage private funds for production of the affordable housing, under  
12 restrictions as required for the performance option, without additional City subsidy in an  
13 amount greater than the payment-in-lieu amount that would otherwise be paid.  
14  
15

16 7. The Housing Director is authorized to accept and execute agreements and  
17 instruments to implement this section. Issuance of the certificate of occupancy for the project  
18 using the bonus residential floor area may be conditioned on such agreements and instruments.  
19

20 8. The housing owner, in the case of rental housing, shall provide annual reports  
21 and pay an annual monitoring fee to the Office of Housing for each affordable housing unit, as  
22 specified under Chapter 22.900G. In the case of affordable housing for owner-occupancy, the  
23 applicant shall pay an initial monitoring fee to the Office of Housing as specified under  
24 Chapter 22.900G, and the recorded resale restrictions shall include a provision requiring  
25 payment to the City, on any sale or other transfer of a unit after the initial sale, of a fee in the  
26  
27



1 amount of \$500, to be adjusted in proportion to changes in the consumer price index from 2008  
2 to the year in which the sale or transfer is made, for the review and processing of documents to  
3 determine compliance with income and affordability restrictions.

4 C. Payment option.

5 1. In lieu of all or part of the performance option, an applicant may pay an  
6 amount determined pursuant to this subsection C1.  
7

8 (a) Subject to subsections C1(b) and C1(c) of this section, the payment  
9 option amount is:

10 (1) \$10 per square foot of net bonus residential floor area that is  
11 below the base height limit or is in any of the first four stories wholly or in part above the base  
12 height limit;  
13

14 (2) \$15 per square foot of net bonus residential floor area in each  
15 of the next three stories above those subject to subsection C1(a)(1) of this section;

16 (3) \$20 per square foot of net bonus residential floor area for the  
17 next four stories above those subject to subsection C1(a)(2) of this section;

18 (4) \$25 per square foot of net bonus residential floor area above  
19 those subject to subsection C1(a)(3) of this section.  
20

21 (b) The maximum payment in lieu is an average of \$18.94 per square  
22 foot of net bonus residential floor area; and

23 (c) The minimum payment in lieu is an average of \$15 per square foot of  
24 net bonus residential floor area.  
25  
26  
27

1 (d) If a development includes both housing bonus residential floor area  
2 and other extra residential floor area, then for purposes of applying this subsection C1, each  
3 portion of the structure that includes extra residential floor area shall be considered to include  
4 the same ratio of housing bonus residential floor to total extra residential floor area as the  
5 entire development.

6  
7 2. Payments in lieu of affordable housing shall be deposited in a special account  
8 established solely to support the development of low-income housing as defined in this  
9 chapter. Earnings on balances in the special account shall accrue to that account. The Housing  
10 Director shall use cash payments and any earnings thereon to support the development or  
11 preservation of low-income housing in any manner now or hereafter permitted by RCW  
12 36.70A.540, including renter or owner housing for income-eligible households and including  
13 land purchase for the purpose of providing low-income housing, as prescribed in this section,  
14 which may include the City's costs to administer projects, not to exceed 10 percent of the  
15 payments into the special account, and support provided through loans or grants to public or  
16 private owners or developers of housing and through loans or grants to affordable households  
17 for home purchases. The location of affordable housing funded wholly or in part with cash  
18 payments shall be prioritized in the following order: (1) within the same neighborhoods where  
19 the developments using the bonus residential floor area are located; (2) in the City within 0.5  
20 mile of light rail or bus rapid transit stations; and (3) within the same City sectors delineated  
21 by Interstate-5, the Ship Canal and Interstate-90 (as projected to Elliott Bay) where the  
22 developments using the bonus residential floor area are located.  
23  
24  
25  
26  
27  
28

1                   3. 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. The Director and the Housing Director are authorized jointly to adopt rules to  
5 interpret and implement the provisions of this section.

6  
7 **23.58A.016 Extra residential floor area for amenities**

8                   A. Findings. The City Council finds that:

9                   1. Neighborhood amenities, including public open space, are an important  
10 aspect of livability in areas targeted in the Comprehensive Plan for concentrated housing and  
11 employment growth. To address this need, the Comprehensive Plan establishes goals for the  
12 amount and distribution of public open space desired in high density environments, including  
13 breathing room open space, usable open space, and village open space. These goals are  
14 consistent with national standards developed to assist communities with planning to provide  
15 adequate open space serving specified population needs.  
16

17                   2. Projects that add density will increase demand for public open space. If  
18 additional public open space is voluntarily provided to offset additional demand, the impacts  
19 on available open space resources will be mitigated.  
20

21                   3. The average amount of public open space, including breathing room open  
22 space, needed to accommodate residential development is at least 0.14 square feet of open  
23 space per gross square foot of residential floor area in a project.  
24

25                   4. The cost of improvements to create open space is normally at least \$50 per  
26 square foot, excluding land costs but including design, engineering, and all other indirect costs.  
27

1           B. Voluntary Agreements for Neighborhood Amenities. Where expressly permitted by  
2 the provisions of the zone, an applicant may achieve bonus residential floor area in part  
3 through a voluntary agreement for provision of neighborhood amenities to mitigate impacts of  
4 the project, subject to the limits in this chapter. Neighborhood amenities that may be provided  
5 for bonus residential floor area include neighborhood open space and green street setbacks on  
6 lots abutting designated green streets. Both of these neighborhood amenities are referred to as  
7 “open space” in this section. The mitigation may be achieved by the performance option, by  
8 the payment option, or by a combination of the performance and payment options.  
9

10           C. Performance option. An applicant electing to use the performance option shall  
11 provide neighborhood amenities on the same lot as the development using the bonus floor area,  
12 except to the extent a combined lot development is expressly permitted by the provisions of the  
13 zone. The maximum area of any amenity or combination of amenities provided on a lot eligible  
14 for a bonus is established in subsection D and may be further limited by Section 23.58A.012 or  
15 the provisions of the zone. Open space amenities provided for a floor area bonus shall meet the  
16 standards of subsection F of this section.  
17

18           D. Maximum open space for bonus. The amount of open space for which bonus  
19 residential floor area may be allowed shall not exceed the amount required to mitigate the  
20 impact created by the total bonus residential floor area in the project, but is in no case to  
21 exceed 15,000 square feet. For purposes of this section, the amount of open space required to  
22 mitigate that impact is 0.14 square feet of open space per square foot of residential floor area,  
23 unless the Director determines that a different ratio applies based on the particular  
24 characteristics of the project.  
25  
26  
27

1 E. Bonus Ratio. Neighborhood amenities may be used to gain bonus floor area  
2 according to the following ratios and subject to the limits of this section:

3 1. For a neighborhood open space, 7 square feet of extra floor area per 1 square  
4 foot of qualifying neighborhood open space area (7:1).

5 2. For a green street setback, 5 square feet of extra floor area per 1 square foot  
6 of qualifying green street setback area (5:1).  
7

8 F. Standards for Amenities

9 1. Public access. The open space must be open during daylight hours and  
10 accessible to the general public, without charge, for reasonable and predictable hours, for a  
11 minimum of 10 hours each day of the year, except that access may be limited as required for  
12 public safety and maintenance reasons. Within the open space, property owners, tenants and  
13 their agents shall allow members of the public to engage in activities allowed in the public  
14 sidewalk environment, except that those activities that would require a street use permit if  
15 conducted on the sidewalk may be excluded or restricted. Free speech activities such as hand  
16 billing, signature gathering, and holding signs, all without obstructing access to the space, the  
17 building, or other adjacent features, and without unreasonably interfering with the enjoyment  
18 of the space by others, shall be allowed. While engaged in allowed activities, members of the  
19 public may not be asked to leave for any reason other than conduct that unreasonably interferes  
20 with the enjoyment of the space by others.  
21  
22

23 2. Standards for neighborhood open space. Neighborhood open space used to  
24 qualify for bonus floor area must satisfy the conditions in this subsection F2, unless an  
25 exception is granted by the Director as a Type I decision, based on the Director's  
26  
27

1 determination that, relative to the strict application of the standards, the exception will result in  
2 improved public access and use of the space or a better integration of the space with  
3 surrounding development:

4 (a) The open space must be improved in compliance with the applicable  
5 provisions of this chapter. The open space must consist of one continuous area with a  
6 minimum of 3,000 square feet and a minimum horizontal dimension of 10 feet.

7 (b) A minimum of 35 percent of the open space must be landscaped with  
8 grass, ground cover, bushes and/or trees.

9 (c) Either permanent or movable seating in an amount equivalent to 1  
10 lineal foot for every 200 square feet of open space shall be available for public use during  
11 hours of public access.

12 (d) The open space shall be located and configured to maximize solar  
13 exposure to the space, allow easy access from streets or other abutting public spaces, including  
14 access for persons with disabilities, and allow convenient pedestrian circulation through all  
15 portions of the open space. The open space must have a minimum frontage of 30 feet at grade  
16 abutting a sidewalk, and be visible from sidewalks on at least one street.

17 (e) The open space must be at ground level, except that in order to  
18 provide level open spaces on steep lots, some separation of multiple levels may be allowed,  
19 provided they are physically and visually connected.

20 (f) Up to 20 percent of the open space may be covered by features  
21 accessory to public use of the open space, including: permanent, freestanding structures, such  
22 as retail kiosks, pavilions, or pedestrian shelters; structural overhangs; overhead arcades or  
23

1 other forms of overhead weather protection; and any other features approved by the Director  
2 that contribute to pedestrian comfort and active use of the space. The following features within  
3 the open space area may count as open space and are not subject to the percentage coverage  
4 limit: temporary kiosks and pavilions, public art, permanent seating that is not reserved for any  
5 commercial use, exterior stairs and mechanical assists that provide access to public areas and  
6 are available for public use, and any similar features approved by the Director. Seating or  
7 tables, or both, may be provided and reserved for customers of restaurants or other uses  
8 abutting the open space, but the area reserved for such seating shall not exceed 15 percent of  
9 the open space area or 500 square feet, whichever is less.  
10

11 (g) Open space may qualify as required residential amenity area to the  
12 extent permitted by the provisions of the zone.  
13

14 (h) The maximum area of all open space eligible for a floor area bonus  
15 for a project is 15,000 square feet.  
16

### 17 3. Standards for green street setbacks.

18 (a) Where permitted by the provisions of the zone, bonus residential  
19 floor area may be gained for green street setbacks by development abutting those street  
20 segments that are listed or shown as green streets in the provisions of the zone, if the Director  
21 has approved a green street concept plan for that street or segment according to Director's  
22 Rule, DR 11-2007, or any successor Director's rule and determines that the setback with  
23 improvements proposed by the applicant will substantially contribute to the implementation of  
24 such plan and will mitigate the direct impacts of the project.  
25  
26  
27

1 (b) A green street setback must be provided as a setback from a property  
2 line abutting a designated green street. The setback must be continuous for the length of the  
3 frontage of the lot abutting the green street, and a minimum of 50 percent of the setback area  
4 eligible for a bonus must be landscaped. The area of any driveways in the setback area shall be  
5 deducted from the total amount of bonusable area. The average setback from the abutting green  
6 street property line shall not exceed 10 feet, with a maximum setback of 15 feet. The design of  
7 the setback area shall allow for public access, such as access to street level uses in abutting  
8 structures or access to areas for seating. The Director may grant an exception to these  
9 standards as a Type I decision, based on the Director's determination that the exception is  
10 consistent with a green street concept plan established in accordance with DR 11-2007, or  
11 successor rule.  
12

13  
14 4. Declaration. When open space or a green street setback is to be provided for  
15 purposes of obtaining bonus residential floor area, the owner(s) of the lot using the bonus  
16 residential floor area, and of the lot where the open space is provided, if different, shall execute  
17 and record a declaration and voluntary agreement in a form acceptable to the Director  
18 identifying the features; acknowledging that the right to develop and occupy a portion of the  
19 gross floor area on the lot is based upon the long-term provision and maintenance of the open  
20 space or green street setback and that development is restricted in the open space or setback  
21 area; and committing to provide and maintain the open space or the setback area, as applicable.  
22

23  
24 5. Duration; Alteration. Except as provided for in this subsection F5, the owners  
25 of the lot using the bonus residential floor area and of the lot where the neighborhood amenity  
26 feature is located, if different, including all successors, shall provide and maintain the  
27



1 amenities for which bonus residential floor area is granted, in accordance with the applicable  
2 provisions of this section, for as long as the extra floor area gained by the amenities exists. A  
3 neighborhood amenity feature for which bonus floor area has been granted may be altered or  
4 removed only to the extent that either or both of the following occur:

5 (a) The additional gross floor area permitted in return for the specific  
6 feature is removed or converted to a use for which extra floor area is not required under the  
7 provisions of the zone; or  
8

9 (b) an amount of extra residential floor area equal to that allowed for the  
10 amenity feature that is to be diminished or discontinued is provided through alternative means  
11 consistent with the provisions of the zone and provisions for allowing extra residential floor  
12 area in this chapter.  
13

14 G. Payment option. In lieu of all or part of the performance option, an applicant may  
15 pay to the City an amount determined pursuant to this subsection if the Director determines  
16 that the payment will contribute to other public open space improvements abutting the lot or in  
17 the vicinity; that such an improvement will meet the additional need for open space caused by  
18 the project and is feasible within a reasonable time; and that the applicant agrees to the specific  
19 improvement or to the general nature and location of the improvement. There is no payment in  
20 lieu option for green street setbacks.  
21

22 1. The amount of the payment is determined by multiplying the number of  
23 square feet of land that would be provided as neighborhood open space, by the sum of an  
24 estimated land value per square foot based on recent transactions in the area and an average  
25 square foot cost for open space improvements. The dollar amount per square foot shall be  
26  
27

1 determined by the Director based on any relevant information submitted by the applicant, and  
2 such other data related to land values and costs as the Director considers reliable.

3           2. Cash payments shall be made prior to issuance, and as a condition to  
4 issuance, of the first building permit for a project, and in any event before any permit for any  
5 construction activity other than excavation and shoring is issued.

6           3. Any such payment in lieu of providing neighborhood amenities shall be  
7 deposited in a dedicated fund or account solely to support acquisition or development of public  
8 open space within 0.25 mile of the lot using the bonus floor area, or such other area as is  
9 prescribed by the provisions of the zone, or at another location where the applicant and the  
10 Director agree that it will mitigate the direct impacts of the project, and the payment shall be  
11 used within five years of receipt for such purposes.  
12

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

15           A. Scope and Applicability. This section contains rules for transfer of residential  
16 development potential to lots in areas for which other provisions of this title specifically refer  
17 to provisions of this section.  
18

19           B. Sending and Receiving Lots. Whether a lot is eligible as a TDP sending site is  
20 determined by the provisions of the zone in which the lot is located. Whether a lot is eligible as  
21 a TDP receiving site, and whether such lot may receive TDP from a particular other lot, is  
22 determined by the provisions of the zone. Use of TDP on any receiving lot is subject to the  
23 limits and conditions in this chapter, the provisions of the zone, and all other applicable  
24 provisions of this title.  
25  
26  
27

1 C. TDP Required Before Construction. No permit after the first building permit, and in  
2 any event, no permit for any construction activity other than excavation and shoring, and no  
3 permit for occupancy of existing floor area by any use based upon TDP, will be issued for  
4 development that includes TDP until the applicant's possession of TDP is demonstrated to the  
5 satisfaction of the Director. The Director is authorized to adopt rules to interpret this section.  
6

7 D. General Standards for Sending Lots.

8 1. TDP Calculation. The maximum amount of floor area that may be transferred  
9 is the amount by which the base residential floor area of the sending lot exceeds the sum of (x)  
10 any residential floor area existing on the sending lot plus (y) any TDP previously transferred  
11 from the sending lot.  
12

13 2. Floor Area Limit After Transfer. After TDP is transferred from a sending lot  
14 the amount of residential floor area that may then be established on the sending lot, other than  
15 floor area exempt from floor area limits under the provisions of the zone, shall be equal to the  
16 base residential floor area, plus any net amount of TDP previously transferred to that lot, minus  
17 the total of (a) the existing residential floor area on the lot, plus (b) the amount of TDP  
18 transferred from the lot.  
19

20 E. Landmark TDP Sending Lots. Landmark structures on sending lots from which  
21 Landmark TDP is transferred shall be restored and maintained as required by the Landmarks  
22 Preservation Board.  
23

24 F. Standards for open space TDP sending lots.

25 1. Open space TDP sites must satisfy the conditions of this subsection F1,  
26 unless an exception is granted by the Director:  
27

1 (a) Each portion of the open space must be accessible from each other  
2 portion of the open space without leaving the open space, and shall have a minimum area of  
3 5,000 square feet;

4 (b) The open space must be directly accessible from the sidewalk or  
5 another public open space, including access for persons with disabilities;

6 (c) The open space on the lot must be at ground level, except that in  
7 order to provide level open spaces on steep lots, some separation of multiple levels may be  
8 allowed, provided they are physically and visually connected;

9 (d) No more than 20 percent of the lot may be occupied by any above  
10 grade structures;

11 (e) The lot must be located a minimum of 0.25 mile from the closest lot  
12 approved by the Director as a separate open space TDP site;

13 (f) The open space must be open to the general public without charge  
14 and must meet any guidelines for an open space TDP lot established by Director's Rule; and

15 (g) Unless the open space will be in public ownership, the applicant  
16 shall make adequate provision to ensure the permanent maintenance of the open space.  
17

18  
19 2. Special exception for open space TDP sites. The Director may grant, or grant  
20 with conditions, an exception to the standards for open space TDP sites in this subsection F  
21 and any applicable Director's Rule(s), as a special exception pursuant to Chapter 23.76,  
22 Procedures for Master Use Permit and Council Land Use Decisions. In determining whether to  
23 grant, grant with conditions, or deny a request for special exception under this subsection, the  
24 Director shall consider:  
25  
26  
27

1 (a) the extent to which the exception would result in an open space TDP  
2 site that better meets the intent of the provisions of this subsection F; and

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

6  
7 3. After any TDP is transferred from an open space TDP site, lot coverage by  
8 structures shall be permanently limited to 20 percent, or such greater amount as was allowed as  
9 a special exception prior to the transfer, and no development shall be permitted that would be  
10 inconsistent with the standards under which it was approved as an open space TDP sending  
11 site.

12  
13 G. Time of Determination of TDP Eligible for Transfer. The eligibility of a sending lot  
14 to transfer TDP, and the amount transferable from a sending lot, shall be determined as of the  
15 date of transfer from the sending lot and shall not be affected by the date of any application,  
16 permit decision or other action for any project seeking to use such TDP.

17  
18 H. Reservation in Deed. Any TDP eligible for transfer may instead be reserved in the  
19 conveyance of title to an eligible sending lot, by the express terms of the deed or other  
20 instrument of conveyance reserving a specified amount of TDP, provided that an instrument  
21 acceptable to the Director is recorded binding the lot to the terms and conditions for eligibility  
22 to send TDP under this section. Any TDP so reserved shall be considered transferred from that  
23 lot and later may be conveyed by deed without participation of the owner of such lot.

24  
25 I. TDP Deeds and Agreements.

1                   1. The fee owners of the sending lot shall execute a deed, and shall obtain the  
2 release of the TDP from all liens of record and the written consent of all holders of  
3 encumbrances on the sending lot other than easements and restrictions, unless such release or  
4 consent is waived by the Director for good cause. The deed shall be recorded in the King  
5 County real property records. When TDP is conveyed to the owner of a receiving lot described  
6 in the deed, then unless otherwise expressly stated in the deed or any subsequent instrument  
7 conveying such lot or the TDP, the TDP shall pass with the receiving lot whether or not a  
8 structure using such TDP shall have been permitted or built prior to any conveyance of the  
9 receiving lot. Any subsequent conveyance of TDP previously conveyed to a receiving lot shall  
10 require the written consent of all parties holding any interest in or lien on the receiving lot  
11 from which the conveyance is made. If the TDP is transferred other than directly from the  
12 sending lot to the receiving lot using the TDP, then after the initial transfer, all subsequent  
13 transfers also shall be by deed, duly executed, acknowledged and recorded, each referring by  
14 King County recording number to the prior deed.  
15  
16

17                   2. Any person may purchase any TDP that is eligible for transfer by complying  
18 with the applicable provisions of this section, whether or not the purchaser is then an applicant  
19 for a permit to develop real property or is the owner of any potential receiving lot. Any  
20 purchaser of such TDP (including any successor or assignee) may use such TDP to obtain floor  
21 area above the applicable base height limit or base floor area limit on a receiving lot to the  
22 extent such use of TDP is permitted under the Land Use Code provisions applicable with  
23 respect to the issuance of permits for development of the project intended to use such TDP.  
24  
25

26 The Director may require, as a condition of processing any permit application using TDP or for  
27

1 the release of any security posted in lieu of a deed for TDP to the receiving lot, that the owner  
2 of the receiving lot demonstrate that the TDP has been validly transferred of record to the  
3 receiving lot, and that such owner has recorded in the real estate records a notice of the filing  
4 of such permit application, stating that such TDP is not available for retransfer.

5  
6 3. As a condition to the effective transfer of Landmark TDP, except from a  
7 City-owned sending lot, the fee owner of the sending lot shall execute and record an agreement  
8 running with the land, in form and content acceptable to, and accepted in writing by, the  
9 Director of the Department of Neighborhoods, providing for the restoration and maintenance  
10 of the historically significant features of the structure or structures on the lot. The Director may  
11 require evidence that each holder of a lien has effectively subordinated the lien to the terms of  
12 the agreement, and that any holders of interests in the property have agreed to its terms. To the  
13 extent that a Landmark structure on the sending site requires restoration or rehabilitation for  
14 the long-term preservation of the structure or its historically significant features, the Director  
15 of the Department of Neighborhoods may require, as a condition to acceptance of the  
16 necessary agreement, that the owner of the sending site apply for and obtain a Certificate of  
17 Approval from the Landmarks Preservation Board for the necessary work, or post security  
18 satisfactory to the Director of the Department of Neighborhoods for the completion of such  
19 restoration or rehabilitation, or both.

22 *Subchapter III Extra nonresidential floor area*

23 **23.58A.020 Scope of subchapter**

1 This subchapter III includes provisions under which applicants may gain extra  
2 nonresidential floor area in development for which the applicable provisions of the zone  
3 expressly refer to this chapter.

4 **23.58A.022 Methods to achieve extra nonresidential floor area**

5 All or a percentage of the extra nonresidential floor area on a lot shall be housing and  
6 child care bonus nonresidential floor area pursuant to Section 23.58A.024, or housing TDR, or  
7 a combination or the foregoing. Unless otherwise expressly provided in the provisions of the  
8 zone:  
9

10 A. If the maximum height limit for nonresidential use is 85 feet or less, all extra  
11 nonresidential floor area shall be housing and child care bonus nonresidential floor area, or  
12 housing TDR, or any combination thereof.

13 B. If the maximum height limit for nonresidential use is greater than 85 feet, the  
14 applicant shall use housing and child care bonus nonresidential floor area, or housing TDR, or  
15 any combination thereof, to achieve at least 75 percent of total the extra nonresidential floor  
16 area on the lot, and, to the extent permitted under the provisions of the zone and this  
17 subchapter, shall use other bonus nonresidential floor area pursuant to Section 23.58A.026 or  
18 TDR pursuant to Section 23.58A.028, or both, for the balance of the extra nonresidential floor  
19 area.  
20  
21

22 **23.58A.024 Bonus nonresidential floor area for affordable housing and child care**

23 A. Scope; General Rule. This section applies to bonus nonresidential floor area allowed  
24 on lots for which applicable sections of this title expressly refer to this chapter. Bonus  
25 nonresidential floor area may be allowed when the applicant qualifies by using the  
26  
27



1 performance option, the payment option, or a combination of these options, in accordance with  
2 this section and subject to the provisions of the zone.

3 B. Performance Option.

4 1. Housing.

5 (a) An applicant using the housing performance option shall provide  
6 housing serving income-eligible households in an amount equal to 15.6 percent of gross extra  
7 nonresidential floor area obtained under the performance option pursuant to this section.  
8

9 (b) Applicants may provide affordable housing as part of the project  
10 using bonus development, or by providing or contributing to an affordable housing project at  
11 another location, subject to the requirements in subsection B1(e) of this section and approved  
12 in writing by the Housing Director prior to issuance of the first building permit for the  
13 development using the bonus nonresidential floor area.  
14

15 (c) The affordable housing shall serve only income-eligible households  
16 for a minimum period of 50 years from the later of the date when the agreement between the  
17 housing owner and the City, as referenced in B1(e), is recorded, or the date when the  
18 affordable housing becomes available for occupancy as determined by the City. For rental  
19 housing, rent shall be limited so that housing costs, including rent and basic utilities, shall not  
20 exceed 30 percent of the applicable income limit for the unit under this section, all as  
21 determined by the Housing Director, for a minimum period of 50 years. For owner-occupied  
22 housing, the initial sale price shall not exceed an amount determined by the Housing Director  
23 to be consistent with affordable housing for an income-eligible household with the average  
24 family size expected to occupy the unit based on the number of bedrooms, and the units shall  
25  
26  
27

1 be subject to recorded instruments satisfactory to the Housing Director providing for sales  
2 prices on any resale consistent with affordability on the same basis for at least 50 years.

3 (d) If the affordable housing is developed within the project using the  
4 bonus floor area:

5 (i) The affordable housing must serve income-eligible  
6 households for the minimum time period referred to in this section.

7 (ii) The affordable housing shall be completed and ready for  
8 occupancy at or before the time when a certificate of occupancy is issued for any other units in  
9 the project using the bonus nonresidential floor area, and as a condition to any right of the  
10 applicant to such a certificate of occupancy.

11 (e) If the affordable housing is not being developed within the project  
12 using the bonus nonresidential floor area:

13 (i) Proposals for affordable housing at a location other than  
14 within the project using the bonus floor area are subject to approval by the Housing Director.  
15 Approval requires a determination by the Housing Director that the affordable housing will (1)  
16 be located within the same neighborhood where the development using the bonus  
17 nonresidential floor area is located, except as otherwise provided in subsection B1(e)(ii) of  
18 this section; (2) provide a public benefit, the value of which, as demonstrated by the applicant,  
19 exceeds the amount of the payment-in-lieu that would otherwise be paid; and (3) be more  
20 affordable than market rents or sale prices, as applicable, for housing in the neighborhood in  
21 which the affordable housing is located.  
22  
23  
24  
25  
26  
27

1 (ii) If the applicant demonstrates to the satisfaction of the  
2 Housing Director that it is infeasible for the off-site affordable housing to be located within the  
3 same neighborhood where the development using the bonus nonresidential floor area is  
4 located, then (A) the Housing Director may allow the affordable housing to be provided  
5 elsewhere in the City within 0.5 mile of a light rail or bus rapid transit station on a route  
6 serving the neighborhood where the development using the bonus nonresidential floor area is  
7 located, or (B) if the applicant demonstrates that providing the affordable housing at such a  
8 location is also infeasible, then the Housing Director may allow the affordable housing to be  
9 provided elsewhere within the same City sector, as delineated by Interstate-5, the Ship Canal  
10 and Interstate-90 (as projected to Elliott Bay), where the development using the bonus  
11 nonresidential floor area is located.  
12

13  
14 (iii) The affordable housing must serve income-eligible  
15 households for the minimum time period referred to in this section pursuant to an agreement  
16 between the housing owner and the City.  
17

18 (iv) The agreement required by subsection B1(e)(iii) must be  
19 executed and recorded prior to issuance, and as a condition to issuance, of the first building  
20 permit for the project using the bonus nonresidential floor area, and in any event before any  
21 permit for any construction activity other than excavation and shoring is issued.  
22

23 (v) The applicant shall provide to the City an irrevocable letter of  
24 credit, or other sufficient security approved by the Housing Director, prior to and as a  
25 condition of issuance of the first building permit, other than for grading and shoring, for the  
26 project using the bonus nonresidential floor area, unless completion of the affordable housing  
27

1 has already been documented to the satisfaction of the Housing Director and the affordable  
2 housing is subject to recorded restrictions satisfactory to the Housing Director. The letter of  
3 credit or other security shall be in an amount equal to the payment option amount calculated  
4 according to provisions in subsection C of this section, plus an amount equal to interest on  
5 such amount, at the rate equal to the prime rate quoted by Bank of America or its successor at  
6 the time the letter of credit or other security is provided, plus 3 percent per annum, from the  
7 date of issuance of the first building permit, other than for excavation and shoring, for the  
8 project using the bonus nonresidential floor area. The letter of credit or other security shall be  
9 on terms such that when a certificate of occupancy is issued for the project using the bonus  
10 nonresidential floor area, or on any earlier date 30 days before the letter of credit or other  
11 security will expire, if the required quantity of affordable housing is not completed and ready  
12 for occupancy or the affordable housing is not all subject to a recorded agreement sufficient to  
13 satisfy the terms of this section, the City shall have a right to draw on the letter of credit or  
14 other security. If and when the City becomes entitled to realize on any such security, the  
15 Housing Director shall take appropriate steps to collect the amount calculated pursuant to the  
16 payment option provisions in subsection C of this section (after allowing credit for any  
17 affordable housing then provided and accepted by the Housing Director), with interest for the  
18 period and at the rate determined pursuant to this subsection, and the amounts realized, net of  
19 any costs to the City, shall be used in the same manner as cash payments for housing made  
20 under this section. To the extent the City receives payment through a letter of credit or other  
21 security, the obligation of the applicant to provide affordable housing will be deemed satisfied  
22  
23  
24  
25  
26  
27

1 and the applicant shall be deemed to have elected the payment option. The applicant shall not  
2 be entitled to any refund based on later completion of affordable housing.

3 (vi) If the Housing Director certifies to the Director that either  
4 (1) the applicant has provided the City with a letter of credit or other sufficient security  
5 pursuant to subsection B1(e)(v) of this section; or (2) there have been recorded one or more  
6 agreements or instruments satisfactory to the Housing Director providing for occupancy and  
7 affordability restrictions on affordable housing with the minimum floor area determined under  
8 this section, all affordable housing has been completed, and the affordable housing is on a  
9 different lot from the bonus residential floor area or is in one or more condominium units  
10 separate from the bonus development under condominium documents acceptable to the  
11 Housing Director, then any failure of the affordable housing to satisfy the requirements of this  
12 subsection B shall not affect the right to maintain or occupy the bonus residential floor area.  
13  
14

15 (vii) Unless and until the Housing Director shall certify as set  
16 forth in clause (1) or (2) of subsection B1(e)(vi) of this section, it shall be a continuing permit  
17 condition, whether or not expressly stated, for each project obtaining bonus residential floor  
18 area based on the provision of housing to which this section applies, that the affordable  
19 housing shall be maintained in compliance with the terms of this section and any applicable  
20 provisions of the zone, as documented to the satisfaction of the Housing Director.  
21

22 (f) No subsidies for bonused housing; Exception.

23  
24 (i) The Housing Director may require, as a condition of any  
25 bonus nonresidential floor area under the performance option, that the owner of the lot upon  
26 which the affordable housing is located agree not to seek or accept any subsidies, including  
27

1 without limitation those items referred to subsection B1(f)(ii) of this section, related to  
2 housing, except for any subsidies that may be allowed by the Housing Director under that  
3 subsection. The Director may require that such agreement provide for the payment to the City,  
4 for deposit in an appropriate subfund or account, of the value of any subsidies received in  
5 excess of any amounts allowed by such agreement.

6  
7 (ii) In general, and except as may be otherwise required by  
8 applicable federal or state law, no bonus nonresidential floor area may be earned by providing  
9 housing if:

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

15  
16 (2) The housing is or would be, independent of the  
17 requirements for the bonus nonresidential floor area, subject to any restrictions on the income  
18 of occupants, rents or sale prices.

19  
20 (iii) As an exception to the restriction on subsidies, the Housing  
21 Director may allow the building or buildings in which the affordable housing is located to be  
22 financed in part with subsidies based on the determination that (1) the total amount of  
23 affordable housing is at least 300 net residential square feet greater than the amount otherwise  
24 required through the performance option under this section; (2) the public benefit of the  
25 affordable housing net of any subsidies, as measured through an economic analysis, exceeds the  
26

1 amount of the payment-in-lieu that would otherwise be paid; and (3) the subsidies being allowed  
2 would not be sufficient to leverage private funds for production of the affordable housing,  
3 under restrictions as required for the performance option, without additional City subsidy in an  
4 amount greater than the payment-in-lieu amount that would otherwise be paid.

5 (g) The Housing Director is authorized to accept and execute  
6 agreements and instruments to implement this section. Issuance of the certificate of occupancy  
7 for the project using the bonus nonresidential floor area may be conditioned on such  
8 agreements and instruments.  
9

10 (h) The housing owner, in the case of rental housing, shall provide  
11 annual reports and pay an annual monitoring fee to the Office of Housing for each affordable  
12 housing unit, as specified under Chapter 22.900G. In the case of affordable housing for owner-  
13 occupancy, the applicant shall pay an initial monitoring fee to the Office of Housing as  
14 specified under Chapter 22.900G, and the recorded resale restrictions shall include a provision  
15 requiring payment to the City, on any sale or other transfer of a unit after the initial sale, of a  
16 fee in the amount of \$500, to be adjusted in proportion to changes in the consumer price index  
17 from 2008 to the year in which the sale or transfer is made, for the review and processing of  
18 documents to determine compliance with income and affordability restrictions.  
19  
20

## 21 2. Child Care.

22 (a) For each square foot of nonresidential bonus floor area allowed  
23 under this section, in addition to providing housing or an alternative cash contribution pursuant  
24 to subsection B1 or C, an applicant using the child care performance option shall provide fully  
25 improved child care facility space sufficient for 0.000127 of a child care slot. The minimum  
26  
27

1 interior space in the child care facility for each child care slot shall comply with all applicable  
2 state and local regulations governing the operation of licensed childcare providers. Child care  
3 facility space shall be deemed provided only if the applicant causes the space to be newly  
4 constructed or newly placed in child care use after the submission of a permit application for  
5 the project intended to use the bonus floor area, except as provided in subsection B2(c)(6). If  
6 any contribution or subsidy in any form is made by any public entity to the acquisition,  
7 development, financing or improvement of any child care facility, then any portion of the space  
8 in such facility determined by the Director of the Human Services Department to be  
9 attributable to such contribution or subsidy shall not be considered as provided by any  
10 applicant other than that public entity.  
11

12 (b) Child care space shall be provided on the same lot as the project  
13 using the bonus floor area, or on another lot in the same neighborhood, or elsewhere in the City  
14 within 0.5 mile of a light rail or bus rapid transit station located on a route serving the  
15 neighborhood where the development using the bonus nonresidential floor area is located.  
16

17 (c) Child care space shall be contained in a child care facility satisfying  
18 the following standards:  
19

20 (1) The child care facility and accessory exterior space must be  
21 approved for licensing by the State of Washington Department of Social and Health Services  
22 and any other applicable state or local governmental agencies responsible for the regulation of  
23 licensed childcare providers.  
24

25 (2) At least 20 percent of the number of child care slots for  
26 which space is provided as a condition of bonus floor area must be reserved for, and affordable  
27



1 to, families with annual incomes at or below the U.S. Department of Housing and Urban  
2 Development Low Income Standard for Section 8 Housing based on family size (or, if such  
3 standard shall no longer be published, a standard established by the Human Services Director  
4 based generally on 80 percent of the median family income of the Metropolitan Statistical  
5 Area, or division thereof, that includes Seattle, adjusted for family size). Child care slots shall  
6 be deemed to meet these conditions if they serve, and are limited to, (a) children receiving  
7 child care subsidy from the City of Seattle, King County or State Department of Social and  
8 Health Services, and/or (b) children whose families have annual incomes no higher than the  
9 above standard who are charged according to a sliding fee scale such that the fees paid by any  
10 family do not exceed the amount it would be charged, exclusive of subsidy, if the family were  
11 enrolled in the City of Seattle Child Care Assistance Program.  
12  
13

14 (3) Child care space provided to satisfy bonus conditions shall be  
15 dedicated to child care use, consistent with the terms of this section, for 20 years. The  
16 dedication shall be established by a recorded covenant, running with the land, and enforceable  
17 by the City, signed by the owner of the lot where the child care facility is located and by the  
18 owner of the lot where the bonus floor area is used, if different from the lot of the child care  
19 facility. The child care facility shall be maintained in operation, with adequate staffing, at least  
20 11 hours per day, five days per week, and 50 weeks per year.  
21

22 (4) Exterior space for which a bonus is or has been allowed  
23 under any other section of this title or under former Title 24 shall not be eligible to satisfy the  
24 conditions of this section.  
25  
26  
27

1 (5) Unless the applicant is the owner of the child care space and  
2 is a duly licensed and experienced child care provider approved by the Director of the Human  
3 Services Department, the applicant shall provide to the Director a signed agreement,  
4 acceptable to such Director, with a duly licensed child care provider, under which the child  
5 care provider agrees to operate the child care facility consistent with the terms of this section  
6 and of the recorded covenant, and to provide reports and documentation to the City to  
7 demonstrate such compliance.  
8

9 (6) One child care facility may fulfill the conditions for a bonus  
10 for more than one project if it includes sufficient space, and provides sufficient slots affordable  
11 to limited income families, to satisfy the conditions for each such project without any space or  
12 child care slot being counted toward the conditions for more than one project. If the child care  
13 facility is located on the same lot as one of the projects using the bonus, then the owner of that  
14 lot shall be responsible for maintaining compliance with all the requirements applicable to the  
15 child care facility; otherwise responsibility for such requirements shall be allocated by  
16 agreement in such manner as the Director of the Human Services Department may approve. If  
17 a child care facility developed to qualify for bonus floor area by one applicant includes space  
18 exceeding the amount necessary for the bonus floor area used by that applicant, then to the  
19 extent that the voluntary agreement accepted by the Director of the Human Services  
20 Department from that applicant so provides, such excess space may be deemed provided by the  
21 applicant for a later project pursuant to a new voluntary agreement signed by both such  
22 applicants and by any other owner of the child care facility, and a modification of the recorded  
23 covenant, each in form and substance acceptable to such Director.  
24  
25  
26  
27

1 (d) The Director of the Human Services Department shall review the  
2 design and proposed management plan for any child care facility proposed to qualify for bonus  
3 floor area to determine whether it will comply with the terms of this section. The allowance of  
4 bonus floor area is conditioned upon approval of the design and proposed management plan by  
5 the Director. The child care facility shall be constructed consistent with the design approved by  
6 such Director and shall be operated for the minimum 20 year term consistent with the  
7 management plan approved by such Director, in each case with only such modifications as  
8 shall be approved by such Director. If the proposed management plan includes provisions for  
9 payment of rent or occupancy costs by the provider, the management plan must include a  
10 detailed operating budget, staffing ratios, and other information requested by the Director to  
11 assess whether the child care facility may be economically feasible and able to deliver quality  
12 services.  
13  
14

15 (e) The Director of the Human Services Department is authorized to  
16 accept a voluntary agreement for the provision of a child care facility to satisfy bonus  
17 conditions and related agreements and instruments consistent with this section. The voluntary  
18 agreement may provide, in case a child care facility is not maintained in continuous operation  
19 consistent with this subsection B2 at any time within the minimum 20 year period, for the  
20 City's right to receive payment of a prorated amount of the alternative cash contribution that  
21 then would be applicable to a new project seeking bonus floor area. Such Director may require  
22 security or evidence of adequate financial responsibility, or both, as a condition to acceptance  
23 of an agreement under this subsection.  
24  
25

26 C. Payment Option.  
27

1                   1. Amount of payments. In lieu of all or part of the performance option, an  
2 applicant may provide a cash contribution to the City of \$18.75 per square foot of  
3 nonresidential bonus floor area for low-income housing, to be administered by the Office of  
4 Housing, and \$3.25 per square foot of nonresidential bonus floor area for child care facilities,  
5 to be administered by the Human Services Department. The Housing Director and Human  
6 Services Director, respectively, may adjust the alternative cash contributions, no more  
7 frequently than annually, approximately in proportion to the change in the Consumer Price  
8 Index, All Urban Consumers, Seattle-Tacoma metropolitan area, All Items (1982-84=100), as  
9 determined by the U.S. Department of Labor, Bureau of Labor Statistics, or successor index, or  
10 any other cost index that such Directors may deem appropriate. The base year for the first such  
11 adjustment shall be 2001.  
12  
13

14                   2. Timing of payments. Cash payments shall be made prior to issuance, and as a  
15 condition to issuance, of the first building permit for a project, and in any event before any  
16 permit for any construction activity other than excavation and shoring is issued.  
17

18                   3. Deposit and use of payments. Payments in lieu of low-income housing and  
19 child care facilities shall be deposited in special accounts established solely to support the  
20 development of low-income housing and child care facilities. Earnings on balances in the  
21 special accounts shall accrue to those accounts. The Housing Director and Human Services  
22 Director shall use cash payments and any earnings thereon to support the development or  
23 preservation of low-income housing, including renter or owner housing for income-eligible  
24 households and including land purchase for the purpose of providing low-income housing, and  
25 the development of child care facilities, as prescribed in this section, which may include the  
26  
27

1 City's costs to administer projects, not to exceed ten percent of the payments into the special  
2 accounts, and support provided through loans or grants to public or private owners or  
3 developers of housing and child care and, in the case of payments in lieu of affordable housing,  
4 through loans or grants to home purchases. The location of affordable housing and child care  
5 funded wholly or in part with cash payments shall be prioritized in the following order: (1)  
6 within the same neighborhoods where the developments using the bonus nonresidential floor  
7 area are located; (2) in the City within 0.5 mile of light rail or bus rapid transit stations on  
8 routes serving the neighborhoods where the developments using the bonus nonresidential floor  
9 area are located; and (3) within the same City sectors as delineated by Interstate-5, the Ship  
10 Canal and Interstate-90 (as projected to Elliott Bay) where the developments using the bonus  
11 nonresidential floor area are located.  
12  
13

14 4. The Director and the Housing Director are authorized jointly to adopt rules to  
15 interpret and implement the provisions of this subsection C, in addition to rules that may be  
16 adopted by the Housing Director independently as authorized in this section.  
17

18 **23.58A.026 Bonus nonresidential floor area for amenities**

19 A. An applicant may achieve a portion of the extra nonresidential floor area through  
20 bonuses for amenities, subject to the limits in this chapter and in the provisions of the zone.

21 Amenities for which bonuses may be allowed are limited to:

22 1. Public open space amenities, including hillside terraces on eligible sites,  
23 urban plazas, parcel parks, public atria, green street improvements and green street setbacks on  
24 designated green streets;  
25

26 2. Hillclimb assists or shopping corridors on eligible sites;  
27

1                   3. Human services uses as follows:

- 2                           (a) Information and referral for support services;
- 3                           (b) Health clinics;
- 4                           (c) Mental health counseling services;
- 5                           (d) Substance abuse prevention and treatment services;
- 6                           (e) Consumer credit counseling;
- 7                           (f) Day care services for adults;
- 8                           (g) Jobs skills training services;

9                   4. Public restrooms;

10                   5. Transit station access for transit facilities.

11                   B. Standards for Amenities.

12                   1. Location of Amenities. Amenities shall be located on the lot using the bonus,  
13                   except as follows:

14                           (a) Green street improvements may be located within an abutting right-  
15                   of-way subject to applicable Director's rules.

16                           (b) An open space amenity, other than green street improvements, may  
17                   be on a lot other than the lot using the bonus, on the following terms:

18                                   (1) The open space must be open to the general public without  
19                   charge, must meet the eligibility conditions of the any applicable standards, and must be one of  
20                   the open space features cited in subsection A1 of this section.

21                                   (2) The open space must be within 0.25 mile of the lot using the  
22                   bonus, except as may be permitted pursuant to subsection B1b(4).

1 (3) The open space must have a minimum contiguous area of  
2 5,000 square feet, except as may be permitted pursuant to subsection B1b(4).

3 (4) Departures from standards for the minimum size of off-site  
4 open space and maximum distance from the project may be allowed by the Director as a Type I  
5 decision if the Director determines that if such departures are approved, the proposed open  
6 space will meet the additional need for open space caused by the project, and improve public  
7 access to the open space compared to provision of the open space on-site.  
8

9 (5) The owner of any lot on which off-site open space is  
10 provided to meet the conditions of this section shall execute and record an easement or other  
11 instrument in a form acceptable to the Director assuring compliance with the requirements of  
12 this section, including applicable conditions of any applicable standards.  
13

14 (c) Public restrooms shall be on a ground floor; shall satisfy all codes  
15 and accessibility standards; shall be open to the general public during hours that the structure is  
16 open to the public, although access may be monitored by a person located at the restroom  
17 facility; shall be maintained by the owner of the structure for the life of the structure that  
18 includes the bonus floor area; and shall be designated by signs sufficient so that they are  
19 readily located by pedestrians on an abutting street or public open space. The Director is  
20 authorized to establish standards for the design, construction, operation and maintenance of  
21 public restrooms qualifying for a bonus, consistent with the intent of this subsection to  
22 encourage the provision of accessible, clean, safe and environmentally sound facilities.  
23  
24

25 2. Options for Provision of Amenities. Amenities must be provided by  
26 performance except as expressly permitted in this section. The Director may accept a cash  
27

1 payment for green street improvements subject to the provisions of this section, any applicable  
2 standards and the Green Street Director's Rule, DR 11-2007, if the Director determines that  
3 improvement of a green street abutting or in the vicinity of the lot within a reasonable time is  
4 feasible. The cash payment must be in an amount sufficient to improve fully 1 square foot of  
5 green street space for each 5 square feet of bonus floor area allowed for such payment.  
6

7 3. Ratios and limits. Amenities may be used to gain floor area according to any  
8 applicable ratios, and subject to the limits, in the applicable provisions of the zone.

9 4. Amenity Standards.

10 (a) The Director shall approve a feature for a bonus if the Director  
11 determines that the feature satisfies the eligibility conditions of any applicable amenity  
12 standards, and that the feature carries out the intent of this section and the guidelines in any  
13 applicable amenity standards.  
14

15 (b) The Director may allow departures from the eligibility conditions in  
16 any applicable amenity standards as a Type I decision, if the applicant can demonstrate that the  
17 amenity better achieves the intent of the amenity as described in this chapter and any  
18 applicable amenity standards, and that the departure is consistent with any applicable criteria  
19 for allowing the particular type of departure in any applicable amenity standards.  
20

21 (c) The Director may allow departures from the eligibility conditions in  
22 any applicable amenity standards as a Type I decision, to allow floor area in a Landmark  
23 structure to qualify as floor area eligible for a bonus when adapted to serve as a hillclimb  
24 assist, shopping corridor, or public atrium amenity.  
25  
26  
27



1 (d) The Director may condition the approval of a feature for a bonus as  
2 provided in any applicable amenity standards.

3 5. Open Space Amenities. Open space amenities must be newly constructed in  
4 compliance with the applicable provisions of this chapter and any applicable amenity  
5 standards.

6 6. Declaration. When amenities are to be provided on-site for purposes of  
7 obtaining bonus floor area, the owner shall execute and record a declaration in a form  
8 acceptable to the Director identifying the features and the fact that the right to develop and  
9 occupy a portion of the gross floor area on the site is based upon the long-term provision and  
10 maintenance of those amenities.  
11

12 7. Duration; Alteration. All bonus amenities shall be provided and maintained in  
13 accordance with the applicable provisions of this section and any applicable amenity standards  
14 for as long as the portion of the nonresidential floor area gained by the amenities exists. A  
15 permit is required to alter or remove any bonused amenity.  
16

17 **23.58A.028 Transfer of development rights**

18 A. General Standards.

19 1. The following types of TDR may be transferred to the extent permitted in the  
20 provisions of the zone, and, subject to the limits and conditions in this chapter and the  
21 provisions of the zone:  
22

23 (a) Housing TDR;

24 (b) Landmark TDR; and

25 (c) Open space TDR.  
26  
27

1                   2. In addition to transfers permitted under subsection A1, TDR may be  
2 transferred from any lot to another lot on the same block, as within-block TDR, to the extent  
3 permitted in the provisions of the zone, subject to the limits and conditions in this chapter and  
4 the provisions of the zone.

5                   3. A lot's eligibility to be either a sending or receiving lot is regulated in this  
6 chapter and the provisions of the zone.

7                   4. No permit after the first building permit, and in any event, no permit for any  
8 construction activity other than excavation and shoring or for occupancy of existing floor area  
9 by any use based upon TDR, will be issued for development that includes TDR until the  
10 applicant's possession of TDR eligible for use on the lot is demonstrated by a recorded deed  
11 validly transferring the TDR to the receiving lot.

12  
13  
14                   B. Standards for Sending Lots.

15                   1. The maximum amount of floor area that may be transferred from an eligible  
16 sending lot is the amount by which the product of the eligible lot area times the base FAR of  
17 the sending lot, as provided in applicable zone, exceeds the sum of any gross nonresidential  
18 floor area existing.

19                   2. For purposes of subsection 1, the eligible lot area is the total area of the  
20 sending lot, reduced by the excess, if any, of the total of accessory surface parking over 25  
21 percent of the total area of the footprints of all structures on the sending lot; and for an open  
22 space TDR site, further reduced by any portion of the lot ineligible under the provisions of the  
23 zone.  
24  
25  
26  
27

1                   3. When TDR are transferred from a sending lot in a zone with a base FAR  
2 limit, then except as otherwise stated in the provisions of the zone, amount of gross  
3 nonresidential floor area that may then be built on the sending lot shall not exceed the area of  
4 the lot multiplied by the applicable base FAR limit set in applicable zone, minus the total of:

5                                   (a) The existing nonresidential floor area on the lot; plus

6                                   (b) The amount of gross floor area transferred from the lot.  
7

8                   4. Gross floor area allowed above base FAR under any bonus provisions of this  
9 title or allowed under any exceptions or waivers of development standards, may not be  
10 transferred.

11                   5. Landmark structures on sending lots from which Landmark TDR are  
12 transferred shall be restored and maintained as required by the Landmarks Preservation Board.  
13

14                   6. Housing on lots from which housing TDR are transferred shall be  
15 rehabilitated to the extent required to provide decent, sanitary and habitable conditions, in  
16 compliance with applicable codes, and so as to have an estimated minimum useful life of at  
17 least 50 years from the time of the TDR transfer, as approved by the Housing Director. If  
18 housing TDR are proposed to be transferred prior to the completion of work necessary to  
19 satisfy this subsection B6, the Housing Director may require, as a condition to such transfer,  
20 that security be deposited with the City to ensure the completion of such work.  
21

22                   C. Limit on within-block TDR. Any receiving lot is limited to a gain of 15 percent of  
23 the floor area above the base FAR, or as specified in the provisions of the zone, from TDR  
24 from sending lots that are eligible to send TDR solely because they are on the same block as  
25 the receiving lot.  
26

1           D. Transfer of Development Rights Deeds and Agreements.

2                   1. The fee owners of the sending lot shall execute a deed with the written  
3 consent of all holders of encumbrances on the sending lot unless, in the case of TDR from a  
4 housing TDR site, such consent is waived by the Housing Director for good cause, which deed  
5 shall be recorded in the King County real property records. When TDR are conveyed to the  
6 owner of a receiving lot described in the deed, then unless otherwise expressly stated in the  
7 deed or any subsequent instrument conveying such lot or the TDR, the TDR shall pass with the  
8 receiving lot whether or not a structure using such TDR shall have been permitted or built prior  
9 to any conveyance of the receiving lot. Any subsequent conveyance of TDR previously  
10 conveyed to a receiving lot shall require the written consent of all parties holding any interest  
11 in or lien on the receiving lot from which the conveyance is made. If the TDR are transferred  
12 other than directly from the sending lot to the receiving lot using the TDR, then after the initial  
13 transfer, all subsequent transfers also shall be by deed, duly executed, acknowledged and  
14 recorded, each referring by King County recording number to the prior deed.  
15

16                   2. Any person may purchase any TDR that are eligible for transfer by  
17 complying with the applicable provisions of this section, whether or not the purchaser is then  
18 an applicant for a permit to develop real property. Any purchaser of such TDR (including any  
19 successor or assignee) may use such TDR to obtain extra nonresidential floor area on a  
20 receiving lot to the extent such use of TDR is permitted under the Land Use Code provisions in  
21 effect on the date of vesting, under applicable law, of such person's rights with respect to the  
22 issuance of permits for development of the project intended to use such TDR. The Director  
23 may require, as a condition of processing any permit application using TDR or for the release  
24  
25  
26  
27

1 of any security posted in lieu of a deed for TDR to the receiving lot, that the owner of the  
2 receiving lot demonstrate that the TDR have been validly transferred of record to the receiving  
3 lot, and that such owner has recorded in the real estate records a notice of the filing of such  
4 permit application, stating that such TDR are not available for retransfer.

5           3. For transfers of housing TDR, the owner of the sending lot shall execute and  
6 record an agreement, with the written consent of all holders of encumbrances on the sending  
7 lot, unless such consent is waived by the Housing Director for good cause, to provide for the  
8 maintenance of the required housing on the sending lot for a minimum of 50 years. Such  
9 agreement shall commit to limits on rent and occupancy, consistent with the definition of  
10 housing TDR site and acceptable to the Housing Director.

11           4. For transfers of Landmark TDR, the owner of the sending lot shall execute  
12 and record an agreement in form and content acceptable to the Landmarks Preservation Board  
13 providing for the restoration and maintenance of the historically significant features of the  
14 structure or structures on the lot.

15           5. A deed conveying TDR may require or permit the return of the TDR to the  
16 sending lot under specified conditions, but notwithstanding any such provisions:

17                   (a) The transfer of TDR to a receiving lot shall remain effective so long  
18 as any portion of any structure for which a permit was issued based upon such transfer remains  
19 on the receiving lot; and

20                   (b) The City shall not be required to recognize any return of TDR unless  
21 it is demonstrated that all parties in the chain of title have executed, acknowledged and  
22  
23  
24  
25  
26  
27

1 recorded instruments conveying any interest in the TDR back to the sending lot and any lien  
2 holders have released any liens thereon.

3           6. Any agreement governing the use or development of the sending lot shall  
4 provide that its covenants or conditions shall run with the land and shall be specifically  
5 enforceable by The City of Seattle.

6           E. Time of Determination of TDR Eligible for Transfer. The eligibility of a sending lot  
7 to transfer TDR, and the amount transferable from a sending lot, shall be determined as of the  
8 date of transfer from the sending lot and shall not be affected by the date of any application,  
9 permit decision or other action for any project seeking to use such TDR.

10           Section 2. The Office of Housing, or successor agency, will review bonus floor area  
11 incentive programs in 2010, and every three to five years thereafter. The purpose of the review  
12 will be to assess market conditions and exercise the Housing Director’s authority to adjust in-  
13 lieu payment amounts in order to maintain programs that provide both incentives to developers  
14 and community benefits.

15           Section 3. The intent of the City is to preserve the option to participate in a regional  
16 transfer of development rights (“TDR”) program if the State sets up a Regional TDR program  
17 for the Central Puget Sound Region or a coalition of jurisdictions sets up a TDR program. The  
18 Regional TDR Program is being considered pursuant to Chapter 482, Laws of 2007 as part of  
19 the work of a TDR Policy Advisory group to the State of Washington to make a  
20 recommendation to develop a Regional TDR program in the Central Puget Sound Region.  
21 Future amendments to the Land Use Code could allow the use of TDR from other jurisdictions  
22 as an option to gain extra nonresidential floor area, instead of using other TDR that could be  
23  
24  
25  
26  
27

1 used for up to 25 percent of that extra floor area under this ordinance, and/or as an option to  
2 gain extra residential floor area, instead of using transfer of development potential from  
3 sending sites in the City where that may be allowed for up to 40 percent of extra residential  
4 floor area under this ordinance.

5           Section 4. 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 5. 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 \_\_\_\_\_, 2008, and signed by me in  
5 open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2008.  
6

7 \_\_\_\_\_  
8

9 President \_\_\_\_\_ of the City Council

10  
11 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2008.  
12

13 \_\_\_\_\_  
14

15 Gregory J. Nickels, Mayor  
16

17 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2008.  
18

19 \_\_\_\_\_  
20

21 City Clerk  
22

23 (Seal)  
24  
25  
26  
27