



Date: November 9, 2012

To: Councilmember Richard Conlin, Chair
Councilmember Tim Burgess, Vice Chair
Councilmember Mike O'Brien, Member
Planning, Land Use and Sustainability (PLUS) Committee

From: Rebecca Herzfeld, Council Central Staff

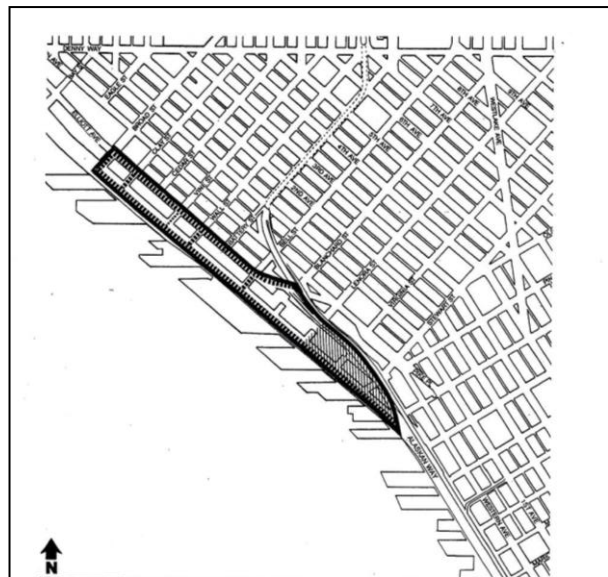
Subject: November 14, 2012 PLUS Meeting: Briefing on Council Bill (C. B.) 117601, amending downtown zoning regulations

The Department of Planning and Development (DPD) is proposing C.B. 117601, which would amend Sections 23.49.011, 23.49.013, 23.49.014, and 23.49.181 of the Downtown Chapter of the City's Land Use Code to correct omissions and make it easier to use incentive provisions in two downtown zones, the Downtown Harborfront 2 (DH2) zone and the Pioneer Square Mixed (PSM) 85-120 zone. A public hearing on the bill is scheduled during the PLUS Committee meeting on November 14, 2012.

After the submittal and introduction of the DPD legislation, the Office of Housing (OH) and Law Department proposed further technical changes and corrections to the bill. OH has also proposed that a "ratify and confirm" clause be added to the bill. These changes are described in Subsection C below and are included in an updated version of the bill that is attached to this memo.

A. Downtown Harborfront 2 Zone

Background. The Downtown Harborfront 2 (DH2) zone applies to an area abutting the waterfront that is one-block deep between Alaskan Way and Elliott Avenue and extends from Pike Street to Broad Street (See Map 1, in which the DH2 zone is the area bounded by the thick black line).



Map 1: Downtown Harborfront 2 zone

The DH2 zone is intended to accommodate a mix of uses at a scale that complements shoreline development and enhances public access to the waterfront. The zone height limits range from 55 feet to 85 feet. The base Floor Area Ratio (FAR) in the zone is 2.5 FAR and the maximum limit on floor area is established by the height and bulk regulations. The remaining redevelopment opportunities in the DH2 zone are limited. Of the 13.2 acres of land within the zone, the combined area of parcels that DPD has identified as potential redevelopment sites is about one acre.

The proposed changes to the DH2 zone are as follows:

1. Reestablish incentive provisions for nonresidential uses to enable projects to gain extra floor area above the current base FAR limit, and allow the use of transfer of development rights (TDR) as one of the incentives. Code amendments adopted in 2001 inadvertently eliminated the incentives for gaining extra floor area above the base FAR.
2. Add the DH2 zone to the list of downtown zones that exempt residential use from FAR calculations. This would make it unnecessary for residential development to use incentives to gain extra floor area and would encourage residential use.

Amendment A1: Reestablish incentive provisions in the DH2 zone

When the DH2 zone was established in 1985, it allowed development to exceed the base FAR of 2.5 by providing open space or contributing to amenities that would help implement the Harborfront Improvement Plan (adopted by Resolution 27794). In 2001, the Council substantially revised the incentive provisions in the Downtown Code. Ordinance 120443, which enacted these changes, repealed several sections that outlined incentives in individual zones, and instead consolidated these incentives in a new section. The DH2 bonus section was one of the ones repealed as part of this ordinance, but its bonuses were left out of the new incentives section.

The amendments in the proposed legislation would again allow the use of incentives in the DH2 zone. For non-residential uses, floor area above the base 2.5 FAR would be gained by participating in the downtown incentive programs, with 75 percent of the extra floor area gained through providing affordable housing and child care. The remaining 25 percent of extra floor area could be gained from amenity bonuses such as off-site open space or green street improvements on Clay, Vine, Cedar, or Wall Streets. TDR from designated landmark structures or public open space could also be used. The restored opportunities for contributions to amenities are consistent with the intent of the original bonus provisions that encouraged increases in open space amenities and enhanced access to the waterfront. To codify this change, the legislation would amend Sections 23.49.011, 23.49.013, and 23.49.014.

Amendment A2: Exempt residential uses from FAR limits in DH2 zones

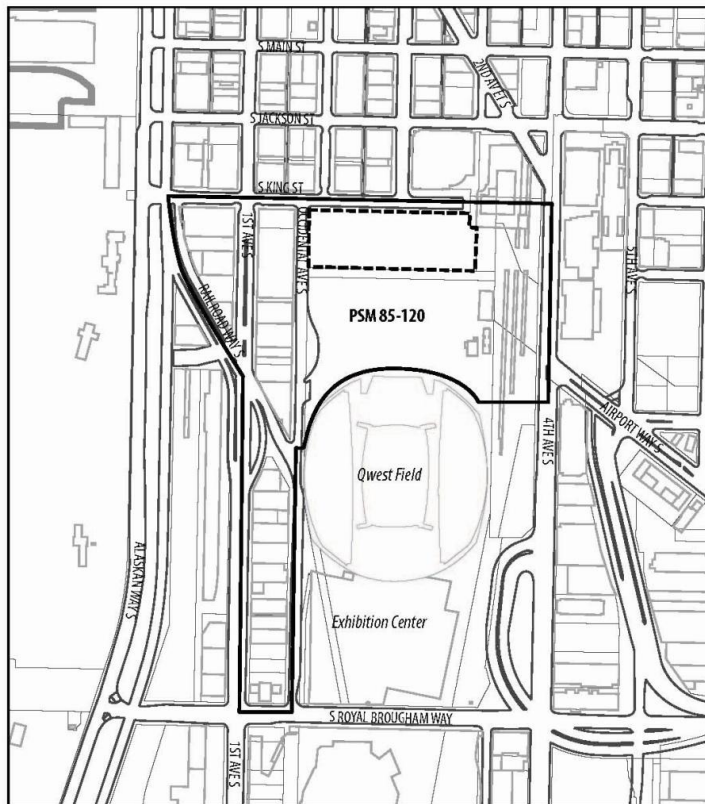
The Downtown Code generally treats residential and nonresidential uses differently, and the proposed amendments would apply a similar approach to the DH2 zone. Currently, residential use is exempt from FAR calculations in all downtown zones except the Pike Market Mixed and DH2 zones. In the DH2 zone, exempting residential use from FAR limits would allow for a density of residential development that is the same as that permitted in zones with similar height limits in the adjacent Belltown area. As in these zones, the maximum amount of residential use allowed in a project would be limited only by height and bulk regulations, including applicable view corridor setbacks, and the use of bonuses would not be required to achieve the maximum amount of floor area permitted.

Because residential use would not be required to gain extra floor area through the use of incentives, residential projects would likely be an attractive option for future development. In addition to being consistent with the treatment of residential uses in the surrounding area, this more flexible treatment of residential use in the DH2 zone would also support the direction of the waterfront planning initiative that is now underway, by promoting increased residential development on the eastern edge of the waterfront.

B. Pioneer Square Mixed 85-120 zone changes

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

Map for 23.49.180



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

Map 2: Pioneer Square Mixed 85-120 Zone

In 2009, the Council adopted Ordinance 123034, which allowed a large mixed-use development and associated bonus floor area on the North Lot (now called Stadium Place (201 S. King Street)).

King County (County) provided the land for this development via a purchase-and-sale agreement that, after a number of amendments, currently requires the developer to provide 115 units of affordable housing, at least 30 of which must be built on-site. Ordinance 123034 added a new Section 23.49.180 to the Code that included provisions for achieving additional height on the project site, including an affordable housing bonus that could be used to gain floor area above the base FAR. The regulations for this affordable housing bonus were included in a new Section 23.49.181, which required that all the affordable housing provided for the bonus be located on the project site and be retained for a minimum of 50 years. The housing bonus regulations in Section 23.49.181 are unique to the PSM 85-120 zone and do not apply anywhere else.

The first phase of Stadium Place is now under construction. The proposed FAR for the entire project is 6.69. Because the whole project would use bonus floor area above the base FAR of 4, construction of affordable housing totaling 63,197 square feet of net rentable floor area is required. This housing would also count toward the 115 affordable housing units required by the County. Because the amount of floor area in Phase 1 of the project is below the base FAR, the project has not yet needed to use bonus floor area. However, the project developer is working on providing the affordable housing now so that future phases of the project can move forward.

Amendment B: Remove the cap on number of off-site affordable units and link the term of affordability to the off-site units

In 2011, the applicant for Stadium Place and the County discussed amendments to the purchase-and-sale agreement that would permit up to 70 of the County's required affordable housing units to be constructed off-site in a project being planned by InterIm, a community development association that works in the Chinatown/International District. To facilitate these negotiations, the City Council amended Section 23.49.181 in April 2011 (Ordinance 123589) to allow the affordable housing provided to earn a bonus to be located off-site within South Downtown. Ordinance 123589 limited the number of off-site units to a maximum of 70, reflecting the anticipated unit count in InterIm's planned affordable housing project.

Since then, InterIm's plans for the off-site affordable housing development were altered to increase the estimated number of units from 70 to 85, and in June, 2012 the County approved this increase in a revised purchase-and-sale agreement with the developer (County Ordinance 17364). The County agreement still requires that 30 units of affordable housing be included on-site at Stadium Place.

In addition, because the off-site affordable housing and the phases of Stadium Place will be completed at different times, City staff realized that the 50-year required term of affordability should attach to the completion date of the off-site affordable housing itself, rather than to the Stadium Place development.

The two amendments to Section 23.49.181 proposed by DPD would therefore:

1. Clarify that the 50-year affordability term required for the affordable housing provided to earn the floor area bonus starts on the date the structure containing the affordable housing is complete, rather than on the completion date of the structure proposing to use the bonus floor area; and

2. Remove the existing cap on the number of off-site units that can satisfy the affordable housing requirements for bonus floor area. The requirement that the off-site units be built in South Downtown would continue to apply.

Amendment C: Technical changes to C.B. 117601

In working on the agreement for providing the affordable housing required to earn the bonus, OH and the Law Department found that seven further changes were needed. All but two of these would amend the bonus provisions of Section 23.49.181. These changes are described in the table below, and are included in the attached version (#10) of the bill.

	Code Subsection	Description of proposed technical changes
1.	23.49.011.A.2.a	This subsection of the Code, which required that buildings in certain downtown zones meet a LEED Silver sustainability standard in order to earn further bonus square footage, expired on May 12, 2011. Therefore, there is no need to add the DH2 zone to the list of zones to which this section applied, as was proposed in the version of C.B. 117601 that was introduced.
2.	23.49.013.A.5.e	Because this section, which describes the different types of downtown amenity bonuses, is being amended by the bill, there is an opportunity to correct a longstanding typo in the subsection about historic theaters, clarifying that the theater must have, “or will have upon completion of a proposed plan ((or) <u>of</u> rehabilitation” a minimum size of 20,000 square feet.
3.	23.49.181.B.1 and B.2	The existing code permits the owner of a future affordable housing site to sign a linkage agreement with an applicant for bonus floor area. The proposed change would allow a party with <i>control over</i> (as distinct from <i>ownership of</i>) a future affordable housing site to sign a linkage agreement. The change is necessary because the linkage agreement may itself be the means by which an affordable housing developer can obtain the funding necessary to close on a piece of property it has under contract. The proposed amendments to this section also correct an erroneous cross-reference.
4.	23.49.181.B.2.b	Because future agreements may call for developer payments to be held in a City account, a proposed addition to 23.49.181.B.2.b would authorize the City’s Director of Finance to establish a standalone fund or account for this purpose.
5.	23.49.181.B.3	The existing regulations permit the Director of Housing to certify that an applicant for bonus floor area has satisfied his or her affordable housing obligation upon receipt of the full linkage payment or an irrevocable letter of credit, among other conditions. The proposed change would allow the Director to place certification in an escrow account prior to receipt of the payment or letter of credit. The certification would take effect only upon the escrow agent’s receipt of the applicant’s payment. The change solves a “who goes first” problem by allowing one action (payment) to immediately trigger a second action (release of the certification).

	Code Subsection	Description of proposed technical changes
6.	23.49.181.E.1	Existing regulations express the amount of required affordable housing in terms of “net rentable floor area,” a phrase that is open to interpretation. The proposed change would clarify that “net rentable” is defined, for the purposes of this subsection only, as 80 percent of gross floor area. This is consistent with the efficiency factor applied to the gross square footage of the requested bonus floor area.
7.	23.49.181.E.7	Correct an omission by adding a requirement that the applicant for bonus floor area in the PSM 85-120 zone pay a review fee to OH. This fee is already specified in Chapter 22.900G of the Municipal Code.

OH has also proposed adding a “ratify and confirm” clause to the bill. This would allow negotiations for the provision of affordable housing to move forward more quickly.

C. Next Steps

A public hearing on C.B. 117601 is scheduled during the PLUS Committee meeting on November 14, 2012. A possible Committee vote is scheduled at the Committee’s next meeting on December 3rd. A full Council vote could take place on December 10th or 17th.

Attachment A: Version #10 of C.B. 117601

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DPD Downtown Code DH2 and PSM 85-120 Amendments ORD v10
November 8, 2012
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CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL _____

AN ORDINANCE relating to land use and zoning, amending Sections 23.49.011, 23.49.013, 23.49.014, and 23.49.181 of the current Seattle Land Use Code (SMC, Title 23) of the Seattle Municipal Code, to correct omissions from previous amendments and facilitate the use of incentive provisions within the Downtown Harborfront 2 (DH2) zone and the Pioneer Square Mixed (PSM) 85-120 zone.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.49.011 of the Seattle Municipal Code, which Section was last amended by Ordinance 123589, is amended as follows:

23.49.011 Floor area ratio

A. General ~~((S))~~standards~~((:-))~~

1. The base and maximum floor area ratio (FAR) for each zone is provided in Table A for 23.49.011.

~~((Table A for 23.49.011
Base and Maximum Floor Area Ratios (FARs)))~~

Table A for 23.49.011 Base and Maximum Area Ratios (FARs)		
Zone Designation	Base FAR	Maximum FAR
Downtown Office Core 1 (DOC1)	6	20
Downtown Office Core 2 (DOC2)	5	14
Downtown Retail Core (DRC)	3	5
Downtown Mixed Commercial (DMC)	4 in DMC 65 4.5 in DMC 85 5 in DMC 125, DMC 160, DMC 240/290-400, and DMC 340/290-400 3 in DMC 85/65-150	4 in DMC 65 4.5 in DMC 85 7 in DMC 125, DMC 160, and DMC 240/290-400 10 in DMC 340/290-400 5 in DMC 85/65- 150

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1 2	Downtown Mixed Residential/Residential (DMR/R)	1 in DMR/R 85/65 1 in DMR/R 125/65 1 in DMR/R 240/65	1 in DMR/R 85/65 2 in DMR/R 125/65 2 in DMR/R 240/65
3 4	Downtown Mixed Residential/Commercial (DMR/C)	1 in DMR/C 85/65 1 in DMR/C 125/65 2 in DMR/C 240/125 2.5 in DMR/C 65/65-85 2.5 in DMR/C 65/65-150	4 in DMR/C 85/65 4 in DMR/C 125/65 5 in DMR/C 240/125 4 in DMR/C 65/65-85 4 in DMR/C 65/65-150
5 6	Pioneer Square Mixed (PSM)	N.A.	N.A.
7 8 9	International District Mixed (IDM)	3, except as stated below* 6 for hotels** in IDM 75-85 and IDM 75/85-150	3, except as stated below* 6 for hotels** in IDM 75-85 and IDM 75/85-150 6 in IDM 150/85-150
10 11	International District Residential (IDR)	1	2 if 50% or more of the total gross floor area on the lot is in residential use
12 13	International District Residential/Commercial (IDR/C)	3, except hotels 6 for hotels**	3, except hotels 6 for hotels**
14 15	Downtown Harborfront 1 (DH1)	N.A.	N.A.
16 17	Downtown Harborfront 2 (DH2)	2.5	Development standards regulate maximum FAR
18 19	Pike Market Mixed (PMM)	7	7
Footnotes: N.A. = Not Applicable. * In the IDM 150/85-150 zone, hotel uses are subject to the base FAR of 3 FAR. ** Hotel use may be combined with up to 3 FAR of other chargeable floor area, up to a total of 6 FAR.			

2. Chargeable floor area shall not exceed the applicable base FAR except as expressly authorized pursuant to this chapter.

a. In DOC1, DOC2, and DMC zones that are located outside of South Downtown, if chargeable floor area above the base FAR is allowed on a lot for development that includes a new structure, the first increment of chargeable floor area above the base FAR, shown for each zone in Table B for 23.49.011, shall be gained by making a commitment satisfactory to the Director that the proposed development will earn a LEED Silver rating or meet a substantially equivalent standard approved by the Director as a Type I decision. In these zones

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1 outside of South Downtown, no chargeable floor area above the base FAR is allowed for a
2 project that includes chargeable floor area in a new structure unless the applicant makes such a
3 commitment. If such a commitment is made, Section 23.49.020 applies. This subsection
4 23.49.011.A.2.a shall expire on May 12, 2011.

5 ((Table B for 23.49.011))

6 Table B for 23.49.011	
7 Zone	8 First increment of FAR above the base FAR achieved through LEED Silver Rating
9 All DOC1 zones	1.0
10 All DOC2 zones	0.75
11 DMC 340/290-400	0.50
12 DMC 125, DMC 160, DMC 240/290-400	0.25

13
14 b. In DOC1, DOC2, DH2, and DMC zones outside of South Downtown,
15 additional chargeable floor area above the first increment of FAR that exceeds the base FAR
16 may be obtained only by qualifying for floor area bonuses pursuant to Section 23.49.012 or
17 Section 23.49.013, or by the transfer of development rights pursuant to Section 23.49.014, or
18 both, except as otherwise expressly provided in this subsection 23.49.011.A.2. After the
19 expiration of subsection 23.49.011.A.2.a, the first increment of floor area that exceeds the base
20 FAR shall be zero.

21 * * *

22 B. Exemptions and ~~((D))~~deductions from FAR ~~((E))~~calculations~~((-))~~

23 1. The following are not included in chargeable floor area, except as specified
24 below in this Section 23.49.011:

25 a. Retail sales and service uses and entertainment uses in a DRC zone, up
26 to a maximum FAR of two for all such uses combined;

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1 b. Street-level uses meeting the requirements of Section 23.49.009,
2 Street-level use requirements, whether or not street-level use is required pursuant to Map 1G, if
3 the uses and structure also satisfy the following standards:

4 1) The street level of the structure containing the exempt space
5 must have a minimum floor to floor height of 13 feet;

6 2) The street level of the structure containing the exempt space
7 must have a minimum depth of 15 feet; and

8 3) Overhead weather protection is provided satisfying Section
9 23.49.018.

10 c. Shopping atria in the DRC zone and adjacent areas shown on Map 1J,
11 provided that:

12 1) The minimum area of the shopping atria is 4,000 square feet;

13 2) The eligibility conditions of the Downtown Amenity Standards
14 are met; and

15 3) The maximum area eligible for a floor area exemption is 20,000
16 square feet;

17 d. Child care;

18 e. Human service use;

19 f. Residential use, except in the PMM (~~and DH2~~) zone(s), and provided
20 that allowable residential floor area is limited on lots from which TDP is transferred in
21 accordance with Chapter 23.58A;

22 g. Live-work units, except in the PMM(~~and DH2~~) zone(s));

23 * * *

24 Section 2. Section 23.49.013 of the Seattle Municipal Code, which Section was last
25 amended by Ordinance 123589, is amended as follows:

26 **23.49.013 Bonus floor area for amenities**

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1 A. An applicant may achieve a portion of the chargeable floor area to be established in
addition to base FAR through bonuses for amenities, subject to the limits in this chapter.

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

3 1. Public open space amenities, including hillside terraces on sites shown
as eligible for bonuses on Map 1J, urban plazas in DOC1, DOC2 and DMC
4 340/290-400 zones, parcel parks in DOC1, DOC2, DMC, DMR, DH2, and IDM zones, public
atria in DOC1, DOC2, DMC 340/290-400, and DMC 85/65-150 zones, green street
5 improvements and green street setbacks on designated green streets;

6 2. Hillclimb assists or shopping corridors on sites shown as eligible for these
respective bonuses on Map 1J;

7 3. Human services uses as follows:

- 8 a. Information and referral for support services;
- 9 b. Health clinics;
- 10 c. Mental health counseling services;
- 11 d. Substance abuse prevention and treatment services;
- 12 e. Consumer credit counseling;
- 13 f. Day care services for adults;
- 14 g. Jobs skills training services;

15 4. Public restrooms;

16 5. For projects in a DOC1, DOC2, or DMC 340/290-400 zone, rehabilitation and
17 preservation of Landmark performing arts theaters, provided that the following conditions are
18 met:

19 a. the theater contains space that was designed for use primarily as, or is
suitable for use as, a performing arts theater;

20 b. the theater is located in a DOC1, DOC2, DRC, or DMC zone;

21 c. the theater is a designated Landmark pursuant to Chapter 25.12;

22 d. the theater is subject to an ordinance establishing an incentive and
controls, or the owner of the theater executes, prior to the approval of a floor area bonus under
23 any agreement with respect to such theater, an incentives and controls agreement approved by
24 the City Landmarks Preservation Board;

25 e. the theater has, or will have upon completion of a proposed plan ~~((A))~~of
26 rehabilitation, a minimum floor area devoted to performing arts theater space and accessory uses
of at least 20,000 square feet; and

27 f. The theater will be available, for the duration of any commitment made
to qualify for a floor area bonus, for live theater performances no fewer than 180 days per year;
and

28 6. Transit station access for fixed rail transit facilities.

B. Standards for ~~((A))~~amenities

1. Location of ~~((A))~~amenities. Amenities provided by the applicant by
performance shall be located on the lot using the bonus, except as follows:

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

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1 b. An open space amenity, other than green street improvements, may be
2 on a lot other than the lot using the bonus, provided that it is within a Downtown zone and all of
3 the following conditions are satisfied:

4 1) The open space must be open to the general public without
5 charge, must meet the eligibility conditions of the Downtown Amenity Standards, and must be
6 one of the open space features cited in subsection 23.49.013.A.1.

7 2) The open space must be within ¼ mile of the lot using the
8 bonus, except as may be permitted pursuant to subsection 23.49.013.B.1.b.4.

9 3) The open space must have a minimum contiguous area of 5,000
10 square feet, except as may be permitted pursuant to subsection 23.49.013.B.1.b.4.

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

16 5) The owner of any lot on which off-site open space is provided to
17 meet the requirements of this Section 23.49.013 shall execute and record an easement or other
18 instrument in a form acceptable to the Director assuring compliance with the requirements of this
19 Section 23.49.013, including applicable conditions of the Downtown Amenity Standards.

20 c. Public restrooms shall be on a ground floor; shall satisfy all codes and
21 accessibility standards; shall be open to the general public during hours that the structure is open
22 to the public, although access may be monitored by a person located at the restroom facility;
23 shall be maintained by the owner of the structure for the life of the structure that includes the
24 bonused space; and shall be designated by signs sufficient so that they are readily located by
25 pedestrians on an abutting street or public open space. The Director is authorized to establish
26 standards for the design, construction, operation and maintenance of public restrooms qualifying
27 for a bonus, consistent with the intent of this subsection 23.49.013.B.1.c to encourage the
28 provision of accessible, clean, safe and environmentally sound facilities.

2. Options for ~~(P)~~provision of ~~(A)~~amenities~~(-)~~

1 a. Amenities must be provided by performance except as expressly
2 permitted in this Section 23.49.013. The Director may accept a cash payment for green street
3 improvements and a related voluntary agreement from the applicant, subject to this Section
4 23.49.013, the Downtown Amenity Standards and the Green Street Director's Rule, DR 11-2007,
5 if the Director determines that improvement of a green street abutting or in the vicinity of the lot
6 within a reasonable time is feasible. The cash payment must be in an amount sufficient to
7 improve fully 1 square foot of green street space for each 5 square feet of bonus floor area
8 allowed for such payment. The cash payment shall be maintained in a restricted account and
9 shall be used to improve a green street abutting or in the vicinity of the lot.

10 b. Rehabilitation and preservation of a Landmark performing arts theater
11 may consist of financial assistance provided by the applicant for rehabilitation work on a
12 Landmark performing arts theater, or for retirement of the cost of improvements made after
13 February 5, 1993, if:

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1) The assistance is provided pursuant to a linkage agreement between the applicant and the owner of the Landmark performing arts theater satisfactory to the Director, in which such owner agrees to use such financial assistance to complete such rehabilitation and agrees that the applicant is entitled to all or a portion of the bonus floor area that may be allowed therefore;

2) The owner of the Landmark performing arts theater executes and records covenants enforceable by the City, agreeing to maintain the structure and the performing arts theater use, consistent with the Downtown Amenity Standards; and

3) Prior to the issuance of any building permit after the first building permit for the project using the bonus, and in any event before any permit for any construction activity other than excavation and shoring issued for that project, unless the rehabilitation work has then been completed, the applicant posts security for completion of that work, consistent with the Downtown Amenity Standards.

3. Ratios and limits((-))

a. Amenities may be used to gain floor area according to the applicable ratios, and subject to the limits in Section 23.49.011 and in Table A for 23.49.013.

((Table A for 23.49.013 Downtown Amenities))

Table A for 23.49.013 Downtown Amenities									
Amenity	Zone Location of Lots Eligible to Use Bonus							Bonus Ratio	Maximum square feet (SF) of floor area eligible for a bonus or maximum floor area gain
	DOC1	DOC2	DMC 340/290-400	DH2,DMC 125, DMC 160, DMC 85/65-150, and DMC 240/290-400	DRC	DMR	IDM		
Hillside Terrace	Only eligible for bonus at locations specified on Map 1J of Chapter 23.49							5:1	6,000 SF
Urban Plaza	X	X	X					5:1	15,000 SF
Commercial Parcel Park	X	X	X	X			X	5:1	7,000 SF
Residential			X	X		X	X	5:1	12,000 SF

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Table A for 23.49.013 Downtown Amenities									
Amenity	Zone Location of Lots Eligible to Use Bonus							Bonus Ratio	Maximum square feet (SF) of floor area eligible for a bonus or maximum floor area gain
Parcel Park									
Green Street Parcel Park	Eligible for bonus only on lots abutting a designated green street							5:1	7,000 SF
Public Atrium	X	X	X					5:1	5,500 SF
Green Street Improvement	Eligible for bonus only on lots abutting a designated green street							5:1	No limit
Green Street Setback	Eligible for bonus only on lots abutting a designated green street that are not subject to property line street wall requirement							1:1	10 times the length of lot's green street frontage
Hillelimb Assist	Only eligible for bonus at locations specified on Map 1J of Chapter 23.49							Not applicable	Maximum gain of 0.5 FAR
Shopping Corridor	Only eligible for bonus at locations specified on Map 1J of Chapter 23.49							5:1	7,200 SF
Transit Station Access	X	X	X	X	X	X		Not Applicable	Maximum gain of 1.0 FAR
Public Restroom	X	X	X	X	X	X		7:1	No limit
Human Services	X	X	X	X	X	X		7:1	10,000 SF
Preservation of Landmark Theater	X	X	X					Variable; maximum of 12:1	Maximum gain of 1.0 FAR

* * *

Section 3. Section 23.49.014 of the Seattle Municipal Code, which Section was last amended by Ordinance 123589, is amended as follows:

23.49.014 Transfer of development rights

A. General ((S))standards((-))

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1 2. The following types of TDR may be transferred to the extent permitted in Table
A for 23.49.014, subject to the limits and conditions in this Chapter 23.49:

- 2 a. Housing TDR;
- 3 b. DMC housing TDR;
- 4 c. Landmark housing TDR;
- 5 d. Landmark TDR;
- 6 e. Open space TDR; and
- 7 f. South Downtown Historic TDR.

8 2. In addition to transfers permitted under subsection 23.49.014.A.1, TDR may be
9 transferred from any lot to another lot on the same block, as within-block TDR, to the extent
10 permitted in Table A for 23.49.014, subject to the limits and conditions in this ~~((€))~~Chapter
11 23.49.

12 3. A lot's eligibility to be either a sending or receiving lot is regulated by Table A
13 for 23.49.014.

14 4. Except as expressly permitted pursuant to this Chapter 23.49, development
15 rights or potential floor area may not be transferred from one lot to another.

16 5. No permit after the first building permit, and in any event, no permit for any
17 construction activity other than excavation and shoring or for occupancy of existing floor area by
18 any use based upon TDR, will be issued for development that includes TDR until the applicant's
19 possession of TDR is demonstrated according to rules promulgated by the Director to implement
20 this ~~((§))~~Section 23.49.014.

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((Table A for 23.49.014))

Table A for 23.49.014

Zones ¹	TDR Transferable Within-block	Types of TDR Transferable Within or Between Blocks				
	Transfer from any lot within the same Downtown block	Housing TDR	DMC Housing TDR	Landmark TDR and Landmark Housing TDR	Open Space TDR	South Downtown Historic TDR
DOC1 and DOC2	S, R	S, R	X	S, R	S, R	R
DRC	S, R ²	S, R ²	X	S, R ²	S, R ²	R
DMC zones with maximum 10 FAR	S, R	S, R	S	S, R	S, R	R
DMC zones with maximum 7 FAR	S ³	S, R	S, R	S, R	S, R	R
DMC 85' and DH2	X	S, R	X	S, R	S, R	R
DMC 65' and DMC 85/65-150	X	S	X	S	S	R
DMR	X	S, R ⁴	X	S, R ⁴	S, R ⁴	R ⁴
IDR	X	S	X	X	S	S
IDR/C	X	S	X	X	S, R ⁵	S
IDM	X	S, R	X	X	S, R ⁵	S, R
PSM	X	S	X	X	S ⁵	S, R

S = Eligible sending lot. R = Eligible receiving lot. X = Not permitted.

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Table A for 23.49.014

	TDR Transferable Within-block	Types of TDR Transferable Within or Between Blocks				
Zones¹	Transfer from any lot within the same Downtown block	Housing TDR	DMC Housing TDR	Landmark TDR and Landmark Housing TDR	Open Space TDR	South Downtown Historic TDR

NOTES

¹ Development rights may not be transferred to or from lots in the ~~((following zones:))~~ PMM(~~(;)~~) or DH1 (~~(or DH2))~~ zones.

² Transfers to lots in a DRC zone are permitted only from lots that also are zoned DRC.

³ Transfers are permitted only from lots zoned DMC to lots zoned DOC1.

⁴ Transfers to lots in a DMR zone are permitted only from lots that also are zoned DMR except that transfer of TDR to a lot in a DMR zone located in South Downtown is permitted from any eligible sending lot in South Downtown.

⁵ Transfers of open space TDR to lots in South Downtown are permitted only from lots that are also located in South Downtown.

* * *

Section 4. Subsections B and E of Section 23.49.181 of the Seattle Municipal Code, which Section was last amended by Ordinance 123589, are amended as follows:

23.49.181 Bonus floor area for affordable housing in the PSM 85-120 zone

* * *

B. Permitting Conditions

1. Master Use Permit. The Master Use Permit application to establish any bonus floor area under this Section 23.49.181 shall include a calculation of the total amount of bonus floor area sought and shall identify the quantity and type of affordable housing to be provided to satisfy the conditions to such bonus floor area. The application shall include the proposed location of the affordable housing. If any of the affordable housing is proposed to be within the area defined on Map A for Section 23.49.180 where additional height is permitted, the application shall include the location of the affordable housing within that area and its distribution within the proposed building(s). If any of the affordable housing is not to be provided within the area defined on Map A for Section 23.49.180 where additional height is permitted, the application shall include the address, legal description, dimensions and ownership of the other lot(s), and the approval of the Director of Housing for the affordable housing to be

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1 provided on the other lot(s), pursuant to subsection 23.49.181.E.3. The Director shall, at the time
2 of issuance of any Master Use Permit decision approving any bonus floor area, issue a Type I
3 decision as to the amount of bonus floor area to be allowed and the conditions to such bonus
4 floor area. A declaration signed by the applicant and any other owners of the lot(s) on which the
5 project using the bonus floor area is to be built and any other owners, or persons with control, of
6 the lot(s) where the affordable housing will be located, on a form approved by the Director,
7 specifying the amount of bonus floor area, the legal descriptions of the lot where the bonus floor
8 area will be used and each other lot where affordable housing will be located, and the conditions,
9 must be executed and recorded as a condition to issuance of the Master Use Permit for a
10 development to include bonus floor area. If a change in the total bonus floor area to be
11 developed, or a change in the location of the affordable housing approved by the Director of
12 Housing pursuant to subsection 23.49.181.E.3, results in adjustment to one or more conditions,
13 the declaration and any related conditions of the Master Use Permit may be amended, with the
14 written approval of the Director, as a Type I decision. In requesting amendment of a declaration
15 under this subsection 23.49.181.B and any related conditions of the Master Use Permit, the
16 applicant may elect, consistent with subsection 23.76.026.~~(F)~~G, that the provisions of this
17 Section 23.49.181 as in effect on the date of the Director's action on that request, rather than any
18 earlier date applicable under Section 23.76.026, apply for purposes of the amendment to the
19 Master Use Permit.

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2. First Building Permit.

a. Except as otherwise provided in this subsection 23.49.181.B.2.a,
29 ~~(P)~~ prior to issuance, and as a condition to issuance, of the first building permit for a structure
30 using bonus floor area, the owner of each lot that will include the affordable housing for that
31 bonus floor area shall execute and record an agreement in a form acceptable to the Director of
32 Housing that shall commit to provide that affordable housing, and shall run with the land to bind
33 successors. The applicant shall submit an acceptable agreement, fully signed, as part of the
34 building permit application, and if there is any change in ownership or if the location at which
35 any affordable housing is to be provided is modified pursuant to subsection 23.49.181.B.1 prior
36 to the issuance of the building permit, the new owners or any other owners of the lot(s) where the
37 affordable housing is to be provided, or both, as applicable, shall execute the agreement or an
38 addendum, substitute or separate agreement, acceptable to the Director of Housing. This
39 subsection 23.49.181.B.2.a does not apply with respect to bonus floor area that is based on an
40 amount of affordable housing for which a certification by the Director of Housing is delivered
41 pursuant to subsection 23.49.181.B.3.

b. If the affordable housing is to be located on any lot(s) not owned by the
42 applicant, then the applicant shall demonstrate that the applicant is providing the affordable
43 housing on the other lot(s) in connection with the applicant's project, as set forth below in this
44 subsection 23.49.181.B.2.b. Prior to issuance, and as a condition to issuance, of the first building
45 permit for a structure using bonus floor area, the applicant shall provide to the Director of
46 Housing a copy of a signed and binding linkage agreement(~~with the owner(s) of those lots~~),
47 acceptable to the Director of Housing, with the owner(s) or person(s) in control of those lots,

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1 pursuant to which only the applicant has the right to claim such housing for purposes of bonus
2 development under this Section 23.49.181 or any other bonus or benefit under this Title 23, and
3 shall demonstrate that the applicant has made a financial contribution to the affordable housing,
4 or has promised such contribution in that linkage agreement and has provided to the City an
5 irrevocable, unconditional letter of credit to ensure its payment, in form and content satisfactory
6 to the Director of Housing, in either case in an amount determined by the Director of Housing to
7 be, when reduced by the value of any expected benefits to be received for such contribution other
8 than the bonus development, approximately equal to the subsidy gap for construction in South
9 Downtown of at least the minimum amount of affordable housing determined under this Section
10 23.49.181 for the amount of bonus floor area sought by the applicant. The Director of Housing
11 may require that one or more parties to a linkage agreement enter into an agreement with the
12 City to establish performance criteria to be met in the development of the affordable housing, to
13 provide for control of the financial contribution from the applicant to ensure its use for the
14 affordable housing, and to provide for its use for alternative affordable housing if performance
15 criteria are not met. The Director of Finance is authorized to establish any funds or accounts that
16 the Director of Housing may deem necessary for the deposit of funds under any agreement
17 authorized in this subsection 23.49.181.B.2.b., and to make disbursements from such funds or
18 accounts as directed by the Director of Housing, but the monies in such funds or accounts shall
19 not become property of the City unless applied against obligations owing to the City, and the
20 expenditure of those monies on any project or contract shall not cause it to be treated as a public
21 work or contract of the City.

13 3. Effect of Certification by Director of Housing. If the Director of Housing
14 certifies to the Director that either (a) the applicant has provided the City with (i) a satisfactory
15 linkage agreement; (ii) evidence of a sufficient financial contribution, a letter of credit, or other
16 sufficient security pursuant to subsection 23.49.181.B.2.b; and (iii) such other agreements as the
17 Director of Housing requires pursuant to subsection 23.49.181.B.2.b, all sufficient for purposes
18 of providing a specified amount of affordable housing consistent with this Section 23.49.181; or
19 (b) there have been recorded one or more agreements or instruments satisfactory to the Director
20 of Housing providing for occupancy and affordability restrictions on affordable housing with the
21 minimum floor area determined under this Section 23.49.181 for the amount of bonus floor area
22 sought by the applicant, all affordable housing has been completed, and the affordable housing
23 either is on a different lot from the bonus floor area or is located in one or more condominium
24 units separate from the bonus floor area under condominium documents acceptable to the
25 Director of Housing; then any failure of the affordable housing to be completed or to satisfy the
26 requirements of subsection 23.49.181.E shall not affect the right to maintain or occupy the bonus
27 floor area and shall not cause the applicant or owner of the lot with the bonus floor area to be in
28 violation of this Title 23. If all conditions to the certification in clause (a)(i) and (a)(iii) of this
subsection 23.49.181.B.3, but not clause (a)(ii), are satisfied, the Director of Housing may
deposit a certification with an escrow agent, with irrevocable instructions to date and deliver the
certification when the escrow agent holds the necessary funds for delivery to an appropriate
account as a contribution to the affordable housing, and delivery of the certification by the
escrow agent shall then have the same effect as certification by the Director of Housing on the
date of that delivery.

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1 D. Defined Terms. For purposes of this Section 23.49.181:

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

4 2. "Base FAR" or "base floor area ratio" means a FAR of 4.

5 3. "Bonus floor area" means all chargeable floor area allowed in addition to the
6 base FAR.

7 4. "Income-eligible households" means:

8 a. In the case of rental housing, households with incomes no higher than 80
9 percent of median income as defined in Section 23.84A.025.

10 b. In the case of owner occupancy housing units, households with incomes no
11 higher than the median income as defined in Section 23.84A.025.

12 5. "Low-income housing" means housing that serves income-eligible households
13 as determined in subsection 23.49.181.E.

14 6. "Net bonus floor area" means gross square footage of bonus floor area,
15 multiplied by an efficiency factor of 80 percent.

16 E. Affordable Housing

17 1. Amount. An applicant using bonus floor area shall provide an amount of net
18 rentable floor area of low-income housing, applicable to units for sale or rent, equal to at least
19 17.5 percent of the net bonus floor area obtained. For purposes of this subsection
20 23.49.181.E, "net rentable floor area" is equal to 80% of the gross floor area of the low-income
21 housing.

22 2. Serving income-eligible households. For the purposes of this Section
23 23.49.181, a housing unit serves income-eligible households only if either:

24 a. For a period of 50 years beginning upon the issuance of a final
25 certificate of occupancy by the Department of Planning and Development for ~~((a structure~~
26 ~~using))~~the ~~((bonus floor area for which that))~~affordable housing~~((is provided))~~, the housing is
27 used as rental housing solely for income-eligible households at rent limited so that annual
28 housing costs, including rent and basic utilities, do not exceed 30 percent of 80 percent of

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1 median income, and the housing unit and the structure in which it is located are maintained in
2 decent and habitable condition, including basic appliances in the housing unit; or

3 b. The unit is sold for owner-occupancy to an income-eligible household
4 at an initial sale price limited so that the annual housing costs, including mortgage principal and
5 interest, real estate taxes, insurance, plus homeowner dues if applicable, are not expected to
6 exceed 35 percent of median income, according to a calculation based on reasonable assumptions
7 and approved by the Director of Housing, and the unit is subject to a recorded instrument
8 satisfactory to the Director of Housing with a term extending until 50 years after the issuance of
9 a final certificate of occupancy by the Department of Planning and Development for the structure
10 using the bonus floor area for which that affordable housing is provided, providing for sales
11 prices on any resale consistent with affordability on the same basis as the initial sale, allowing
12 resales only to income-eligible households, and requiring that upon any resale, the housing unit
13 be in decent and habitable condition, including adequate basic appliances in the housing unit.

14 3. Location, size and other requirements. Affordable housing may be provided
15 within the area defined on Map A for ((Section))23.49.180 where additional height is permitted.
16 Alternatively, affordable housing may be provided on one or more different lots within South
17 Downtown, subject to approval by the Director of Housing under the criteria in this subsection
18 23.49.181.E and to the conditions in subsection 23.49.181.B.2. Approval requires a
19 determination by the Director of Housing that the affordable housing will

20 (a) provide a public benefit; and

21 (b) be more affordable than market rents

22 or sale prices, as applicable, for housing in South Downtown. The affordable housing shall be
23 provided in a range of unit sizes consistent with RCW 36.70A.540 and comply with all
24 requirements of RCW 36.70A.540.

25 4. Time of completion. Unless affordable housing is to be provided on a lot other
26 than that of the project using the bonus and the Director of Housing has made all approvals
27

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1 described in subsections 23.49.181.B.2 and 23.49.181.E.3, the affordable housing shall be
2 completed and ready for occupancy at or before the time when a certificate of occupancy is
3 issued for any bonus floor area that is based on the affordable housing and as a condition to any
4 right of the applicant to such a certificate of occupancy.

5 5. No ~~((S))~~ subsidies for affordable housing; exceptions.

6 a. In general, and except as may be otherwise required by applicable
7 federal or state law, no bonus floor area may be earned by providing affordable housing if:

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

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

15 b. As exceptions to the general rule in subsection 23.49.181.E.5.a:

16 1) All affordable housing provided as a condition to bonus floor
17 area within the area defined on Map A for ~~((Section))~~23.49.180 where additional height is
18 permitted may consist wholly or in part of the same units used to satisfy terms under which the
19 lot or a portion thereof was transferred by a public body, and ~~((up to seventy))~~any units of
20 affordable housing provided as a condition to bonus floor area on a lot outside the area defined
21 on Map A for ~~((Section))~~23.49.180 where additional height is permitted, may consist wholly or
22 in part of the same units used to satisfy terms under which the lot or a portion thereof was
23 transferred by a public body;

24 2) The improvements on the lot may qualify for, and affordable
25 housing provided as a condition to bonus floor area may consist wholly or in part of the same
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1 units used to satisfy conditions of, property tax exemptions pursuant to Chapter 5.73(~~SMC~~);
2 and

3 3) The prohibition on public subsidies for affordable housing does
4 not include Internal Revenue Code Section 45D, New Markets Tax Credits.

5 c. The Director of Housing may require, as a condition of any bonus floor
6 area, that the owner of the lot upon which the affordable housing is located agree not to seek or
7 accept any subsidies, other than as described in subsection 23.49.181.E.5.b, related to housing.
8 The Director of Housing may require that such agreement provide for the payment to the City,
9 for deposit in an appropriate sub-fund or account, of the value of any subsidies received in
10 excess of any amounts allowed by such agreement.

11 d. As an exception to the restriction on subsidies, the Director of Housing
12 may allow the building or buildings in which the affordable housing is located to be financed in
13 part with subsidies based on determinations that:

14 1) the total amount of affordable housing is at least 300 net
15 residential square feet greater than the minimum amount of affordable housing that would be
16 needed to satisfy the conditions of this Section 23.49.181;

17 2) the public benefit of the affordable housing net of those
18 subsidies, as measured through an economic analysis, exceeds the public benefit from the
19 minimum amount of affordable housing; and

20 3) the subsidies being allowed would not be sufficient to leverage
21 private funds for production of the affordable housing, under restrictions required in this Section
22 23.49.181, without additional City subsidy.

23 6. Agreements and approvals. The Director of Housing is authorized to accept
24 and execute agreements and instruments to implement this Section 23.49.181. Except with
25 respect to bonus floor area based on an amount of affordable housing for which a certification by
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1 the Director of Housing is delivered pursuant to subsection 23.49.181.B.3, ((F))issuance of the
2 Master Use Permit, building permit, or certificate of occupancy for the project using the bonus
3 floor area may be conditioned on satisfactory agreements and instruments signed by applicants
4 and other owners. An applicant or prospective applicant may request, and the Director of
5 Housing may provide, a determination that a linkage agreement or security arrangement, or both,
6 would satisfy specific provisions of this Section 23.49.181, whether or not an applicant has
7 proposed a specific development to use bonus floor area, but no such approval or agreement shall
8 affect the determination, under Chapter 23.76 or other applicable law, of the date as of which any
9 development regulations apply to a permit application.
10

11 7. Reports and fees. An applicant for bonus floor area shall pay a review fee and
12 ((F))the housing owner shall provide annual reports and pay an annual monitoring fee to the
13 Office of Housing for each affordable housing unit, as specified under Chapter 22.900G.
14

15 * * *

16 Section 5. Any act pursuant to the authority of this ordinance, following passage by the
17 City Council but prior to the effective date of the ordinance, is ratified and confirmed.
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1 Section 6. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the ____ day of _____, 2012, and
5 signed by me in open session in authentication of its passage this
6 ____ day of _____, 2012.

7
8
9 _____
10 President _____ of the City Council

11 Approved by me this ____ day of _____, 2012.

12 _____
13 Michael McGinn, Mayor

14 Filed by me this ____ day of _____, 2012.

15 _____
16 Monica Martinez Simmons, City Clerk

17 (Seal)
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