



**Legislative Department
Seattle City Council
Memorandum**

Date: December 9, 2013

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 and Eric McConaghy, Council Central Staff

Subject: Council Bill (C.B.) 117952 – Land Use Omnibus Legislation

I. Introduction

About every other year the Department of Planning and Development (DPD) develops an omnibus bill amending the Land Use Code (Code). Generally, the omnibus bill corrects typographical errors, corrects cross-references, clarifies existing regulations, and makes other minor amendments identified by DPD in the course of Code administration. The omnibus bill is not intended to be a vehicle for addressing significant policy issues.

C.B. 117952 was introduced on October 28, 2013, and the PLUS Committee discussed it on November 22 and 27, 2013. On November 27, the Committee agreed that proposed amendments to the bill would be considered only if they did not affect the schedule for adoption of the legislation, for example by requiring a change in the bill title. A public hearing, discussion, and possible vote on C.B. 117952 are scheduled in the PLUS Committee on December 11, 2013.

The following amendments to the omnibus legislation are presented for discussion, based on Committee direction and public comment:

A. Consent items

At its November 22, 2013 meeting, the PLUS Committee directed that two changes be made to C.B. 117952. These two items are listed below.

A.1 Height exceptions in multifamily zones, code subsection 23.45.514.F.4 (page 50).

Subsection 23.45.514.F.4 addresses how to measure the height exception for a partially below-grade story in Lowrise 2 and 3 zones. DPD is now proposing that this amendment be withdrawn for further work. The original code language of subsection F.4 that would remain in the code is shown double-underlined below.

23.45.514 Structure height

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F. For apartments in LR2 zones, and for all residential uses in LR3 zones, the applicable height limit is increased 4 feet above the height shown on Table A for 23.45.514 for a structure that includes a story that is partially below-grade, provided that:

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4. The average height of the exterior facades of the portion of the story that is partially below-grade does not exceed 4 feet, measured from existing or finished grade, whichever is less.

A.2 Transition vesting provision for height measurement technique, code subsection 23.76.026.F (page 166).

When the multifamily code chapter was overhauled in 2010, one of the key updates was to change the height measurement technique. In 2011, the Council adopted a “clean-up” bill to fix problems that arose as part of administering the new standards. One part of the clean-up legislation allowed applicants with projects vested as of October 7, 2011 the flexibility to choose either the old or new measurement technique. DPD had proposed to eliminate this provision, believing it was no longer relevant, but at least one applicant has identified a continuing need for it. The Committee directed staff to maintain this provision, and to reevaluate it in the next omnibus amendment cycle. The original code language of subsection F that would remain in the code is shown double-underlined below.

23.76.026 Vesting

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F. Applicants whose applications vest after April 19, 2011 but prior to or on October 7, 2011 may elect to have the old height measurement technique applied to the projects, as reflected in Section 23.86.006, Structure Height, as it existed immediately prior to April 19, 2011. Projects where the applicant has chosen this option may also take advantage of exceptions to height limits provided in this Title 23 at that time.

Committee decision on consent items:

B. Potential amendments based on public comments

Based on the public comments on the proposed omnibus legislation, Councilmember (CM) Conlin is proposing the following six amendments to the bill.

B1. Unit Lot Subdivisions for apartment buildings, code subsections 23.22.062, 23.24.045, and 23.45.510.E.3, pages 1-2, 7, and 42.

The code currently permits unit lot subdivisions for four types of housing (single family, townhouse, rowhouse, and cottage housing), in multifamily zones and under some circumstances in single family zones. Unit lot subdivisions allow the original lot (called the “parent lot”) to be subdivided if as a whole the development meets code standards, even though the “unit lots” that are created contain development that is nonconforming. For example, the individual unit lots may not have required open space or parking located on site, or may not provide required setbacks. Unit lots are not considered separate buildable lots.

Unit lot subdivisions permit the sale of attached units without setting the development up as a condominium. Instead of state condominium regulations that govern homeowners’ associations and funding for maintenance and repairs, developers generally provide Covenants, Conditions, and Restrictions (CC&Rs) for purchasers. CC&Rs are not reviewed or regulated by the State or the City.

The bill proposes a narrow expansion of the rules for unit lot subdivisions that would permit a unit lot subdivision between apartment structures in multifamily zones, only if the apartment:

- was built as a single-family home prior to 1982; and
- is part of a project that uses the density or floor area ratio (FAR) exemptions provided in multifamily zones for preserving such structures (code subsection 23.45.510.E.3).

This change would allow the density and FAR exception to be used by structures that were built as single-family homes but that have since been split into two or more dwelling units.

During the Committee discussion on November 22, CM Conlin requested that staff bring back an amendment that would expand the application of the unit lot subdivision process to all apartments, as originally proposed by DPD. After further consideration, CM Conlin is proposing that the Code permit unit lot subdivisions for all apartments built prior to January 1, 2013. This would provide flexibility to subdivide lots with existing apartment buildings into unit lots, but would avoid creating unintended results for new apartments until further study is done.

The amended language for full subdivisions would read as follows, with changes shown double-underlined or ~~double-crossed-out~~. The same changes would be made to Section 23.24.045, which applies to short plats.

23.22.062 Unit lot subdivisions

A. The provisions of this Section 23.22.062 apply exclusively to the unit subdivision of land for townhouse, rowhouse, ~~((and))~~cottage housing developments in all zones in which these uses are permitted, ((as permitted in Single Family, Residential Small Lot and Lowrise zones)) ~~and existing apartment structures in multifamily zones that were built prior to January 1, 2013 1982 as single family dwelling units that meet the conditions for a FAR exemption in subsection 23.45.510.E.3 or a density exception in subsection 23.45.512.E,~~ but not individual apartment units, and for single-family dwelling units in ~~((Lowrise))~~LR zones, or any combination of the above types of residential development, as permitted in the applicable zones.

Committee decision on allowing unit lot subdivisions for existing apartments:

B.2 Optional design review, subsection 23.41.004.B.2, p. 11

The proposed bill clarifies the circumstances in which the developer of a proposed project that is not subject to design review may opt into the process. To recognize the potential design impacts of larger projects, the legislation would allow only the use of the full design review process for projects with more than 20 dwelling units. Full design review includes review by the neighborhood Design Review Board. For projects of 20 units or less, the bill provides only the option of using administrative design review, which is done by DPD planners without Board involvement. The amendment proposed below would provide these smaller projects with the option of choosing either full or administrative design review. This change, as well as an editorial change to use the term “dwelling unit”, which is defined in the Land Use Code, are shown double underlined below in the last sentence of subsection B.2.

23.41.004 Applicability

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B. Design ~~(R)~~review - ~~(O)~~optional~~(-)~~

1. Full ~~(D)~~design review is optional to any applicant for new multifamily, commercial or Major Institution development proposals not otherwise subject to this Chapter 23.41, ~~if the new development proposal not otherwise subject to this Chapter 23.41 is in the Stadium Transition Area Overlay District or if the new proposal is ~~(and)~~in ~~(all)~~any multifamily, commercial ~~(and)~~or downtown zone(s).~~

2. Administrative design review is optional for any applicant for new multifamily or commercial development proposals ~~if the new multifamily or commercial development proposal does not exceed the thresholds provided in Table A for 23.41.004 and is not otherwise subject to this Chapter 23.41 if the proposal is in the Stadium Transition Area Overlay District, or is ~~(and)~~in any multifamily, commercial, ~~(and)~~or downtown zone(s), according to the process described in Section 23.41.016. Projects that are not otherwise subject to this Chapter 23.41 and are in any multifamily zone not listed in Table A for 23.41.004 are eligible only for optional full design review under subsection 23.41.004.B.1 if the ~~unit count~~ number of dwelling units exceeds 20 ~~units~~. If the ~~unit count is~~ project contains 20 units or less, then the project applicant may pursue either full or administrative design review.~~

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Committee decision on design review options for projects of 20 units or less:

B3. Calculation of Floor Area Ratio (FAR) exemption for below grade floors in commercial zones, subsection 23.47A.013.A.3, page 86.

The current provisions for FAR exemptions for below-grade space in commercial zones do not match the regulations for measuring FAR in the measurements section of the Code. In addition, the current exemption permits an entire story to be exempt from the FAR limits, even if the floor of that story is one inch below grade. This was not the intent of the exemption.

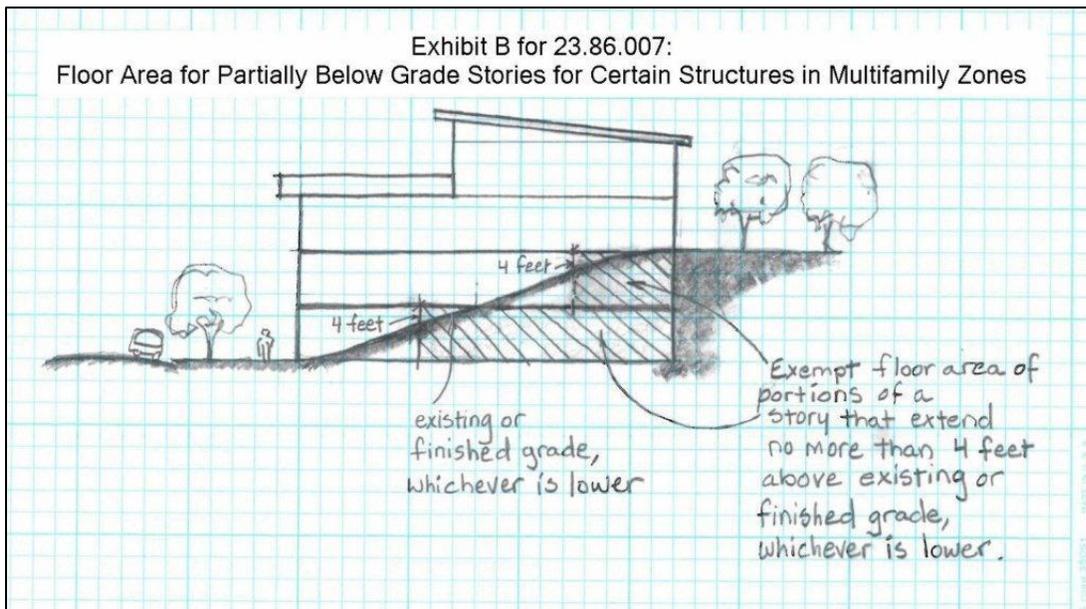
The proposed legislation would make the measurement of exempt underground FAR in commercial zones consistent with how it is generally measured in multifamily zones. The only floor area exempt from FAR would be the portions of stories that are completely underground, as shown below in a diagram from the measurement chapter.

Exhibit A for 23.86.007: Floor Area Below Grade



One commenter has pointed out that this would result in less exempt floor area, and therefore buildings would have to be smaller. In response, Councilmember Conlin is proposing that the below-grade FAR exemption in commercial zones be consistent with the zoning in South Lake Union, where the exemption for underground stories allows stories that are partially exposed by no more than four feet to be exempted. This exemption also applies to apartments and rowhouses in some Lowrise multifamily zones that meet certain conditions (using such as meeting green building performance standards), as illustrated in the exhibit below from the measurement chapter. CM Conlin's proposal would exempt less square footage than the current code, but more than the amendment in the proposed legislation. The wording of the proposed amendment is provided below, with changes shown double-underlined or ~~double-crossed-out~~.

**Exhibit B for 23.86.007:
Floor Area for Partially Below Grade Stories for Certain Structures in Multifamily Zones**



23.47A.013 Floor area ratio

A. Floor area ratio (FAR) limits apply to all structures and lots in all NC zones and C zones.

1. All gross floor area not exempt under subsection 23.47A.013.D is counted against the maximum gross floor area allowed by the permitted FAR.

2. If there are multiple structures on a lot, the highest FAR limit applicable to any structure on the lot applies to the combined non-exempt gross floor area of all structures on the lot, subject to subsection 23.47A.013.A.4.

3. ~~((Above-grade))~~ Except as provided in subsection 23.47A.013.D.7, parking that is within or covered by a structure or portion of a structure and that is within a story that is not underground must be included in gross floor area calculations ~~((, except as provided in subsection 23.47A.013.D.6))~~.

4. If a lot is in more than one zone, the FAR limit for each zone applies to the portion of the lot located in that zone.

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D. The following gross floor area is not counted toward maximum FAR:

1. ~~((Gross floor area below grade))~~ All underground stories or portions of stories
All gross floor area underground;

2. All portions of a story that extend no more than 4 feet above existing or finished grade, whichever is lower, excluding access;

3. Gross floor area of a transit station, including all floor area open to the general public during normal hours of station operation but excluding retail or service establishments to which public access is limited to customers or clients, even where such establishments are primarily intended to serve transit riders;

4. Within the South Lake Union Urban Center, gross floor area occupied by mechanical equipment located on the roof of a structure;

5. Within the South Lake Union Urban Center, mechanical equipment that is accessory to a research and development laboratory, up to 15 percent of the gross floor area of a structure. The allowance is calculated on the gross floor area of the structure after all space exempt under this subsection 23.47A.013.D is deducted; and

6. Within the First Hill Urban Center Village, on lots zoned NC3, with a 160 foot height limit, all gross floor area occupied by a residential use.

7. On a lot containing a peat settlement-prone environmentally critical area, above-grade parking within or covered by a structure or portion of a structure where the Director finds that locating a story of parking below grade is infeasible due to physical site conditions such as a high water table, if either:

a. the above-grade parking extends no more than 6 feet above existing or finished grade and no more than 3 feet above the highest existing or finished grade along the structure footprint, whichever is lower, as measured to the finished floor level or roof above, pursuant to subsection 23.47A.012.A.5; or

b. all of the following conditions are met:

1) no above-grade parking is exempted by subsection 23.47A.013.D.7.a;

- 2) the parking is accessory to a residential use on the lot;
- 3) total parking on the lot does not exceed 1 space for each residential dwelling unit plus the number of spaces required by this Code for non-residential uses; and
- 4) the amount of gross floor area exempted by this subsection 23.47A.013.D.6**7**.b does not exceed 25 percent of the area of the lot in zones with a height limit less than 65 feet, or 50 percent of the area of the lot in zones with a height limit 65 feet or greater.

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Committee decision on FAR exemption for below-grade floors in commercial zones:

B4. FAR exemption for rooftop agricultural greenhouses in commercial zones, subsection 23.47A.013.D.7, p. 88.

The version of the bill that DPD originally sent the Council included a proposal to allow greenhouses dedicated to agricultural production located on the rooftops of buildings in commercial zones to be exempt from FAR. Such greenhouses are already allowed by subsection 23.47A.012.D.6 to extend up to 15 feet above the height limit if they cover no more than 50% of the roof area. The intent is to provide an incentive to encourage urban food production. Greenhouses not used for agriculture may only extend as high as the highest ridge of a pitched roof, or up to 4 feet above the height limit, whichever is higher. The amendment shown below would add the FAR exemption for greenhouses dedicated to agricultural use back to the legislation.

23.47A.013 Floor area ratio

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D. The following gross floor area is not counted toward maximum FAR:

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7. Rooftop greenhouse areas meeting the standards of subsection 23.47A.012.C.6 and C.7.

For purposes of clarity, the subsections from the section on height limits in commercial zones cross-referenced in 23.47A.013.D above are shown below:

23.47A.012.C Rooftop Features.

6. Greenhouses that are dedicated to food production are permitted to extend 15 feet above the applicable height limit if the combined total coverage of all features gaining additional height listed in this subsection 23.47A.012.C does not exceed 50 percent of the roof area, and the greenhouse adheres to the setback requirements in subsection 23.47A.012.C.7.

7. The rooftop features listed in this subsection 23.47A.012.C.7 shall be located at least 10 feet from the north edge of the roof unless a shadow diagram is provided that demonstrates that locating such features within 10 feet of the north edge of the roof would not shade property to the north on January 21st at noon more than would a structure built to maximum permitted height and FAR:

- a. Solar collectors;
- b. Planters;

- c. Clerestories;
- d. Greenhouses and solariums;
- e. Minor communication utilities and accessory communication devices, permitted pursuant to the provisions of Section 23.57.012;
- f. Non-firewall parapets;
- g. Play equipment.

Committee decision on FAR exemption for agricultural greenhouses:

B5. Maximum parking limits, code subsection 23.54.015.C.3, page 127.

The current code sets a limit of ten parking spaces for business establishments in multifamily zones. The omnibus legislation includes a change intended to clarify that the limit applies only to commercial uses, and not to institutions such as schools. However, the bill also proposes to apply the ten space limit in all zones, not just multifamily zones. This latter change is an error that was pointed out in a public comment. Staff recommends that the bill be amended to restore the current language about where the maximum parking limit applies, as shown below in double-underline and ~~double-cross-out~~:

23.54.015 Required parking

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C. Maximum parking limits((-))

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3. In all multifamily zones, ~~((In all multifamily zones,))~~ commercial uses are limited to no more than ten ~~((10))~~ parking spaces ~~((may be provided))~~ per business establishment.

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Committee decision on maximum parking limits:

B6. State Environmental Policy Act (SEPA) Parking Policy, code subsection 25.05.675.M.2.b.2), p. 193.

DPD originally proposed a change to the SEPA parking policy to make it consistent with parking regulations in the Land Use Code. Since then, DPD has determined that the clarification is not needed. Therefore, staff recommends that the substantive changes to the SEPA parking policy be deleted, as shown below in double-underline and ~~double-cross-out~~, leaving only minor formatting corrections in the legislation.

25.05.675 Specific environmental policies

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M. Parking((-))

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2. Policies((-))

a. It is the City's policy to minimize or prevent adverse parking impacts associated with development projects.

b. Subject to the overview and cumulative effects policies set forth in Sections 25.05.665 and 25.05.670, the ~~((decisionmaker))~~decision maker may condition a project to mitigate the effects of development in an area on parking; provided that:

1) No SEPA authority is provided to mitigate the impact of development on parking availability in the Downtown and South Lake Union Urban Centers;

2) No SEPA authority is provided for the decision maker to mitigate the impact of ~~new residential~~ development on parking availability ~~for ((for))if the new residential uses ((uses))development is~~ located within:

~~((i-))~~a) the Capitol Hill/First Hill Urban Center, the Uptown Urban Center, and the University District Urban Center, except the portion of the Ravenna ~~((u))~~Urban ~~((v))~~Village that is not within 1,320 feet of a street with frequent transit service, measured as the walking distance from the nearest transit stop to the lot line of the lot;

~~((ii-))~~b) the Station Area Overlay District; and

~~((iii-))~~c) portions of urban villages within 1,320 feet of a street with frequent transit service, measured as the walking distance from the nearest transit stop to the lot line of the lot;

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Committee decision on deleting amendments to SEPA parking policies: