

Ordinance No. 121157

Council Bill No. 114557

# The City of Seattle Council Bill/Ordinance

Relating to land use and zoning, amending page 76 of the Official Land Use Map, (Volume 1 of Plats, page 238, Records of King County) to rezone property located at 3333 Wallingford Avenue North, from Industrial-Commercial with a 45' height limit (IC-45) to Neighborhood Commercial Two with a 65' height limit (NC2-65) and accepting a Property Use and Development Agreement in connection therewith. (Petition of Tomlinson, Inc., C.F. 305371, Application. 2105167)

5/6/03 - Pass 3-0  
5-12-03 Passed

CF No. \_\_\_\_\_

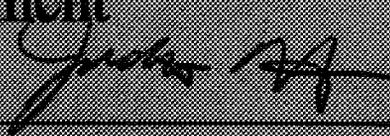
Date Introduced:	<u>5-5-03</u>	
Date 1st Referred:	<u>5-5-03</u>	
To: (committee)	<u>Land Use</u>	
Date Re - Referred:		
To: (committee)		
Date Re - Referred:		
To: (committee)		
Date of Final Passage:	<u>5-12-03</u>	
Full Council Vote:	<u>9-0</u>	
Date Presented to Mayor:	<u>5-13-03</u>	
Date Approved:	<u>5/20/03</u>	
Date Returned to City Clerk:	Date Published:	T.O. F.T.J. <u>Z</u>
<u>5/20/03</u>	<u>2/20</u>	
Date Vetted by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

This file is complete and ready for review

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: \_\_\_\_\_



Councilmember

**Committee Action:**

5/6/03 - Pass 3-0 (UN, MP, RC)

5-12-03 Passed As Amended 9-0

This file is complete and ready for presentation to Full Council.

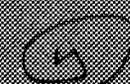
Committee: \_\_\_\_\_

(initials)

Law Dept. Review

OMP  
Review

  
City Clerk  
Review

  
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**ORDINANCE**

121152

AN ORDINANCE relating to land use and zoning, amending page 76 of the Official Land Use Map, (Volume 1 of Plats, page 238, Records of King County) to rezone property located at 3333 Wallingford Avenue North, from Industrial-Commercial with a 45' height limit (IC-45) to Neighborhood Commercial Two with a 65' height limit (NC2-65) and accepting a Property Use and Development Agreement in connection therewith. (Petition of Tomlinson, Inc., C.F. 305371, Application. 2105167)

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

Section 1. This Ordinance affects the following described property (the "Property"):

LOTS 1, 2, 11 and 12 in Block 75 of the LAKE UNION ADDITION of the CITY OF SEATTLE, as per PLAT RECORDED in VOLUME 1 of PLATS, PAGE 238, RECORDS of KING COUNTY: SITUATE in the CITY OF SEATTLE, COUNTY of KING, STATE OF WASHINGTON.

Section 2. The Official Land Use Map zone classification for the Property, as adopted by Ordinance 110381 and last amended by Ordinance 121091, and established on page 76 of the Official Land Use Map, is amended to rezone the Property from Industrial-Commercial with a 45' height limit (IC-45) to Neighborhood Commercial Two with a 65' height limit (NC2-65), as shown in "Exhibit A," attached to this Ordinance.

Section 3. A Property Use and Development Agreement that was submitted to the City by Tomlinson Incorporated, owner of the Property, by which said owner agrees to certain restrictions upon the Property to ameliorate the adverse impacts of uses and developments otherwise permitted in the NC2-65 zone upon property in the vicinity, is hereby accepted and attached to this Ordinance as "Exhibit B."

Section 4. Pursuant to SMC Section 23.76.060B(1)(b), the rezone of the Property shall expire and be of no force and effect five (5) years from the effective date of the approval of this rezone unless an application is filed for a building permit for the building described in Exhibit B and that building is completed and a Certificate of Occupancy obtained from DCLU within the time permit authority is active and valid.



1 Section 5. The City Clerk is hereby authorized and directed to file a copy of said  
2 Property Use and Development Agreement and of this Ordinance at the King County  
3 Records and Elections Division, to file the original of the Property Use and Development  
4 Agreement with this Ordinance at the City Clerk's Office, and to deliver copies of the same  
5 to the Director of the Department of Design, Construction and Land Use and to the King  
6 County Assessor's Office.

7 Section 6. This Ordinance shall take effect and be in force thirty (30) days from and  
8 after its passage and approval by the Mayor, but if not approved and returned by the Mayor  
9 within ten (10) days after presentation, it shall take effect as provided by Municipal Code  
10 Section 1.04.020.

11 Passed by the City Council the 12<sup>th</sup> day of May, 2003, and signed by  
12 me in open session in authentication of its passage this 12<sup>th</sup> day of May,  
13 2003.

14  
15 

16 President of the City Council

17  
18 Approved by me this 22 day of May, 2003.

19  
20 

21 Mayor

22  
23 Filed by me this 22<sup>nd</sup> day of May, 2003.

24  
25 

26 City Clerk

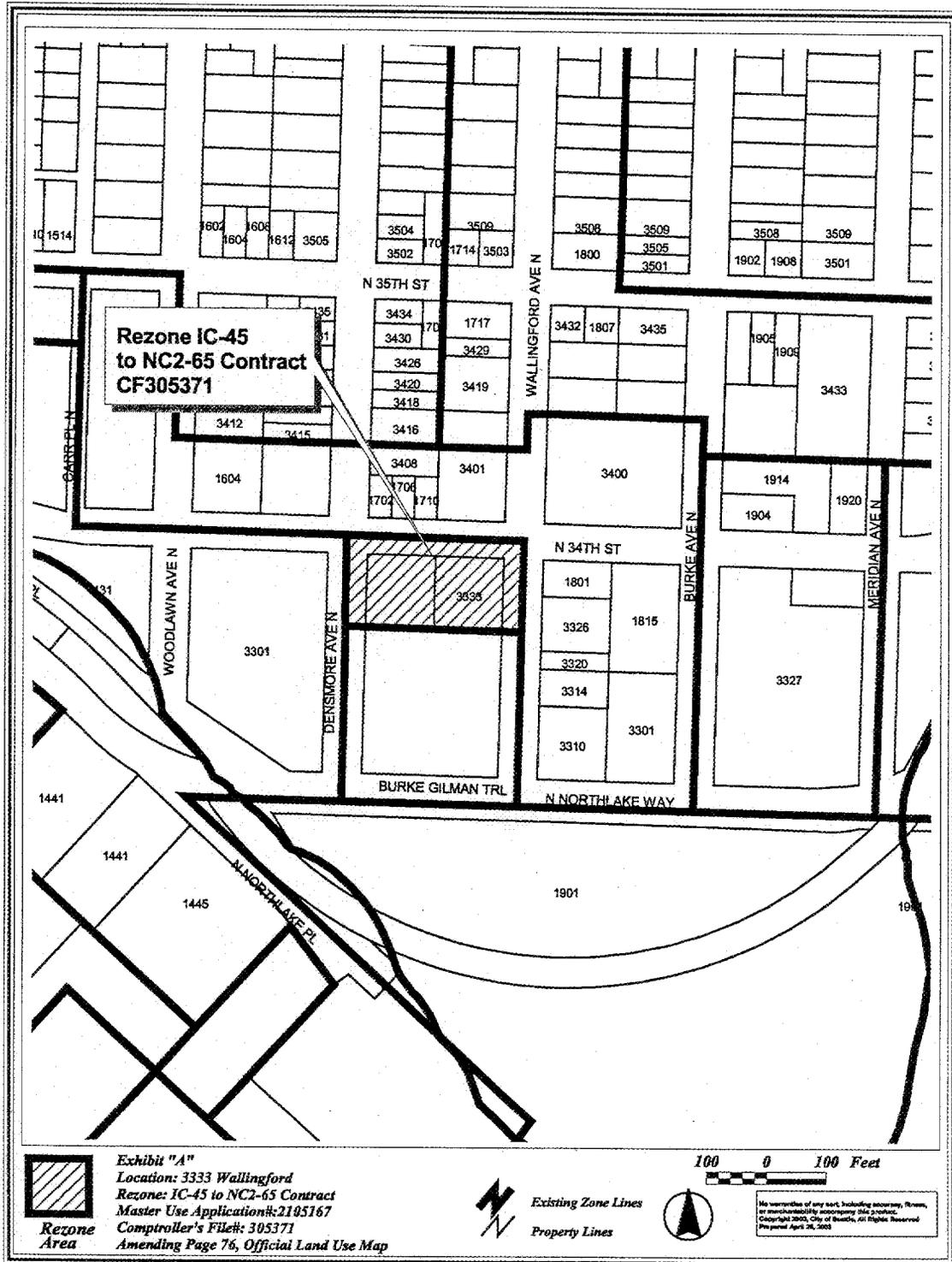
27 (SEAL)

28 Exhibit A: Map

29 Exhibit B: Property Use and Development Agreement  
30  
31



Exhibit A



**Rezoned Area**  
 Exhibit "A"  
 Location: 3333 Wallingford  
 Rezone: IC-45 to NC2-65 Contract  
 Master Use Application#: 2105167  
 Comptroller's File#: 305371  
 Amending Page 76, Official Land Use Map

Existing Zone Lines  
 Property Lines

100 0 100 Feet

No warranties of any sort, including accuracy, fitness, or merchantability accompany this product.  
 Copyright 2002, City of Seattle, All Rights Reserved  
 Prepared April 28, 2002

ACTING  
 CITY  
 CLERK

RAM:ram  
V2 Ordinance 3333 Wallingford  
April 29, 2002  
V2  
Page 4

1

2

## Exhibit B



When Recorded, Return to:

THE CITY CLERK  
First Floor, Municipal Building  
600 4<sup>th</sup> Avenue  
Seattle, WA 98104

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## PROPERTY USE AND DEVELOPMENT AGREEMENT

<b>Grantor:</b>	1) Tomlinson Wallingford Apartments, LLC	2) _____
	<input type="checkbox"/> Additional on page _____	
<b>Grantee:</b>	1) The City of Seattle	2) _____
	<input type="checkbox"/> Additional on page _____	
<b>Legal Description (abbreviated):</b>	Lots 1, 2, 11 and 12 in Block 75 of Lake Union Addition to the City of Seattle, as per Plat recorded in Volume 1 of Plats, Page 238 records of King County.	
	<input type="checkbox"/> Additional on: _____	
<b>Assessor's Tax Parcel ID #:</b>	408330-7045-08 and 408330-7095-07	
<b>Reference Nos. of Documents Released or Assigned:</b>	N/A	

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2003 in favor of the City of Seattle, a Washington municipal corporation (herein called "City"), by Tomlinson Wallingford Apartments, LLC a Washington limited liability corporation, sole owner of property legally described herein (herein called "Owner").

### RECITALS

A. Tomlinson Wallingford Apartments, LLC is the sole owner of that certain real property in the City of Seattle described as Lots 1, 2, 11 and 12 in Block 75 of Lake Union Addition to the City of Seattle, as per Plat recorded in Volume 1 of Plats, Page 238 records of King County, also commonly known as 3333 Wallingford Avenue N. and



zoned Industrial Commercial (IC-45), that is the subject of this Agreement (herein called the "Property").

B. On October 12, 2002, Owner submitted to the City of Seattle an application for a contract rezone from Industrial Commercial with a 45' height limit (IC-45) to Neighborhood Commercial with a 65' height limit (NC2-65). The purpose of the application is to allow the Property to be used for construction of a four-story residential mixed-use building that would maintain the same roof height elevation as the Property drops in elevation to the south. The resulting building will appear as a four-story building along N 34<sup>th</sup> St. and rise to as high as a six-story building at the southern, downhill extent of the Property.

C. Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a contract rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts which could occur from unrestricted use and development permitted in the zone."

D. The Owner has a fee simple or other beneficial interest in the Property described in paragraph A. and wants the City Council to rezone the property pursuant to SMC 23.34.004.

E. The City, in approving this Agreement, has determined, pursuant to SMC 23.34.004, that the rezone of the Property and the waivers granted thereunder would not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the Property is located.

## AGREEMENT

**Section 1. Zone Changes Limited to Proposed Building.** Pursuant to SMC 23.34.004, the Owner hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that it will comply with the following limitations and conditions in consideration of the rezone of the Property from IC-45 to NC2-65:

- a) The NC2-65 zone shall be established only for development of a building with substantially the same design and height as the one approved in MUP 2105167 and represented in the Clerk's File CF 305371, including the quality of materials and design details as shown on the approved MUP Plans. Design details and additions recommended by the Design Review Board (e.g., column capitals on the



north elevation, addition of an awning for overhead weather protection at the northwest corner, consideration of using a topping slab or other paving above the structural slab for the residential open space between the two residential "blocks") shall also be included. Typical mechanical vents and exhausts may be added to the roof of the approved building,

- b) The design and function of the building and provision of street level amenities shall be as developed in the MUP and Design Review process (including a vent chase, constructed to Seattle Building Code standards extending from the non-residential space in the southeast portion of the first floor, through the roof of the building), as shown in the approved Plans,
- c) In the initial five (5) years after a Final Certificate of Occupancy for the building is issued, uses within the non-residential first floor spaces shall be limited to those allowed in a Pedestrian One ("P1") zone. After five (5) years have passed, uses may be any as otherwise allowed by the then applicable codes and regulations.
- d) The rezone approval includes the development standard departures for residential open space and commercial frontage thru the Design Review process and as shown in the Plans,
- e) Upon receipt of a building permit for all or part of the proposed building the Owner shall contribute \$10,000.00 to the Wallingford Steps project either in reimbursement to the City for previous expenditures or contribution to the City for additional improvements to the existing steps,
- f) Prior to receipt of a Final Certificate of Occupancy for the proposed building the Owner shall contribute \$10,000.00 to the City to underwrite, partially or wholly, a feature art piece for the terrace/gateway element at the southwest corner of Wallingford Avenue N. and N. 34<sup>th</sup> Street. This feature art piece will be commissioned through a local art competition conducted in consultation with the Wallingford District Council.



- g) The Owner shall pay the money required under (e) and (f), above, to the City. Upon delivery of said funds, Owner shall have no further responsibility regarding the requirements in (e) and (f) above.

**Section 2. Agreement Runs With the Land.** This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the Property and shall be binding upon the Owner, its heirs, successors and assigns, and shall apply to after-acquired title of the Owner of the Property; provided, however, the covenants herein and the rezone shall expire and be of no force and effect five (5) years from the effective date of the approval of the rezone unless an application is filed for a building permit for the building contemplated in the attached Exhibit A, the approved MUP plans, and that building is completed and a Certificate of Occupancy obtained from DCLU within the time permit authority is active and valid.

**Section 3. Amendment, Exercise of Police Power, No Precedent.** This Agreement shall only be amended or modified by a written agreement signed by the Owner and the City, and approved by the legislative authority of the City by ordinance. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Land Use Code or exercising the City's police power, as it may deem necessary in the public interest. Owner agrees that nothing in this Agreement is intended to authorize any use or dimension not otherwise permitted in a Neighborhood Commercial zone with a sixty-five foot height limit (NC2-65), except as approved in this Agreement. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property, and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

**Section 4. Benefited.** This Agreement is made for the benefit of the City and for the benefit of the owners of the property within 300 feet of the Property and either the City or



any such property owners may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

**Section 5. Repeal as Additional Remedy.** Owner acknowledges that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owner avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may revoke the rezone by ordinance and require the use of the Property to conform to the requirements of the previously existing IC-45 zone.

SIGNED this 5 day of MAY, 2003.

OWNER

TOMLINSON WALLINGFORD APARTMENTS, LLC

\_\_\_\_\_ a Washington Limited Liability Corporation

By \_\_\_\_\_

Its: President (title).



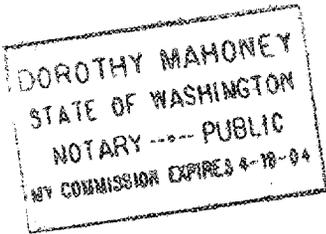
STATE OF WASHINGTON

COUNTY OF KING

} ss.

On this day personally appeared before me Gary Tomlinson, to me known to be the President of Tomlinson Wallingford Apartments, LLC the party that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 5<sup>th</sup> day of May, 2003.



Dorothy Mahoney

Printed Name

Dorothy Mahoney

NOTARY PUBLIC in and for the State of Washington, residing at

Renton

My Commission Expires

4/18/04



**Return Address:**

Seattle City Clerk's Office

600 4th Avenue, Room 104

Seattle, WA 98104



20030606000281

SEATTLE CITY CLERK  
PAGE 001 OF 008 26.00

06/06/2003 09:10  
KING COUNTY, WA

06/06/2003 09:10  
KING COUNTY, WA

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

<b>Document Title(s)</b> (or transaction contained therein): (all areas applicable to your document <u>must</u> be filled in.)  1. ORDINANCE #1121152
<b>Re -</b> _____ of document. Property Use and Development Agreement (PUDA)
<b>Grantor(s)</b> (Last name first, then first name and initials) 1. City of Seattle <input type="checkbox"/> Additional names on page----- of document.
<b>Grantee(s)</b> (Last name first, then first name and initials) 1. N/A 2.
<b>Legal description</b> (abbreviated: i.e. lot, block, plat or section, township, range) <input type="checkbox"/> Additional reference #s on page -----of document N/A
<b>Assessor's Property Tax Parcel/Account Number/</b> N/A  <input type="checkbox"/> Assessor Tax # not yet assigned.

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FILED  
CITY OF SEATTLE  
03 JUL 29 AM 11:14  
CITY CLERK

When Recorded, Return to:

THE CITY CLERK  
First Floor, Municipal Building  
600 4<sup>th</sup> Avenue  
Seattle, WA 98104

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	<input type="checkbox"/> Additional on page _____	
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Reference Nos. of Documents Released or Assigned:	N/A	

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north elevation, addition of an awning for overhead weather protection at the northwest corner, consideration of using a topping slab or other paving above the structural slab for the residential open space between the two residential "blocks") shall also be included. Typical mechanical vents and exhausts may be added to the roof of the approved building,

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**Section 2. Agreement Runs With the Land.** This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the Property and shall be binding upon the Owner, its heirs, successors and assigns, and shall apply to after-acquired title of the Owner of the Property; provided, however, the covenants herein and the rezone shall expire and be of no force and effect five (5) years from the effective date of the approval of the rezone unless an application is filed for a building permit for the building contemplated in the attached Exhibit A, the approved MUP plans, and that building is completed and a Certificate of Occupancy obtained from DCLU within the time permit authority is active and valid.

**Section 3. Amendment, Exercise of Police Power, No Precedent.** This Agreement shall only be amended or modified by a written agreement signed by the Owner and the City, and approved by the legislative authority of the City by ordinance. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Land Use Code or exercising the City's police power, as it may deem necessary in the public interest. Owner agrees that nothing in this Agreement is intended to authorize any use or dimension not otherwise permitted in a Neighborhood Commercial zone with a sixty-five foot height limit (NC2-65), except as approved in this Agreement. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property, and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

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any such property owners may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

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SIGNED this 5 day of MAY, 2003.

OWNER

TOMLINSON WALLINGFORD APARTMENTS, LLC

\_\_\_\_\_ a Washington Limited Liability Corporation

By \_\_\_\_\_

Its: President (title)



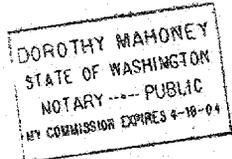
STATE OF WASHINGTON

COUNTY OF KING

} ss.

On this day personally appeared before me Gary Tomlinson, to me known to be the President of Tomlinson Wallingford Apartments, LLC the party that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 5<sup>th</sup> day of May, 2003.



Dorothy Mahoney

Printed Name Dorothy Mahoney

NOTARY PUBLIC in and for the State of Washington, residing at Renton

My Commission Expires 4/18/04

Proton Use And Development Agmt  
MAY 1 2003  
5/5/2003  
CLERK OF SUPERIOR COURT  
COUNTY OF KING  
RECEIVED  
MAY 1 2003

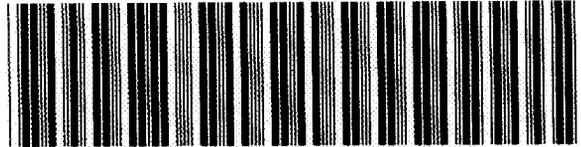


**Return Address:**

Seattle City Clerk's Office

600 4th Avenue, Room 104

Seattle, WA 98104



**20030606000282**

SEATTLE CITY C CORD 23.00  
PAGE 001 OF 005  
06/06/2003 09:10  
KING COUNTY, WA

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

<p><b>Document Title(s)</b> (or transaction contained therein): (all areas applicable to your document <u>must</u> be filled in.</p> <p>1. ORDINANCE #1121152</p>
<p><b>Re -</b> _____ of document.</p> <p>AN ORDINANCE relating to land use and zoning, amending page 76 of the Official Land Use Map, (Volume 1 of Plats, page 238, Records of King County) to rezone property located at 3333 Wallingford Avenue North, from Industrial-Commercial with a 45' height limit (IC-45) to Neighborhood Commercial Two with a 65' height limit (NC2-65) and accepting a Property Use and Development Agreement in connection therewith. (Petition of Tomlinson, Inc., C.F. 305371, Application No. 2105167</p>
<p><b>Grantor(s)</b> (Last name first, then first name and initials) 1.City of Seattle <input type="checkbox"/> Additional names on page----- of document.</p>
<p><b>Grantee(s)</b> (Last name first, then first name and initials) 1.N/A 2.</p>
<p><b>Legal description</b> (abbreviated: i.e. lot, block, plat or section, township, range) <input type="checkbox"/> Additional reference #s on page -----of document N/A</p>
<p><b>Assessor's Property Tax Parcel/Account Number/ N/A</b></p> <p><input type="checkbox"/> Assessor Tax # not yet assigned.</p>

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FILED  
CITY OF SEATTLE  
03 JUL 29 AM 11:14  
CITY CLERK

ORDINANCE 121152

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4 AN ORDINANCE relating to land use and zoning, amending page 76 of the Official Land  
5 Use Map, (Volume 1 of Plats, page 238, Records of King County) to rezone property  
6 located at 3333 Wallingford Avenue North, from Industrial-Commercial with a 45'  
7 height limit (IC-45) to Neighborhood Commercial Two with a 65' height limit  
8 (NC2-65) and accepting a Property Use and Development Agreement in connection  
9 therewith. (Petition of Tomlinson, Inc., C.F. 305371, Application. 2105167)

10  
11 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**  
12

13 Section 1. This Ordinance affects the following described property (the "Property"):

14  
15 LOTS 1, 2, 11 and 12 in Block 75 of the LAKE UNION ADDITION of the CITY OF  
16 SEATTLE, as per PLAT RECORDED in VOLUME 1 of PLATS, PAGE 238,  
17 RECORDS of KING COUNTY: SITUATE in the CITY OF SEATTLE, COUNTY of  
18 KING, STATE OF WASHINGTON.  
19

20 Section 2. The Official Land Use Map zone classification for the Property, as  
21 adopted by Ordinance 110381 and last amended by Ordinance 121091, and established on  
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35 described in Exhibit B and that building is completed and a Certificate of Occupancy  
36 obtained from DCLU within the time permit authority is active and valid.  
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Section 5. The City Clerk is hereby authorized and directed to file a copy of said Property Use and Development Agreement and of this Ordinance at the King County Records and Elections Division, to file the original of the Property Use and Development Agreement with this Ordinance at the City Clerk's Office, and to deliver copies of the same to the Director of the Department of Design, Construction and Land Use and to the King County Assessor's Office.

Section 6. This Ordinance shall take effect and be in force thirty (30) days from and after its passage and approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 12<sup>th</sup> day of May, 2003, and signed by me in open session in authentication of its passage this 12<sup>th</sup> day of May, 2003.

Peter Stembner  
President of the City Council

Approved by me this 22 day of May, 2003.  
[Signature]  
Mayor

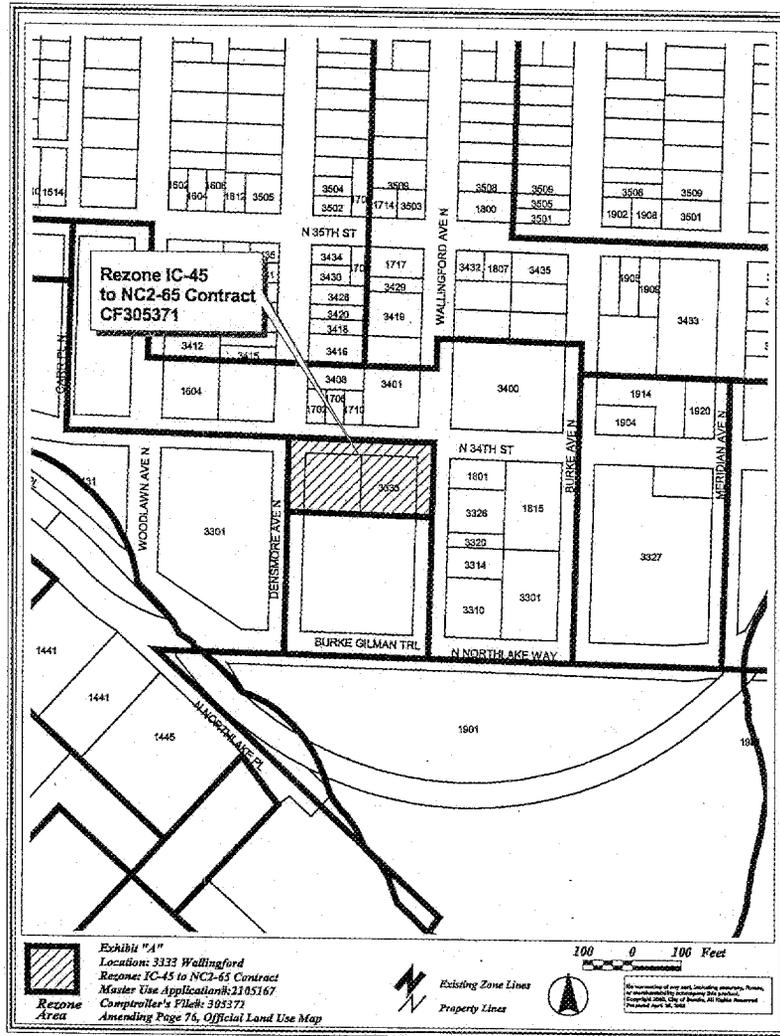
Filed by me this 20<sup>th</sup> day of May, 2003.  
[Signature]  
City Clerk

Exhibit A: Map  
Exhibit B: Property Use and Development Agreement



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### Exhibit A



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ACTING  
CITY  
CLERK

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