

Ordinance No. 122835

Council Bill No. 116384

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: *Nick Lesar*

AN ORDINANCE related to land use and zoning, amending Chapter 23.48 and Section 23.54.020 of the Seattle Municipal Code; creating a new SM/D/40-85 zoning classification; adopting an affordable housing incentive program for increased height in areas zoned SM/D/40-85; and amending the Official Land Use Map at pages 72-73 to rezone land in the West Dravus commercial area to SM/D/40-85.

Committee Action:

Date	Recommendation	Vote

Law Department

Related Legislation File: _____

Date Introduced and Referred: <u>Oct. 27, 2008</u>	To: (committee): <u>Full Council</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>11-3-08</u>	Date Presented to Mayor: <u>11-4-08</u>
Date Signed by Mayor: <u>11.7.08</u>	Date Returned to City Clerk: <u>11.7.08</u>
Published by Title Only <u>JS</u>	Date Vetoed by Mayor:
Published in Full Text	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

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

Full Council Action:

Date	Decision	Vote
<u>11-3-08</u>	<u>Passed As Amended</u>	<u>7-2</u>
	<u>(No: Harrell, McIver)</u>	

ORDINANCE 122835

1
2 AN ORDINANCE related to land use and zoning, amending Chapter 23.48 and Section
3 23.54.020 of the Seattle Municipal Code; creating a new SM/D/40-85 zoning
4 classification; adopting an affordable housing incentive program for increased height in
5 areas zoned SM/D/40-85; and amending the Official Land Use Map at pages 72-73 to
6 rezone land in the West Dravus commercial area to SM/D/40-85.

7 WHEREAS the Seattle Comprehensive Plan, policy LU6, provides that “the City Council may
8 permit greater heights on commercially-zoned sites in the Interbay area along and near
9 W. Dravus Street between 15th Avenue W. and 20th Avenue W., through overlay zoning,
10 zoning map amendment, or other implementing measures”; and

11 WHEREAS on October 3, 2005 the City Council adopted Resolution 30804 calling for
12 consideration of an overlay zone or other zoning options, including height limit increases,
13 to promote mixed-use development in the W. Dravus Commercial area, and directing the
14 Department of Planning and Development to prepare legislation; and

15 WHEREAS the goals of the zoning change in the W. Dravus Commercial area are to preserve
16 and enhance the existing industrial employment base, provide opportunities for higher-
17 density transit oriented development, create workforce housing in a new pedestrian-
18 oriented, mixed use center in proximity to existing open space resources, and to promote
19 a jobs housing balance within a walkable neighborhood; and

20 WHEREAS the City Council believes that any transportation infrastructure improvements in the
21 W. Dravus Commercial Area required to serve new mixed use development can be
22 accomplished by mitigation required through the City’s substantive authority under the
23 State Environmental Policy Act; and

24 WHEREAS changes in zone classification and height limit have the potential to substantially
25 increase the development capacity of lots in the W. Dravus commercial area; and

26 WHEREAS RCW 36.70A.540 provides express authority for the City to establish incentive
27 programs to ensure that a portion of new housing created through increases in
28 development capacity be affordable; and

WHEREAS on December 4, 2006, the City Council adopted Resolution 30939 affirming the
Council’s and Mayor’s support for the use of new affordable housing incentive program
authority; and

WHEREAS there is now pending Council Bill 116358, which would enact a new chapter 23.58A
containing affordable housing incentive provisions to apply in areas outside of



1 Downtown, and the City Council intends that those provisions, if enacted, would apply in
2 the West Dravus Commercial area, instead of the provisions in this ordinance;

3 NOW, THEREFORE,

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

5 Section 1. Subsection A of Section 23.48.002 of the Seattle Municipal Code, which
6 section was last amended by Ordinance 121782, is amended as follows:

7 **23.48.002 Scope of provisions.**

8 A. This chapter identifies uses that are or may be permitted in ~~((the))~~ Seattle Mixed (SM)
9 zones and establishes development standards. The SM zone boundaries are shown on the Official
10 Land Use Map. The "D" suffix with a height limit range may be applied to SM-zoned land in
11 the West Dravus area.

12 * * *

13
14 Section 2. Subsection A of Section 23.48.010 of the Seattle Municipal Code, as last
15 amended by Ordinance 121782, is amended as follows:

16 **23.48.010 General structure height.**

17 A. Maximum Height. Maximum structure height ~~((shall be))~~ is ~~((forty-))~~40~~((-))~~ feet,
18 ~~((fifty five-))~~55~~((-))~~ feet, ~~((sixty five-))~~65~~((-))~~ feet, ~~((seventy five-))~~75~~((-))~~ feet, ~~((eighty five~~
19 ~~-))~~85~~((-))~~ feet, or ~~((one hundred twenty five-))~~125~~((-))~~ feet as designated on the Official Land
20 Use Map, Chapter 23.32, except as provided in ~~((subsection B of))~~ this Section or in Section
21 23.48.016.

22 * * *



1 Section 3. A new Section 23.48.011 of the Seattle Municipal Code is adopted to read as
2 follows:

3 **23.48.011 Affordable Housing Incentive Program**

4 A. Additional Height Conditioned on Low-income Housing. In the SM/D/40-85 zone
5 additional building height may be obtained for mixed-use projects and single-purpose residential
6 projects if the applicant provides low-income housing, or makes a payment in lieu thereof, under
7 the terms of this section.
8

9 B. Finding; Definitions.

10 1. Pursuant to the authority of RCW 36.70A.540, the City finds that the higher
11 income levels specified in this subsection B, rather than those stated in RCW 36.70A.540, are
12 needed to address local housing market conditions in each of the areas and zones to which this
13 section applies.
14

15 2. For purposes of this section, the following definitions apply:

16 a. "Affordable unit" means a unit of low-income housing provided as a
17 condition to bonus development.
18

19 b. "Base height limit" means 40 feet above the "Grade Plane", as defined
20 in Section 502 of the Seattle Building Code.
21

22 c. "Bonus development" means floor area allowed in stories wholly or in
23 part above the base height limit on condition that low-income housing be provided, or that a
24 payment in lieu thereof be made, under this section.
25



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

3
4 e. In the case of rental units, "low-income housing" means housing
5 affordable to and occupied by households with incomes no higher than the lesser of (1) eighty
6 percent of median income, defined as annual median family income for the statistical area or
7 division thereof including Seattle for which median family income is published from time to time
8 by the U.S. Department of Housing and Urban Development, with adjustments according to
9 household size in a manner determined by the Director of the Office of Housing, or (2) the
10 maximum level permitted by RCW 36.70A.540 as in effect when the agreement for the units to
11 serve as affordable units is executed, and "low-income household" means such a household.

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14 f. In the case of owner occupancy housing units, "low-income housing"
15 means housing affordable to and occupied by households with incomes no higher than the lesser
16 of (1) median income, defined as annual median family income for the statistical area or division
17 thereof including Seattle for which median family income is published from time to time by the
18 U.S. Department of Housing and Urban Development, with adjustments according to household
19 size in a manner determined by the Director of the Office of Housing, or (2) the maximum level
20 permitted by RCW 36.70A.540 as in effect when the agreement for the units to serve as
21 affordable units is executed, and "low-income household" means such a household.

22
23 C. Bonus Options. Bonus development may be allowed when low-income housing is
24 developed (the "performance option") or when the applicant makes a payment to the City in lieu
25



1 of providing low-income housing (the “payment option”), or when a combination of the
2 performance and payment options is used, in accordance with this section.

3 1. Performance option.

4 a. The applicant shall provide low-income housing with a floor area equal
5 to the greater of (i) 17.5 percent of 80 percent of the gross residential floor area of all stories on
6 the lot that are wholly or in part above the base height limit, or (ii) 700 square feet.

7
8 b. Each affordable unit shall serve only low-income households for a
9 minimum period of 50 years. For rental housing, rent shall be limited so that housing costs,
10 including rent and basic utilities, shall not exceed 30 percent of the applicable income limit for
11 the unit under this section, all as determined by the Housing Director, for a minimum period of
12 50 years. For owner-occupied housing, the initial sale price shall not exceed an amount
13 determined by the Housing Director to be consistent with affordable housing for a low-income
14 household with the average family size expected to occupy the unit based on the number of
15 bedrooms, and the units shall be subject to recorded instruments satisfactory to the Housing
16 Director providing for sales prices on any resale consistent with affordability on the same basis
17 for at least 50 years. The Housing Director may promulgate rules specifying the method of
18 determining affordability, including eligible monthly housing costs. The Housing Director may
19 also promulgate rules for determining whether units satisfy the requirements of this section and
20 any requirements relating to down-payment amount, design, quality, maintenance and condition
21 of the low-income housing.
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1 c. Affordable units each shall include at least 350 net square feet, and they
2 shall be provided in a range of sizes consistent with RCW 36.70A.540. The affordable units
3 shall comply with all other requirements of RCW 36.70A.540, as in effect on the date as of
4 which the provisions of this title apply to the application for a use permit for the project using the
5 bonus development. Affordable units that are developed as part of the project using bonus
6 development shall be completed and ready for occupancy at or before the time when a certificate
7 of occupancy is issued for any other units in that project, and as a condition to any right of the
8 applicant to such a certificate of occupancy. The Housing Director may provide, by rule
9 promulgated after the effective date of this ordinance, for terms and conditions on which an
10 extension of time may be allowed due to delays that the applicant could not reasonably have
11 avoided.
12

13
14 d. If the affordable units are not being developed within the project using
15 the bonus development:

16 (i) The applicant must ensure that a certificate of occupancy for the
17 affordable units is issued before or within two years after the date that the first building permit,
18 other than for grading and shoring, is issued for the project using the bonus development, or such
19 later date as the Housing Director may approve based on delays that the applicant or housing
20 developer could not reasonably have avoided and conditioned on the security provided under
21 subsection C1d(ii) of this section being extended and increased as may be necessary. To the
22 extent the City receives payment through a letter of credit or other security in an amount
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1 determined under subsection C1d(ii) of this section, the obligation of the applicant to provide
2 affordable units will be deemed satisfied.

3 (ii) The applicant shall provide to the City an irrevocable letter of
4 credit, or other sufficient security approved by the Housing Director, prior to and as a condition
5 of issuance of the first building permit, other than for grading and shoring, for the project using
6 the bonus development, unless completion of the affordable units has already been documented
7 to the satisfaction of the Housing Director and the affordable units are subject to recorded
8 restrictions satisfactory to the Housing Director. The letter of credit or other security shall be in
9 an amount and on terms so that at the end of the period specified in subsection C1d(i) of this
10 section, or on any earlier date thirty (30) days before the letter of credit or other security will
11 expire, if the housing does not qualify or is not provided in a sufficient amount to satisfy the
12 terms of this section, the City shall receive a cash payment for housing in the amount determined
13 pursuant to subsection C2 of this section, after credit for any affordable units then provided and
14 accepted by the Housing Director, plus an amount equal to interest on such payment, at the rate
15 equal to the prime rate quoted by Bank of America or its successor at the time the letter of credit
16 or other security is provided, plus three percent per annum, from the date of issuance of the first
17 building permit, other than for excavation and shoring, for the project using the bonus
18 development. If and when the City becomes entitled to realize on any such security, the Housing
19 Director shall take appropriate steps to do so, and the amounts realized, net of any costs to the
20 City, shall be used in the same manner as cash payments for housing made under this section.

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24 e. No subsidies for bonused housing; Exception.



1 (i) The Housing Director may require, as a condition of any bonus
2 development under the performance option, that the owner of the lot upon which the affordable
3 units are located agree not to seek or accept any subsidies, including without limitation those
4 items referred to in subsection C1e(ii) of this section, related to housing. For the purpose of this
5 subsection C1e, the qualification for and use of property tax exemptions pursuant to Chapter 5.73
6 SMC, or any other program implemented pursuant to Chapter 84.14 RCW, does not constitute a
7 subsidy.
8

9 (ii) In general, and except as may be otherwise required by
10 applicable federal or state law, no bonus development may be earned by providing housing if:

11 (a) Any person is receiving or will receive with respect to
12 the housing any charitable contributions or public subsidies for housing development or
13 operation, including, but not limited to, tax exempt bond financing, tax credits, federal loans or
14 grants, City of Seattle housing loans or grants, county housing funds, or State of Washington
15 housing funds; or
16

17 (b) The housing is or would be, independent of the
18 requirements for the bonus development, subject to any restrictions on the income of occupants,
19 rents or sale prices.
20

21 (iii) The Housing Director may allow the building or buildings in
22 which the affordable units are located to be financed in part with subsidies based on the
23 determination that (1) the public benefit of the affordable housing net of any subsidies, as
24 measured through an economic analysis, exceeds the amount of the payment-in-lieu that would
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1 otherwise be paid; and (2) the subsidies being allowed would not be sufficient to leverage private
2 funds for production of the affordable housing, under restrictions as required for the performance
3 option, without additional City subsidy in an amount greater than the payment-in-lieu amount
4 that would otherwise be paid..

5 f. If the Housing Director certifies to the Director that either

6 (i) the applicant has provided the City with a letter of credit or
7 other sufficient security pursuant to subsection C1d(ii) of this section; or

8 (ii) there have been recorded one or more agreements or
9 instruments satisfactory to the Housing Director providing for occupancy and affordability
10 restrictions on affordable units with the minimum floor area determined under this section, all
11 affordable units have been completed, and the affordable units are on a different lot from the
12 bonus development or are in one or more condominium units separate from the bonus
13 development under condominium documents acceptable to the Housing Director,
14 then any failure of the affordable units to satisfy the requirements of this subsection C shall not
15 affect the right to maintain or occupy the bonus development. Unless and until the Housing
16 Director shall certify as set forth in subsections C1f(i) or C1f(ii) of this section, it shall be a
17 continuing permit condition, whether or not expressly stated, for each project obtaining bonus
18 development based on the provision of housing under this subsection, that the affordable units
19 shall be maintained in compliance with the terms of this section, as documented to the
20 satisfaction of the Housing Director. The Housing Director may provide by rule for
21 circumstances in which affordable units may be replaced if lost due to casualty or other causes,
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1 and for terms and conditions upon which a cash payment may be made in lieu of continuing to
2 provide affordable units under the terms of this subsection C1.

3 g. The Housing Director is authorized to accept and execute agreements
4 and instruments to implement this section. Issuance of the certificate of occupancy for the project
5 using the bonus development may be conditioned on such agreements and instruments.

6 h. The housing owner, in the case of rental housing, shall provide annual
7 reports and pay an annual monitoring fee to the Office of Housing of \$65 for each affordable
8 unit. In the case of affordable units for owner-occupancy, the recorded resale restrictions shall
9 include a provision requiring payment to the City, on any sale or other transfer, of a fee of \$500
10 for the review and processing of documents to determine compliance with income and
11 affordability restrictions.
12

13
14 2. Payment option.

15 a. In lieu of all or part of the performance option, an applicant may pay to
16 the City \$18.94 per net square foot in stories wholly or in part above the base height limit. The
17 amount of net square feet in a story is computed by multiplying the gross residential floor area in
18 the story by an efficiency factor of 80 percent.

19
20 b. The Housing Director shall use cash payments and any earnings thereon
21 to support the development of low-income housing in any manner now or hereafter permitted by
22 RCW 36.70A.540, which may include support provided through loans or grants to public or
23 private owners or developers of housing and through loans or grants to low-income households
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1 for home purchases, and the City's costs to administer projects, not to exceed 10% of payments
2 made to the City.

3 c. Cash payments shall be made prior to issuance, and as a condition to
4 issuance, of any building permit after the first building permit for a project, and in any event
5 before any permit for any construction activity other than excavation and shoring is issued,
6 unless the applicant elects in writing to defer payment. If the applicant elects to defer payment,
7 then the issuance of any certificate of occupancy for the project shall be conditioned upon
8 payment of the full amount of the cash payment determined under this section, plus an interest
9 factor equal to that amount multiplied by the increase, if any, in the Consumer Price Index, All
10 Urban Consumers, West Region, All Items, 1982-84=100, as published monthly, from the last
11 month prior to the date when payment would have been required if deferred payment had not
12 been elected, to the last month for which data are available at the time of payment. If the index
13 specified in this subsection is not available for any reason, the Director shall select a substitute
14 cost of living index. In no case shall the interest factor be less than zero.
15
16

17 3. The Director and the Housing Director are authorized jointly to adopt rules to
18 interpret and implement the provisions of this subsection C, in addition to rules that may be
19 adopted by the Housing Director independently as authorized in this section.
20

21 4. Nothing in this section shall be construed to confer on any owner or developer
22 of housing any development rights or property interests. Because the availability and terms of the
23 allowance of bonus development depend on the regulations in effect at the relevant time for the
24 project proposing to use such bonus development, pursuant to SMC 23.76.026, any approvals or
25



1 agreements by the Housing Director regarding the eligibility of actual or proposed housing as to
2 satisfy conditions for bonus development do not grant any vested rights, nor guarantee that any
3 bonus development will be permitted based on such housing.

4 D. This section shall expire and be of no further effect on the earlier of the effective date
5 of any ordinance passed by the City Council enacting a new chapter 23.58A in the Seattle
6 Municipal Code, or March 31, 2009.

7
8 Section 4. Section 23.48.016 of the Seattle Municipal Code, which section was last
9 amended by Ordinance 122611, is amended to add a new subsection C as follows:

10 **23.48.016 Standards applicable to specific areas.**

11 * * *

12 C. Seattle Mixed/D/40-85

13
14 1. Base Height Limit. Structures in the SM/D/40-85 zone are subject to a height
15 limit of 40 feet, except as otherwise provided in this subsection C.

16 2. Additional Height for Certain Structures with Only Residential Uses Above 40
17 Feet. A structure in the SM/D/40-85 zone that has only residential uses above a height of 40 feet
18 has a maximum height limit of 85 feet if:

19 a. the applicant satisfies the conditions to bonus development under Section
20 23.48.011; or

21 b. Section 23.48.011 is no longer in effect, Chapter 23.58A is in effect, and
22 the applicant satisfies all conditions set forth in Chapter 23.58A that apply to residential floor
23 area above a base height limit; or
24



1 L. SM/D/40-85 zone. As a Type I decision pursuant to Chapter 23.76, Procedures for
2 Master Use Permits and Council Land Use Decisions, the Director may reduce required parking
3 for any proposed uses in the SM/D/40-85 zone to a level not less than the amount needed to
4 serve parking demand to be generated by those uses as demonstrated to the satisfaction of the
5 Director by a parking demand study performed by a licensed professional engineer and
6 submitted by the applicant.
7

8 Section 6. Attached to this ordinance is a zoning map, identified as Exhibit A and
9 incorporated herein by this reference. The Official Land Use Map, as adopted by Section
10 23.32.016 and as previously amended, is amended to rezone certain land shown on pages 72-73
11 from C1 40 and C2 40 to SM/D/40-85, as shown on Exhibit A.
12

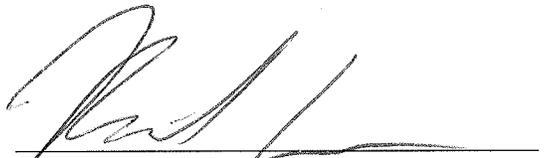
13 Section 7. To the extent that any performance or payment under Section 23.48.011 or
14 23.48.016 as enacted by this ordinance may constitute a tax under applicable law, this ordinance
15 enacts that tax pursuant to the authority in RCW 36.70A.540.
16

17 Section 8. Effective Date. This ordinance shall take effect and be in force thirty (30)
18 days from and after its approval by the Mayor, but if not approved and returned by the Mayor
19 within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section
20 1.04.020.
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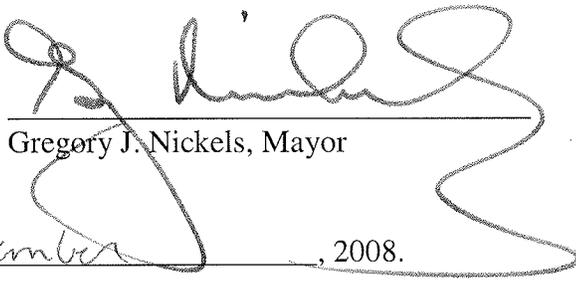
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Passed by the City Council the 3rd day of November, 2008, and
signed by me in open session in authentication of its passage this 3rd day of
November, 2008.



President _____ of the City Council

Approved by me this 7th day of November, 2008.



Gregory J. Nickels, Mayor

Filed by me this 7th day of November, 2008.



City Clerk

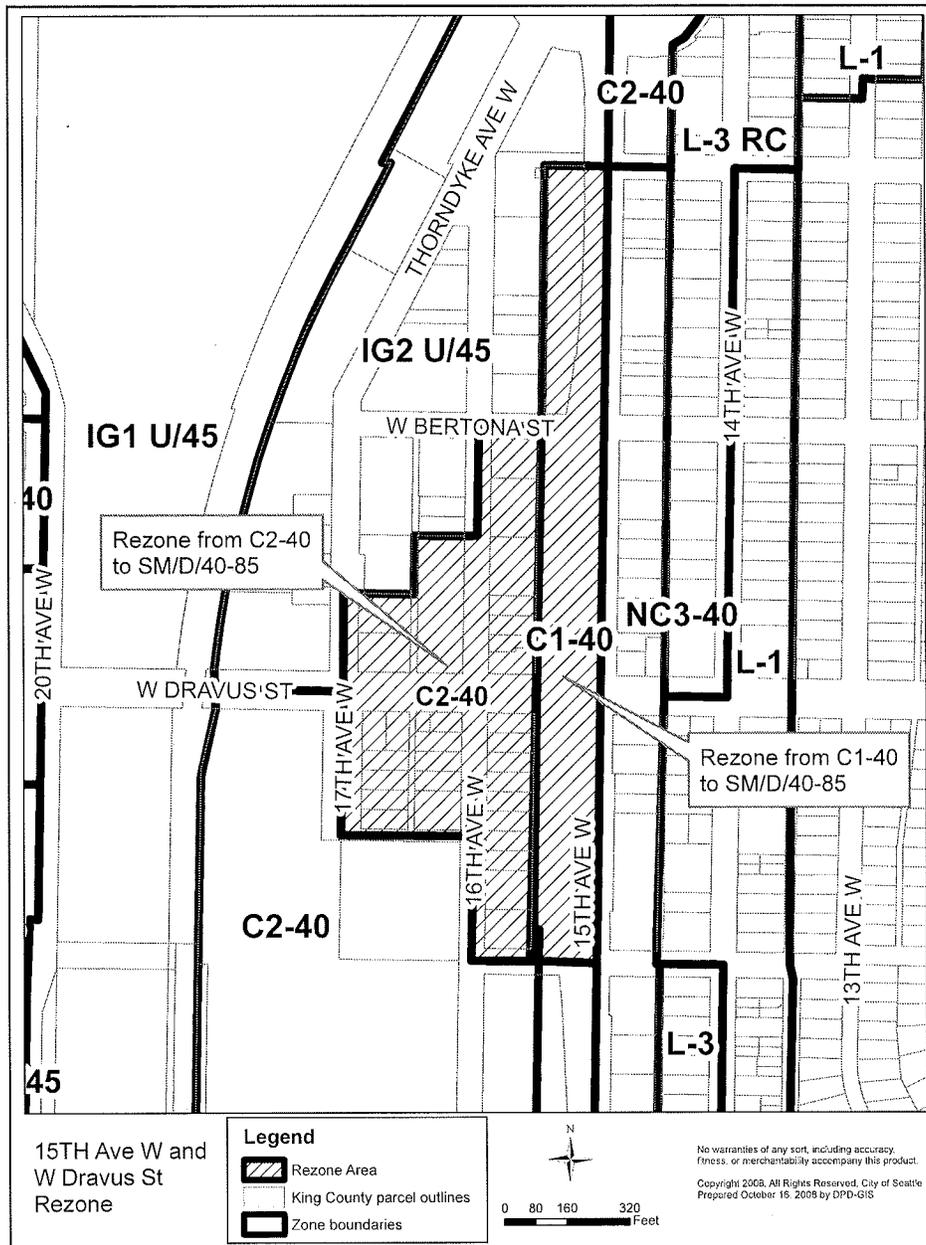
(Seal)

Attachments: Exhibit A: Map of Rezones



Exhibit A

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FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Department of Planning and Development	Ketil Freeman 684.8178	NA

Legislation Title:

AN ORDINANCE related to land use and zoning, amending Chapter 23.48 and Section 23.54.020 of the Seattle Municipal Code; creating a new SM/D/40-85 zoning classification; adopting an affordable housing incentive program for increased height in areas zoned SM/D/40-85; and amending the Official Land Use Map at pages 72-73 to rezone land in the West Dravus commercial area to SM/D/40-85.

- **Summary of the Legislation:** This legislation rezones 7.5 acres in the W. Dravus Commercial area from C2-40 and C1-40 to SM/D 40-85.
- **Background:** This legislation was requested by the City Council in 2005 in response to neighborhood requests that the area be rezoned. The neighborhood anticipates redevelopment from a commercial and industrial character to a mixed use neighborhood with dense residential development. The City Council amended the Comprehensive Plan to allow for consideration of greater heights in this neighborhood, and requested that the Department of Planning and Development complete a rezone analysis and recommend an appropriate zoning configuration.

The proposed bill is a modification of C.B. 116292 proposed by the Mayor and C.B. 116357 proposed by Councilmember Conlin. This bill differs from C.B. 116357 in that, like C.B. 116292, the bill would establish a base height of 40 feet – the same as the maximum height under existing zoning – above which residential floor area would be obtainable through participation in an affordable housing incentive program.

- *Please check one of the following:*

This legislation does not have any financial implications. *(Stop here and delete the remainder of this document prior to saving and printing.)*

This legislation has financial implications.



ORDINANCE _____

1
2 AN ORDINANCE related to land use and zoning, amending Chapter 23.48 and Section
3 23.54.020 of the Seattle Municipal Code; creating a new SM/D/40-85 zoning
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5 areas zoned SM/D/40-85; and amending the Official Land Use Map at pages 72-73 to
6 rezone land in the West Dravus commercial area to SM/D/40-85.

7 WHEREAS the Seattle Comprehensive Plan, policy LU6, provides that “the City Council may
8 permit greater heights on commercially-zoned sites in the Interbay area along and near
9 W. Dravus Street between 15th Avenue W. and 20th Avenue W., through overlay zoning,
10 zoning map amendment, or other implementing measures”; and

11 WHEREAS on October 3, 2005 the City Council adopted Resolution 30804 calling for
12 consideration of an overlay zone or other zoning options, including height limit increases,
13 to promote mixed-use development in the W. Dravus Commercial area, and directing the
14 Department of Planning and Development to prepare legislation; and

15 WHEREAS the goals of the zoning change in the W. Dravus Commercial area are to preserve
16 and enhance the existing industrial employment base, provide opportunities for higher-
17 density transit oriented development, create workforce housing in a new pedestrian-
18 oriented, mixed use center in proximity to existing open space resources, and to promote
19 a jobs housing balance within a walkable neighborhood; and

20 WHEREAS the City Council believes that any transportation infrastructure improvements in the
21 W. Dravus Commercial Area required to serve new mixed use development can be
22 accomplished by mitigation required through the City’s substantive authority under the
23 State Environmental Policy Act; and

24 WHEREAS changes in zone classification and height limit have the potential to substantially
25 increase the development capacity of lots in the W. Dravus commercial area; and

26 WHEREAS RCW 36.70A.540 provides express authority for the City to establish incentive
27 programs to ensure that a portion of new housing created through increases in
28 development capacity be affordable; and

WHEREAS on December 4, 2006, the City Council adopted Resolution 30939 affirming the
Council’s and Mayor’s support for the use of new affordable housing incentive program
authority; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:



1 Section 1. Subsection A of Section 23.48.002 of the Seattle Municipal Code, which
2 section was last amended by Ordinance 121782, is amended as follows:

3 **23.48.002 Scope of provisions.**

4 A. This chapter identifies uses that are or may be permitted in ~~((the))~~ Seattle Mixed (SM)
5 zones and establishes development standards. The SM zone boundaries are shown on the Official
6 Land Use Map. The “D” suffix with a height limit range may be applied to SM-zoned land in
7 the West Dravus area.

8 * * *

9
10 Section 2. Subsection A of Section 23.48.010 of the Seattle Municipal Code, as last
11 amended by Ordinance 121782, is amended as follows:

12 **23.48.010 General structure height.**

13 A. Maximum Height. Maximum structure height ~~((shall be))~~ is ~~((forty-))~~40~~(())~~ feet,
14 ~~((fifty-five-))~~55~~(())~~ feet, ~~((sixty-five-))~~65~~(())~~ feet, ~~((seventy-five-))~~75~~(())~~ feet, ~~((eighty-five~~
15 ~~))~~85~~(())~~ feet, or ~~((one hundred twenty-five-))~~125~~(())~~ feet as designated on the Official Land
16 Use Map, Chapter 23.32, except as provided in ~~((subsection B of))~~ this Section or in Section
17 23.48.016.

18 * * *

19
20
21 Section 3. A new Section 23.48.011 of the Seattle Municipal Code is adopted to read as
22 follows:



1 **23.48.011 Affordable Housing Incentive Program**

2 A. Additional Height Conditioned on Low-income Housing. In the SM/D/40-85 zone
3 additional building height may be obtained for mixed-use projects and single-purpose residential
4 projects if the applicant provides low-income housing, or makes a payment in lieu thereof, under
5 the terms of this section.

6 B. Finding; Definitions.

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8 1. Pursuant to the authority of RCW 36.70A.540, the City finds that the higher
9 income levels specified in this subsection B, rather than those stated in RCW 36.70A.540, are
10 needed to address local housing market conditions in each of the areas and zones to which this
11 section applies.

12 2. For purposes of this section, the following definitions apply:

13 a. "Affordable unit" means a unit of low-income housing provided as a
14 condition to bonus development.

15 b. "Base height limit" means 40 feet.

16 c. "Bonus development" means floor area allowed in stories wholly or in
17 part above the base height limit on condition that low-income housing be provided, or that a
18 payment in lieu thereof be made, under this section.

19 d. "Certificate of occupancy" means the first certificate of occupancy
20 issued by the City for a project, whether temporary or permanent, unless otherwise specified.

21 e. In the case of rental units, "low-income housing" means housing
22 affordable to and occupied by households with incomes no higher than the lesser of eighty
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1 percent of median income, as defined in section 23.84A.025, or the maximum level permitted by
2 RCW 36.70A.540 as in effect when the agreement for the units to serve as affordable units is
3 executed, and “low-income household” means such a household.

4 f. In the case of owner occupancy housing units, “low-income housing”
5 means housing affordable to and occupied by households with incomes no higher than the lesser
6 of median income, as defined in section 23.84A.025, or the maximum level permitted by RCW
7 36.70A.540 as in effect when the agreement for the units to serve as affordable units is executed,
8 and “low-income household” means such a household.

9
10 C. Bonus Options. Bonus development may be allowed when low-income housing is
11 developed (the “performance option”) or when the applicant makes a payment to the City in lieu
12 of providing low-income housing (the “payment option”), or when a combination of the
13 performance and payment options is used, in accordance with this section.

14
15 1. Performance option.

16 a. The applicant shall provide low-income housing with a gross floor area
17 equal to the greater of (i) 20 percent of the gross floor area of all stories on the lot that are wholly
18 or in part above the base height limit, or (ii) 700 square feet.

19
20 b. Each affordable unit shall serve only low-income households for a
21 minimum period of 50 years. For rental housing, rent shall be limited so that housing costs,
22 including rent and basic utilities, shall not exceed 30 percent of the applicable income limit for
23 the unit under this section, all as determined by the Housing Director, for a minimum period of
24 50 years. For owner-occupied housing, the initial sale price shall not exceed an amount
25

1 determined by the Housing Director to be consistent with affordable housing for a low-income
2 household with the average family size expected to occupy the unit based on the number of
3 bedrooms, and the units shall be subject to recorded instruments satisfactory to the Housing
4 Director providing for sales prices on any resale consistent with affordability on the same basis
5 for at least 50 years. The Housing Director may promulgate rules specifying the method of
6 determining affordability, including eligible monthly housing costs. The Housing Director may
7 also promulgate rules for determining whether units satisfy the requirements of this section and
8 any requirements relating to down-payment amount, design, quality, maintenance and condition
9 of the low-income housing.
10

11 c. Affordable units each shall include at least 350 net square feet, and they
12 shall be provided in a range of sizes consistent with RCW 36.70A.540. The affordable units
13 shall comply with all other requirements of RCW 36.70A.540, as in effect on the date as of
14 which the provisions of this title apply to the application for a use permit for the project using the
15 bonus development. Affordable units that are developed as part of the project using bonus
16 development shall be completed and ready for occupancy at or before the time when a certificate
17 of occupancy is issued for any other units in that project, and as a condition to any right of the
18 applicant to such a certificate of occupancy. The Housing Director may provide, by rule
19 promulgated after the effective date of this ordinance, for terms and conditions on which an
20 extension of time may be allowed due to delays that the applicant could not reasonably have
21 avoided.
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1 d. If the affordable units are not being developed within the project using
2 the bonus development:

3 (i) The applicant must ensure that a certificate of occupancy for the
4 affordable units is issued before or within two years after the date that the first building permit,
5 other than for grading and shoring, is issued for the project using the bonus development, or such
6 later date as the Housing Director may approve based on delays that the applicant or housing
7 developer could not reasonably have avoided and conditioned on the security provided under
8 subsection C1d(ii) of this section being extended and increased as may be necessary. To the
9 extent the City receives payment through a letter of credit or other security in an amount
10 determined under subsection C1d(ii) of this section, the obligation of the applicant to provide
11 affordable units will be deemed satisfied.
12

13
14 (ii) The applicant shall provide to the City an irrevocable letter of
15 credit, or other sufficient security approved by the Housing Director, prior to and as a condition
16 of issuance of the first building permit, other than for grading and shoring, for the project using
17 the bonus development, unless completion of the affordable units has already been documented
18 to the satisfaction of the Housing Director and the affordable units are subject to recorded
19 restrictions satisfactory to the Housing Director. The letter of credit or other security shall be in
20 an amount and on terms so that at the end of the period specified in subsection C1d(i) of this
21 section, or on any earlier date thirty (30) days before the letter of credit or other security will
22 expire, if the housing does not qualify or is not provided in a sufficient amount to satisfy the
23 terms of this section, the City shall receive a cash payment for housing in the amount determined
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1 pursuant to subsection C2 of this section, after credit for any affordable units then provided and
2 accepted by the Housing Director, plus an amount equal to interest on such payment, at the rate
3 equal to the prime rate quoted by Bank of America or its successor at the time the letter of credit
4 or other security is provided, plus three percent per annum, from the date of issuance of the first
5 building permit, other than for excavation and shoring, for the project using the bonus
6 development. If and when the City becomes entitled to realize on any such security, the Housing
7 Director shall take appropriate steps to do so, and the amounts realized, net of any costs to the
8 City, shall be used in the same manner as cash payments for housing made under this section.

9
10 e. No subsidies for bonused housing; Exception.

11 (i) The Housing Director may require, as a condition of any bonus
12 development under the performance option, that the owner of the lot upon which the affordable
13 units are located agree not to seek or accept any subsidies, including without limitation those
14 items referred to subsection C1e(ii) of this section, related to housing.

15 (ii) In general, and except as may be otherwise required by
16 applicable federal or state law, no bonus development may be earned by providing housing if:

17 (a) Any person is receiving or will receive with respect to
18 the housing any charitable contributions or public subsidies for housing development or
19 operation, including, but not limited to, tax exempt bond financing, tax credits, federal loans or
20 grants, City of Seattle housing loans or grants, county housing funds, or State of Washington
21 housing funds; or
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1 (b) The housing is or would be, independent of the
2 requirements for the bonus development, subject to any restrictions on the income of occupants,
3 rents or sale prices.

4 (iii) The Housing Director may allow the building or buildings in
5 which the affordable units are located to be financed in part with subsidies based on the
6 determination that (1) the public benefit of the affordable housing net of any subsidies, as
7 measured through an economic analysis, exceeds the amount of the payment-in-lieu that would
8 otherwise be paid; and (2) the subsidies being allowed would not be sufficient to leverage private
9 funds for production of the affordable housing, under restrictions as required for the performance
10 option, without additional City subsidy in an amount greater than the payment-in-lieu amount
11 that would otherwise be paid..

12 f. If the Housing Director certifies to the Director that either

13 (i) the applicant has provided the City with a letter of credit or
14 other sufficient security pursuant to subsection C1d(ii) of this section; or

15 (ii) there have been recorded one or more agreements or
16 instruments satisfactory to the Housing Director providing for occupancy and affordability
17 restrictions on affordable units with the minimum floor area determined under this section, all
18 affordable units have been completed, and the affordable units are on a different lot from the
19 bonus development or are in one or more condominium units separate from the bonus
20 development under condominium documents acceptable to the Housing Director,
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1 then any failure of the affordable units to satisfy the requirements of this subsection C shall not
2 affect the right to maintain or occupy the bonus development. Unless and until the Housing
3 Director shall certify as set forth in subsections C1f(i) or C1f(ii) of this section, it shall be a
4 continuing permit condition, whether or not expressly stated, for each project obtaining bonus
5 development based on the provision of housing under this subsection, that the affordable units
6 shall be maintained in compliance with the terms of this section, as documented to the
7 satisfaction of the Housing Director. The Housing Director may provide by rule for
8 circumstances in which affordable units may be replaced if lost due to casualty or other causes,
9 and for terms and conditions upon which a cash payment may be made in lieu of continuing to
10 provide affordable units under the terms of this subsection C1.

12 g. The Housing Director is authorized to accept and execute agreements
13 and instruments to implement this section. Issuance of the certificate of occupancy for the project
14 using the bonus development may be conditioned on such agreements and instruments.

16 h. The housing owner, in the case of rental housing, shall provide annual
17 reports and pay an annual monitoring fee to the Office of Housing of \$65 for each affordable
18 unit. In the case of affordable units for owner-occupancy, the recorded resale restrictions shall
19 include a provision requiring payment to the City, on any sale or other transfer, of a fee of \$500
20 for the review and processing of documents to determine compliance with income and
21 affordability restrictions.

23 2. Payment option.



1 a. In lieu of all or part of the performance option, an applicant may pay to
2 the City \$18.94 per gross square foot in each of the stories wholly or in part above the base
3 height limit.

4 b. The Housing Director shall use cash payments and any earnings thereon
5 to support the development of low-income housing in any manner now or hereafter permitted by
6 RCW 36.70A.540, which may include support provided through loans or grants to public or
7 private owners or developers of housing and through loans or grants to low-income households
8 for home purchases.

9 c. Cash payments shall be made prior to issuance, and as a condition to
10 issuance, of any building permit after the first building permit for a project, and in any event
11 before any permit for any construction activity other than excavation and shoring is issued,
12 unless the applicant elects in writing to defer payment. If the applicant elects to defer payment,
13 then the issuance of any certificate of occupancy for the project shall be conditioned upon
14 payment of the full amount of the cash payment determined under this section, plus an interest
15 factor equal to that amount multiplied by the increase, if any, in the Consumer Price Index, All
16 Urban Consumers, West Region, All Items, 1962-64=100, as published monthly, from the last
17 month prior to the date when payment would have been required if deferred payment had not
18 been elected, to the last month for which data are available at the time of payment. If the index
19 specified in this subsection is not available for any reason, the Director shall select a substitute
20 cost of living index. In no case shall the interest factor be less than zero.
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2. Additional Height for Certain Structures with Only Residential Uses Above 40 Feet. Structures in the SM/D/40-85 zone that (a) have only residential uses above a height of 40 feet; and (b) satisfy the conditions to bonus development under Section 23.48.011 or under any superseding ordinance as described in subsection 23.48.011D, have a maximum height limit of 85 feet.

3. Building Setbacks on W. Dravus Street. The portion of any structure above 45 feet in height shall be set back at least 50 feet from W. Dravus Street, except as provided in subsections C4 and C5 of this section.

4. Projections Allowed in Setback. If a setback is required under subsection C3 of this section, the first four feet of horizontal projection of decks, balconies with open railings, eaves, cornices, and gutters is permitted in the required setback.

5. Exceptions and Rooftop Features. Height in addition to the limit applicable under subsection C1 or C2 of this section, and in addition to the limit applicable in a required setback area under subsection C3 of this section, is allowed for pitched roofs and certain rooftop features as set forth in subsections D and E of Section 23.48.010.

Section 5. Section 23.54.020 of the Seattle Municipal Code, which section was last amended by Ordinance 122738, is amended to add a new subsection L as follows:



1 **23.54.020 Parking quantity exceptions.**

2 The parking quantity exceptions set forth in this section apply in all zones except downtown
3 zones, which are regulated by Section 23.49.019, and Major Institution zones, which are
4 regulated by Section 23.54.016.
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6 * * *

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8 L. SM/D/40-85 zone. As a Type I decision pursuant to Chapter 23.76, Procedures for
9 Master Use Permits and Council Land Use Decisions, the Director may reduce required parking
10 for any proposed uses in the SM/D/40-85 zone to a level not less than the amount needed to
11 serve parking demand to be generated by those uses as demonstrated to the satisfaction of the
12 Director by a parking demand study performed by a licensed professional engineer and
13 submitted by the applicant.
14

15 Section 6. Attached to this ordinance is a zoning map, identified as Exhibit A and
16 incorporated herein by this reference. The Official Land Use Map, as adopted by Section
17 23.32.016 and as previously amended, is amended to rezone certain land shown on pages 72-73
18 from C1 40 and C2 40 to SM/D/40-85, as shown on Exhibit A.
19

20 Section 7. Effective Date. This ordinance shall take effect and be in force thirty (30)
21 days from and after its approval by the Mayor, but if not approved and returned by the Mayor
22 within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section
23 1.04.020.
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Passed by the City Council the ____ day of _____, 2008, and
signed by me in open session in authentication of its passage this ____ day of
_____, 2008.

President _____ of the City Council

Approved by me this ____ day of _____, 2008.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2008.

City Clerk

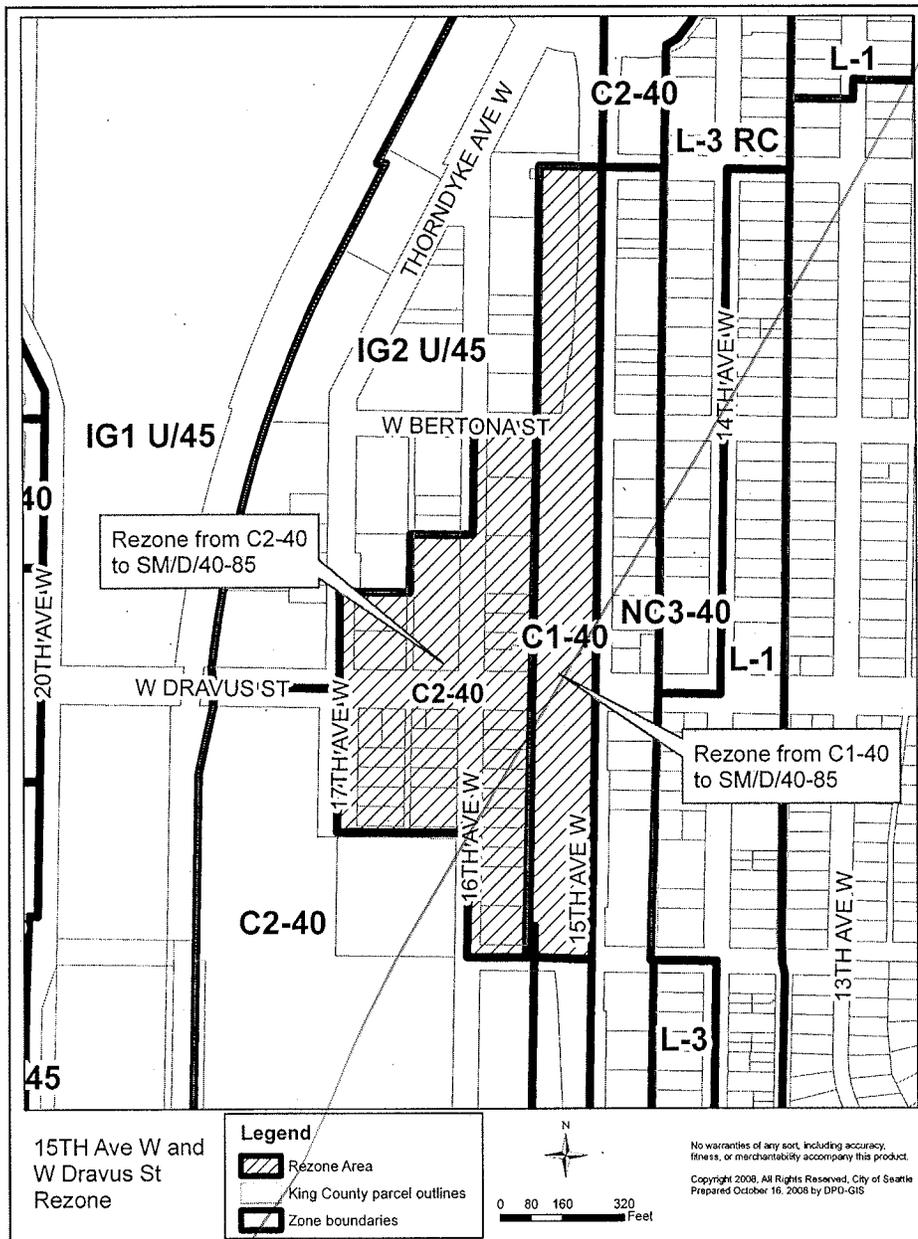
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Attachments: Exhibit A: Map of Rezones



Exhibit A

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STATE OF WASHINGTON – KING COUNTY

--SS.

231308
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

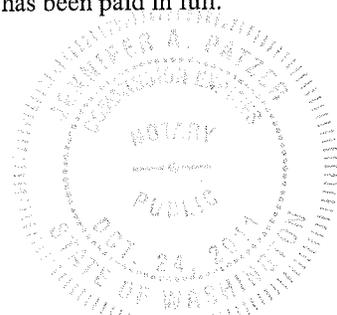
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122835 ORDINANCE

was published on

11/13/08

The amount of the fee charged for the foregoing publication is the sum of \$ 758.70, which amount has been paid in full.



[Signature]

Subscribed and sworn to before me on
11/13/08 *[Signature]*

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King Cour

City of Seattle

ORDINANCE 122835

AN ORDINANCE related to land use and zoning, amending Chapter 23.48 and Section 23.54.020 of the Seattle Municipal Code; creating a new SMD/40-85 zoning classification; adopting an affordable housing incentive program for increased height in areas zoned SMD/40-85, and amending the Official Land Use Map at pages 72-73 to rezone land in the West Dravus commercial area to SMD/40-85.

WHEREAS the Seattle Comprehensive Plan, Policy IUV, provides that "the City Council may permit greater heights on commercially-zoned sites in the Interbay area along and near W. Dravus Street between 15th Avenue W. and 20th Avenue W. through overlay zoning, zoning map amendment, or other implementing measures"; and

WHEREAS on October 3, 2005 the City Council adopted Resolution 30804 calling for consideration of an overlay zone or other zoning options, including height limit increases, to promote mixed-use development in the W. Dravus Commercial area, and directing the Department of Planning and Development to prepare legislation; and

WHEREAS the goals of the zoning change in the W. Dravus Commercial area are to preserve and enhance the existing industrial employment base, provide opportunities for higher-density transit oriented development, create workforce housing in a new pedestrian-oriented, mixed use center in proximity to existing open space resources, and to promote a jobs housing balance within a walkable neighborhood; and

WHEREAS the City Council believes that any transportation infrastructure improvements in the W. Dravus Commercial Area required to serve new mixed use development can be accomplished by mitigation required through the City's substitute authority under the State Environmental Policy Act, and

WHEREAS changes in zone classification and height limit have the potential to substantially increase the development capacity of lots in the W. Dravus commercial area, and

WHEREAS RCW 36.70A.540 provides express authority for the City to establish incentive programs to ensure that a portion of new housing created through increases in development capacity be affordable; and

WHEREAS on December 4, 2006, the City Council adopted Resolution 30939 affirming the Council's and Mayor's support for the use of new affordable housing incentive program authority; and

WHEREAS there is now pending Council Bill 116388, which would enact a new chapter 23.58A containing affordable housing incentive provisions to apply in areas outside of Downtown, and the City Council intends that those provisions, if enacted, would apply in the West Dravus Commercial area, instead of the provisions in this ordinance;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subsection A of Section 23.48.002 of the Seattle Municipal Code, which section was last amended by Ordinance 121782, is amended as follows:

23.48.002 Scope of provisions.

A. This chapter identifies uses that are or may be permitted in (bays) Seattle Mixed Use (SMU) zones and (bays) business development standards. The SMU incentives are shown on the Official Land Use Map. The "D" suffix with a height limit change may be applied to SMU-zoned land in the West Dravus area.

Section 2. Subsection A of Section 23.48.010 of the Seattle Municipal Code, as last amended by Ordinance 121782, is amended as follows:

23.48.010 General structure height.

A. Maximum Height. Maximum structure height (shall be) is (bays) 40 (bays) feet, (bays) 45 (bays) feet, (bays) 50 (bays) feet, (bays) 55 (bays) feet, (bays) 60 (bays) feet, (bays) 65 (bays) feet, (bays) 70 (bays) feet, or (bays) 75 (bays) feet, as designated on the Official Land Use Map. Chapter 23.32, except as provided in (bays) this Section or in Section 23.48.016.

Section 3. A new Section 23.48.011 of the Seattle Municipal Code is adopted to read as follows:

23.48.011 Affordable Housing Incentive Program

A. Additional Height Conditioned on Low-income Housing. In the SMD/40-85 zone additional building height may be obtained for mixed-use projects and single-purpose residential projects if the applicant provides low-income housing, or makes a payment in lieu thereof, under the terms of this section.

B. Finding; Definitions.

1. Pursuant to the authority of RCW 36.70A.540, the City finds that the higher income levels specified in this subsection B, rather than those stated in RCW 36.70A.540, are needed to address local housing market conditions in each of the areas and zones to which this section applies.

2. For purposes of this section, the following definitions apply:

a. "Affordable unit" means a unit of low-income housing provided as a condition to bonus development.

b. "Base height limit" means 40 feet above the "Grade Plane" as defined in Section 502 of the Seattle Building Code.

c. "Bonus development" means floor area allowed in stories wholly or in part above the base height limit on condition that low-income housing be provided, or that a payment in lieu thereof be made, under this section.

d. "Certificate of occupancy" means the first certificate of occupancy issued by the City for a project, whether temporary or permanent, unless otherwise specified.

e. In the case of rental units, "low-income housing" means housing affordable to and occupied by households with incomes no higher than the lesser of (i) income no higher than the lesser of (i) eighty percent of median income defined as annual median family income for the statistical area or division thereof including Seattle for which median family income is published from time to time by the U.S. Department of Housing and Urban Development, with adjustments according to household size in a manner determined by the Director of the Office of Housing, or (2) the maximum level permitted by RCW 36.70A.540 as in effect when the agreement for the units to serve as affordable units is executed, and "low-income household" means such a household.

f. In the case of owner occupancy housing units, "low-income housing" means housing affordable to and occupied by households with incomes no higher than the lesser of (i) median family income for the statistical area or division thereof including Seattle for which median family income is published from time to time by the U.S. Department of Housing and Urban Development, with adjustments according to household size in a manner determined by the Director of the Office of Housing, or (2) the maximum level permitted by RCW 36.70A.540 as in effect when the agreement for the units to serve as affordable units is executed, and "low-income household" means such a household.

C. Bonus Options. Bonus development may be allowed when low-income housing is developed (the "performance option") or when the applicant makes a payment to the City in lieu of providing low-income housing (the "payment option"), or when a combination of the performance and payment options is used, in accordance with this section.

1. Performance option.

a. The applicant shall provide low-income housing with a floor area equal to the greater of (i) 1.5 percent of 80 percent of the gross residential floor area of all stories on the lot that are wholly or in part above the base height limit, or (ii) 700 square feet.

leverage private funds for production of the affordable housing, under restrictions as required for the performance option, without additional City subsidy in an amount greater than the payment-in-lieu amount that would otherwise be paid.

f. If the Housing Director certifies to the Director that either

(i) the applicant has provided the City with a letter of credit or other sufficient security pursuant to subsection C14(d) of this section, or

(ii) there have been recorded one or more agreements or instruments satisfactory to the Housing Director providing for occupancy and affordability restrictions on affordable units with the minimum floor area determined under this section, all affordable units have been completed, and the affordable units are on a different lot from the bonus development or are in one or more condominium units separate from the bonus development under condominium documents acceptable to the Housing Director,

then any failure of the affordable units to satisfy the requirements of this subsection C shall not affect the right to maintain or occupy the bonus development. Unless and until the Housing Director shall certify as set forth in subsections C14(i) or C14(ii) of this section, it shall be a continuing permit condition, whether or not expressly stated, for each project obtaining bonus development based on the provision of housing under this subsection, that the affordable units shall be maintained in compliance with the terms of this section, as documented to the satisfaction of the Housing Director. The Housing Director may provide by rule for circumstances in which affordable units may be replaced if lost due to casualty or other causes, and for terms and conditions upon which a cash payment may be made in lieu of continuing to provide affordable units under the terms of this subsection C1.

e. The Housing Director is authorized to accept and execute agreements and instruments to implement this section. Assurance of the certificate of occupancy for the project using the bonus development may be conditioned on such agreements and instruments.

h. The housing owner, in the case of rental housing, shall provide annual reports and pay an annual monitoring fee to the Office of Housing of \$65 for each affordable unit. In the case of affordable units for owner-occupancy, the recorded resale restrictions shall include a provision requiring payment to the City, on any sale or other transfer, of a fee of \$500 for the review and processing of documents to determine compliance with income and affordability restrictions.

2. Payment option.

a. In lieu of all or part of the performance option, an applicant may pay to the City \$18.94 per net square foot in stories wholly or in part above the base height limit. The amount of net square feet in a story is computed by multiplying the gross residential floor area in the story by an efficiency factor of 80 percent.

b. The Housing Director shall use cash payments and any earnings thereon to support the development of low-income housing in any manner now or hereafter permitted by RCW 36.70A.13-40, which may include support provided through loans or grants to public or private owners or developers of housing and through loans or grants to low-income households for some purchases, and the City's costs to administer projects, not to exceed 10% of payments made to the City.

c. Cash payments shall be made prior to issuance, and as a condition to issuance, of any building permit after the first building permit for a project, and in any event before any permit for any construction activity other than excavation and shoring is issued, unless the applicant elects in writing to defer