

Ordinance No. 124258

Council Bill No. 117827

An ORDINANCE approving an amendment of the Property Use and Development Agreement approved by Ordinance 123774 for property located at 500 Fairview Avenue North.

Related Legislation File:

Date Introduced and Referred: <u>7-8-13</u>	To: (committee): <u>Planning, Land Use, and Sustainability</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>8/5/13</u>	Date Presented to Mayor: _____
Date Signed by Mayor: _____	Date Returned to City Clerk: <u>8/5/13</u>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text _____	Date Passed Over Veto:
Date Veto Published:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by:

Richard Conlin

Committee Action:

Date	Recommendation	Vote
<u>7/10/13</u>	<u>Pass</u>	<u>3-0 RCTB/MO</u>

This file is complete and ready for presentation to Full Council. RC 7/10/13

Full Council Action:

Date	Decision	Vote
<u>July 15, 2013</u>	<u>Held until July 22, 2013</u>	<u>9-0</u>
<u>July 22, 2013</u>	<u>Held until July 29, 2013</u>	<u>9-0</u>
<u>July 29, 2013</u>	<u>Held until Aug. 5, 2013</u>	<u>9-0</u>
<u>Aug. 5, 2013</u>	<u>Passed as Amended</u>	<u>8-0 (excused: Burgess)</u>

Law Department

ORDINANCE 124258

An ORDINANCE approving an amendment of the Property Use and Development Agreement approved by Ordinance 123774 for property located at 500 Fairview Avenue North.

WHEREAS, in December, 2011 the City Council passed Ordinance 123774, approving a contract rezone for BMR-500 Fairview, L.L.C. ("Applicant") for property located at 500 Fairview Avenue North, including acceptance of a Property Use and Development Agreement ("PUDA"); and

WHEREAS, the PUDA imposes conditions that restrict the development at the site to a development in substantial accordance with the final approved drawings for Master Use Permit application 3011479 dated July 15, 2011; and

WHEREAS, the Applicant seeks to change the design of the development; and

WHEREAS, Applicant seeks to amend the PUDA to allow this change; and

WHEREAS, Seattle Municipal Code Section 23.76.058.C authorizes the Council to amend PUDAs; and

WHEREAS, the Council finds that amendment of the PUDA is in the public interest on the basis of the analysis provided by the Department of Planning and Development to the Council filed in Clerk's File 312944; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The amendment to the Property Use and Development Agreement ("PUDA") approved by Ordinance 123774; attached as Exhibit A to this ordinance, is approved.

Section 2. The City Clerk is hereby authorized and directed to file said amended PUDA, attached to this ordinance as Exhibit A, at the King County Records and Elections Division; to file, upon return of the recorded agreement from the King County Records and Elections Division, the original of said PUDA with this ordinance at the City Clerk's Office; and to deliver copies of the same to the Director of the Department of Planning and Development and to the King County Assessor's Office.



1 Section 3. This Ordinance, effectuating a quasi-judicial decision of the City Council; is
2 not subject to mayoral approval or disapproval; and shall take effect and be in force 30 days from
3 and after its passage and approval by the City Council.

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5 Passed by the City Council the 5th day of August, 2013, and signed by me
6 in open session in authentication of its passage this 5th day of August, 2013.

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9 President _____ of the City Council

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11 Approved by me this 5th day of August, 2013.

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14 City Clerk

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16 (Seal)

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24 Exhibit A: Amended PUDA



EXHIBIT A – AMENDED PUDA

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D. On December 19, 2011 the Seattle City Council (the "Council") passed Ordinance 123774, which rezoned the Property and accepted a Property Use and Development Agreement (the "PUDA") in connection with the rezone. The PUDA was recorded at Auditor's File No. 20111229000634, records of King County, Washington.

E. Conditions in the PUDA accepted by Ordinance 123774 limit "[f]uture development of the Property...to a project developed in substantial accordance with the final approved Master Use Permit drawings for MUP Application 3011479 dated July 15, 2011."

F. On March 19, 2013, the Owner submitted revised plans that make changes to the plans approved in MUP 3011479. The revised plans were submitted under the new project number 3015121.

G. SMC Section 23.76.058.C provides that "[p]roperty use and development agreements recorded as a condition of a contract rezone may be amended by agreement between the owner and the City, if the amendment is approved by the Council."

H. The parties desire to amend and restate the PUDA to acknowledge the approval of the revised plans by the Council.

NOW, THEREFORE, in consideration of this Agreement's terms, the parties agree to amend and restate the PUDA in its entirety as follows:

AGREEMENT

Section 1. Agreement. Under SMC Section 23.34.004, the Owner 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 Industrial Commercial with a 65 foot height limit ("IC 65") to SM 85:

Future development of the Property is restricted to a project developed in substantial accordance with the approved Master Use Permit drawings for MUP Application 3015121.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County, Washington by the City Clerk. The Agreement shall be considered covenants that attach to and run with the Property and are binding on the Owner, its heirs, successors and assigns; and shall apply to any after-acquired title to the Property by the Owner.

Section 3. Termination. The covenants and the rezone shall expire three years from the date a Master Use Permit is issued for the project, as revised. If the Master Use Permit is issued and the Owner subsequently receives a certificate of occupancy for the permitted structure prior to the Master Use Permit expiring, including any renewals, the rezone remains in effect unless revoked according to SMC Section 23.34.004.



Section 4. Amendment. This Agreement may be amended or modified by written agreement between the parties, provided any amendment shall be approved by ordinance.

Section 5. Exercise of Police Power. Nothing in this Agreement prevents the Council from making further amendments to the Seattle Municipal Code or Land Use Code (which currently is a part of the Seattle Municipal Code) that apply to the Property as it may deem necessary in the public interest.

Section 6. No Precedent. 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 7. Enforcing the Agreement. This Agreement benefits the City and owners of property within 300 feet of the Property, and either the City or any benefitted property owner may institute and prosecute a proceeding at law or in equity to enforce this Agreement.

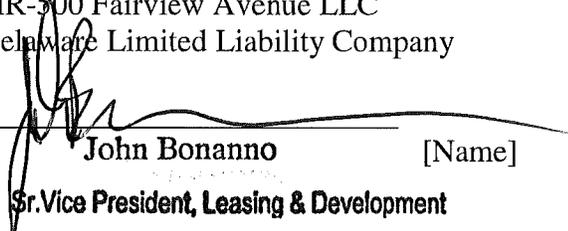
Section 8. Repeal as Additional Remedy. The Owner acknowledges that compliance with the conditions of this Agreement is a condition of the rezone and that if Owner or its successor avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement, then, in addition 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 IC 65 zone.

Section 9. Superseding Agreement. This Agreement supersedes and replaces in its entirety the PUDA recorded at Auditor's File No. 20111229000634, records of King County, Washington.

SIGNED this 29th day of July, 2013.

BMR-500 Fairview Avenue LLC
a Delaware Limited Liability Company

By



John Bonanno [Name]

Its Sr. Vice President, Leasing & Development

[Title]



ACKNOWLEDGMENT

State of California
County of San Diego)

On July 29th, 2013 before me, Nicole L. Smith, notary public
(insert name and title of the officer)

personally appeared John Bonanno
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Nicole L. Smith (Seal)

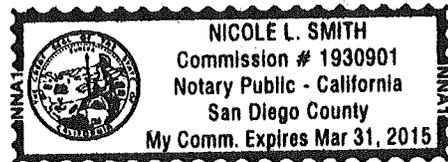


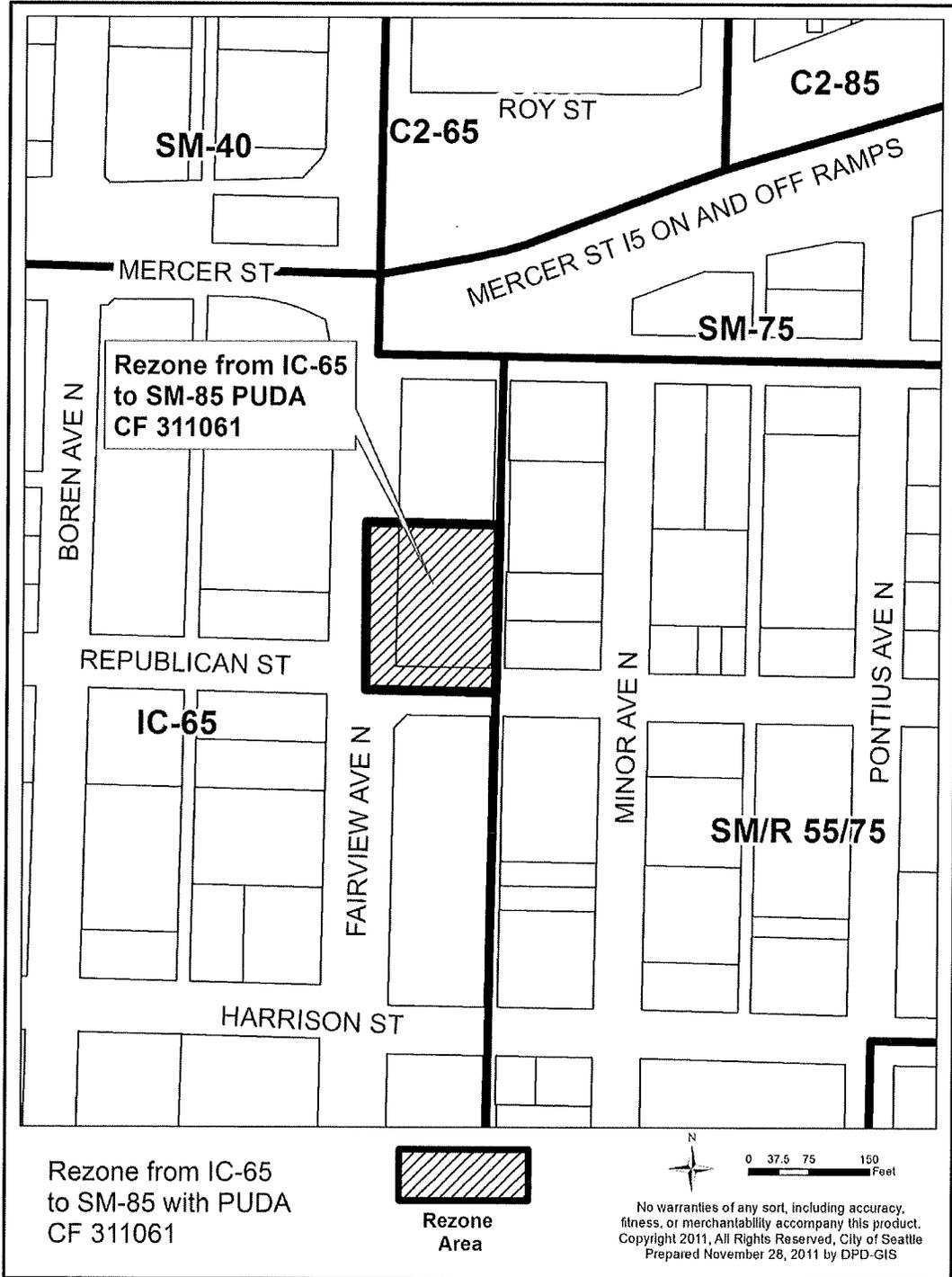
EXHIBIT A
Legal Description

Real property in the City of Seattle, County of King, State of Washington, described as follows:

LOTS 4, 5, AND 6 BLOCK 5, SORENSON'S ADDITION TO THE CITY OF SEATTLE ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 218, IN KING COUNTY, WASHINGTON.



EXHIBIT B
Rezone Map



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative	Ketil Freeman, 684.8178	NA

Legislation Title:

An ORDINANCE approving an amendment of the Property Use and Development Agreement approved by Ordinance 123774 for property located at 500 Fairview Avenue North.

• **Summary of the Legislation:**

This legislation amends a Property Use and Development Agreement (PUDA). The PUDA establishes a rezone condition for development of a site located at the northeast corner of Fairview Avenue North and Republican Street. The zone designation for that site was previously changed from Industrial Commercial with a 65-foot height limit to Seattle Mixed with an 85-foot height limit and a PUDA was accepted by Ordinance 123774.

• **Background:**

This bill approves a petitioner-generated amendment to a PUDA, which was previously accepted in conjunction with a contract rezone. The PUDA amendment is subject to the Council's rules for quasi-judicial decisions. The original petition, Department of Planning and Development recommendation, Hearing Examiner's Findings and Recommendation, record established by the Hearing Examiner and Council's Findings, Conclusions and Decision are contained in Clerk's File 311061.

• *Please check one of the following:*

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



When Recorded, Return to:

THE SEATTLE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantors: 1) <u>BMR-500 Fairview Avenue LLC</u> 2) _____ <input type="checkbox"/> Additional on page _____
Grantee: 1) <u>The City of Seattle</u> 2) _____ <input type="checkbox"/> Additional on page _____
Legal Description (abbreviated): <u>Lot 4, 5, and 6 Block 5, Sorenson's Addition to the City of Seattle</u> <input type="checkbox"/> Additional on : <u>EXHIBIT A</u>
Assessor's Tax Parcel ID #: <u>786350-0040-02</u>
Reference Nos. of Documents Released or Assigned: _____

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the Agreement) is executed this _____ day of _____, 2013, in favor of the CITY OF SEATTLE, a Washington municipal corporation (the City), and BMR-500 Fairview Avenue LLC, a Delaware limited liability company (the Owner).

RECITALS

A. The Owner owns real property (the Property) in the City of Seattle that is zoned Seattle Mixed with an 85 foot height limit (SM 85), and legally described in Exhibit A attached to and incorporated into this Agreement.

B. On January 21, 2011, the Owner submitted to the City a Master Use Permit (MUP) application, project number 3011479, to rezone the Property from IC 65 to SM 85 as shown in Exhibit B. The purpose of the application was to allow the Property to be developed for research and development laboratory use.

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 that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."

THIS VERSION IS NOT ADOPTED



D. On December 19, 2011 the Seattle City Council passed Ordinance 123774, which rezoned the Property and accepted a Property Use and Development Agreement (PUDA) in connection with the rezone.

E. Conditions in the PUDA accepted by Ordinance 123774 limit “[f]uture development of the Property...to a project developed in substantial accordance with the final approved Master Use Permit drawings for MUP Application 3011479 dated July 15, 2011.”

F. On March 19, 2013, the Owner submitted revised plans that make changes to the plans approved in MUP 3011479.

G. SMC Section 23.76.058.C provides that “[p]roperty use and development agreements recorded as a condition of a contract rezone may be amended by agreement between the owner and the City, if the amendment is approved by the Council.”

NOW, THEREFORE, in consideration of this Agreement’s terms the parties agree as follows:

AGREEMENT

Section 1. Agreement. Under Section 23.34.004, the Owner 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 Industrial Commercial with a 65 foot height limit (IC 65) to Seattle Mixed with an 85 foot height limit (SM 85):

Future development of the Property is restricted to a project developed in substantial accordance with the revised Master Use Permit drawings for MUP Application 3011479 dated _____.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The Agreement shall be considered covenants that attach to and run with the Property and are binding on the Owner, its heirs, successors and assigns; and shall apply to any after-acquired title to the Property by the Owner.

Section 3. Termination. The covenants and the rezone shall expire three years from the date a Master Use Permit is issued for the project. If the Master Use Permit is issued and the Owner subsequently receives a certificate of occupancy for the permitted structure prior to the Master Use Permit expiring, including any renewals; the rezone remains in effect unless revoked according to Section 23.34.004.

Section 4. Amendment. This Agreement may be amended or modified by written agreement between the parties, provided any amendment shall be approved by ordinance.

THIS VERSION IS NOT ADOPTED



Section 5. Exercise of Police Power. Nothing in this Agreement prevents the City Council from making further amendments to the Seattle Municipal Code or Land Use Code that apply to the Property as it may deem necessary in the public interest.

Section 6. No Precedent. 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 7. Enforcing the Agreement. This Agreement benefits the City and owners of property within 300 feet of the Property, and either the City or any benefitted property owner may institute and prosecute a proceeding at law or in equity to enforce this Agreement.

Section 8. Repeal as Additional Remedy. The Owner acknowledges that compliance with the conditions of this Agreement is a condition of the rezone and that if Owner or its successor avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement; 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 IC 65 zone.

SIGNED this _____ day of _____, 2013.

BMR-500 Fairview Avenue LLC
a Delaware Limited Liability Company
By

[Name]

Its

[Title]

THIS VERSION IS NOT ADOPTED



EXHIBIT A
Legal Description

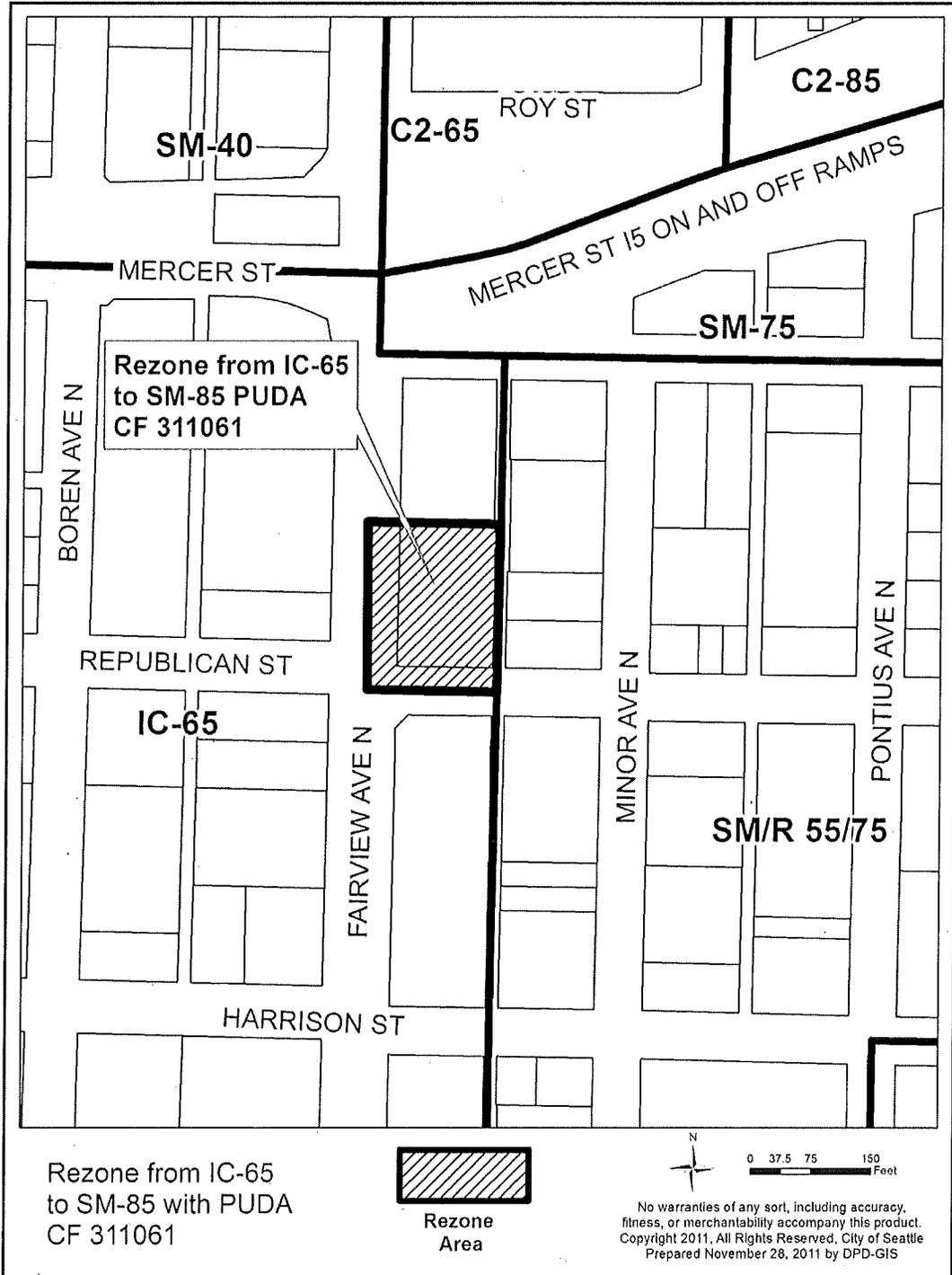
Real property in the City of Seattle, County of King, State of Washington, described as follows:

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THIS VERSION IS NOT ADOPTED



EXHIBIT B
Rezone Map



THIS VERSION IS NOT ADOPTED



STATE OF WASHINGTON -- KING COUNTY

--ss.

301947

No.

CITY OF SEATTLE, CLERKS OFFICE

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.

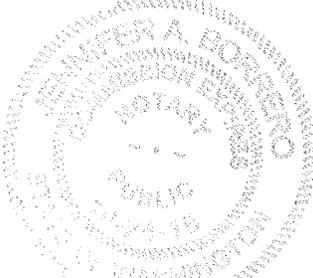
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:124242-248,124258

was published on

08/29/13

The amount of the fee charged for the foregoing publication is the sum of \$148.50 which amount has been paid in full.



Affidavit of Publication

James Colby
Subscribed and sworn to before me on
08/29/2013 *[Signature]*

Notary public for the State of Washington,
residing in Seattle

City of Seattle

State

King County

The full text of the following legislation, passed by the City Council on August 5, 2013, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>. Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 124242

AN ORDINANCE related to land use and zoning, approving and authorizing execution of a development agreement with the Central Puget Sound Regional Transit Authority ("Sound Transit") for real properties owned by Sound Transit within the Capitol Hill Station Area Overlay District; approving and adopting revised Capitol Hill Neighborhood Design Guidelines; and amending section 23.41.010 of the Seattle Municipal Code.

ORDINANCE NO. 124243

AN ORDINANCE relating to historic preservation, imposing controls upon the Rohrer House, a landmark designated by the Landmarks Preservation Board under Chapter 25.12 of the Seattle Municipal Code, and adding it to the Table of Historical Landmarks contained in Chapter 25.32 of the Seattle Municipal Code.

ORDINANCE NO. 124244

AN ORDINANCE relating to historic preservation, imposing controls upon the Barksdale House, a landmark designated by the Landmarks Preservation Board under Chapter 25.12 of the Seattle Municipal Code, and adding it to the Table of Historical Landmarks contained in Chapter 25.32 of the Seattle Municipal Code.

ORDINANCE NO. 124245

AN ORDINANCE relating to historic preservation, imposing controls upon the Horace Mann School, a landmark designated by the Landmarks Preservation Board under Chapter 25.12 of the Seattle Municipal Code, and adding it to the Table of Historical Landmarks contained in Chapter 25.32 of the Seattle Municipal Code.

ORDINANCE NO. 124246

AN ORDINANCE relating to historic preservation, imposing controls upon the Charles P. Dose House, a landmark designated by the Landmarks Preservation Board under Chapter 25.12 of the Seattle Municipal Code, and adding it to the Table of Historical Landmarks contained in Chapter 25.32 of the Seattle Municipal Code.

ORDINANCE NO. 124247

AN ORDINANCE relating to McCurdy Park; accepting an offer from the Washington State Department of Transportation to acquire certain real property in connection with the SR 520 Project; authorizing the Superintendent of Parks and Recreation to execute a purchase and sale agreement and deed for such real property and to take other related actions; increasing appropriations in connection therewith; authorizing the Superintendent to execute an amended and restated agreement with the Museum of History and Industry for the distribution of the proceeds from the conveyance such real property; superseding Ordinance 118477, which adopted Initiative 42, for purposes of this ordinance; and ratifying and confirming prior acts; all by a three-fourths vote of the City Council.

ORDINANCE NO. 124248

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 124258

An ORDINANCE approving an amendment of the Property Use and Development Agreement approved by Ordinance 123774 for property located at 600 Fairview Avenue North.

Date of publication in the Seattle Daily Journal of Commerce, August 29, 2013.

8/29(301947)