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CB 117130

Michael Jenkins
West Seattle Safeway PUDA amendment
March 8, 2011
Version #1

ORDINANCE _____

AN ORDINANCE approving an amendment of the Property Use and Development Agreement approved by Ordinance 123320 for property located at 2622 California Ave SW.

WHEREAS, in June, 2010 the City Council adopted Ordinance 123320, approving a contract rezone for Safeway, Incorporated ("Safeway") for property located at 2622 California Ave SW, including approval of a Property Use and Development Agreement ("PUDA"); and

WHEREAS, the PUDA imposed conditions that restricted the development at the site to construction of a new 59,000 square foot grocery store with rooftop and at grade parking, and an additional structure attached to the grocery store containing no more than 40 dwelling units and 20,000 square feet of flex work office space with underground parking; and

WHEREAS, Safeway seeks to change the uses permitted within the attached structure by increasing the number of dwelling units from 40 to 79 and eliminating the flex work office space; and

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

WHEREAS, Seattle Municipal Code Section 23.76.058B 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; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The amendment to the PUDA approved by Ordinance 123320, attached as Exhibit A to this ordinance, is approved.

Section 2. The City Clerk is hereby authorized and directed to file said Amended Property Use and Development Agreement, 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 Property Use and Development Agreement with this Ordinance at the City Clerk's Office; and to deliver copies of the same to

bns CITY CLERK

the Director of the Department of Planning and Development and to the King County Assessor's Office.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this _____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

City Clerk

(Seal)

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EXHIBIT A – AMENDED PUDA

BNS CITY CLERK

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) Safeway, Inc. 2)	
☐ Additional on page ____	
Grantee: 1) The City of Seattle 2)	
☐ Additional on page ____	
Legal Description (abbreviated):	PARCEL A: LOT 6, BLOCK 5, PLAT OF WEST SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 9 OF PLATS, PAGE 10, IN KING COUNTY WASHINGTON
X Additional on : Attachment 1	
Assessor's Tax Parcel ID #:	608710066002, 608710066507, 608710089509 and 608710090002
Reference Nos. of Documents Released or Assigned:	20100624000122

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 24th day of March, 2011, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by Gary Slabaugh, Assistant Vice President, Safeway, Inc. (the "Owner").

RECITALS

A. Safeway, Inc., is the owner of that certain real property (the "Property") in the City of Seattle zoned Neighborhood Commercial 2 with a 40 foot height limit (NC2-40) and Lowrise 3 (L3) described as:

See Attachment 1

B. On or around August 1, 2008, the Owner submitted to the City of Seattle an application for early design guidance, including a request to rezone the Property from Neighborhood Commercial 2 with a 40 foot height limit (NC2-40) and Lowrise 3, to Neighborhood Commercial 3 with a 40 foot height limit (NC3-40), as depicted in Attachment 2. The purpose of the application is to allow the Property to be used for mixed-use, commercial and multi-family residential development of greater density.

C. On June 21, 2010, the City Council approved Ordinance 123320, which included the approval of a Property Use and Development Agreement, which was subsequently recorded in the King County Recorder's Office on June 24, 2010.

D. On _____, 2011 the City Council approved an Ordinance, adopted as Council Bill 117130, which authorized the Owner to amend the Property Use and Development Agreement, as reflected in Section 1, below.

E. 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."

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to 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 Neighborhood Commercial 2 with 40 foot height limit (NC2-40) and Lowrise 3 to Neighborhood Commercial 3 with a 40 foot height limit (NC3-40):

1. Except as provided in subsection 2 of this section, future development of the Property is restricted to a structure that substantially conforms to the final approved Master Use Permit decision with related plans dated March 25, 2010 (MUP 3007044), as modified under MUP 3011952, and all conditions reflected in the Council's Findings, Conclusions and Decision under Clerk File 309869.

2. Use of the property is limited to 1) approximately 60,724 square feet for a grocery store, 2) a separate structure containing no more than 79 dwelling units, and 3) at least 199 parking spaces.

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.

Section 3. Termination. The covenants herein and the rezone shall expire two (2) years from the effective date of approval, unless, within the two (2) year period, an application is filed for a Master Use Permit, which permit is subsequently issued. The rezone remains in effect unless revoked pursuant to Section 23.34.004.

Section 4. **Amendment.** This Agreement may be amended or modified by agreement between Owner and the City; provided, such amendment shall be approved by the legislative authority of the City by ordinance.

Section 5. **Exercise of Police Power.** Nothing in this Agreement prevents the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code 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. **Benefited.** This Agreement is made for the benefit of the City and for the benefit of the owners of 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 8. **Repeal as Additional Remedy.** 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 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 NC2-40 and Lowrise 3 zones, the original zoning of the property prior to the rezone.

SIGNED this 24th day of March, 2011.

By: _____
Gary Slabaugh, Assistant Vice President, on behalf of Safeway, Inc., Owner

STATE OF WASHINGTON }
ss.
COUNTY OF KING

On this day personally appeared before me Gary Slabaugh, who executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that she/he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 24th day of March, 2011.

BROOKE H. SEVERNS
COMMISSION EXPIRES
NOTARY
PUBLIC
02-02-13
STATE OF WASHINGTON

Brooke H. Severns

Printed Name Brooke H. Severns

NOTARY PUBLIC in and for the State of WA,
residing at Bellevue

My Commission Expires 2/2/2013

ATTACHMENT 1 – Property Use and Development Agreement – Legal Description for 2622 California Ave SW

PARCEL A: LOT 6, BLOCK 5, PLAT OF WEST SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 9 OF PLATS, PAGE 10, IN KING COUNTY WASHINGTON

PARCEL B: LOTS 7-24, INCLUSIVE, BLOCK 5, AND LOT 6 AND LOTS 9 THROUGH 20, INCLUSIVE, BLOCK 6 ALL IN PLAT OF WEST SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 9 OF PLATS, PAGE 10, IN KING COUNTY WASHINGTON;

TOGETHER WITH THAT PORTION OF THE VACATED ALLEY LYING BETWEEN SAID BLOCKS 5 AND 6 AND SOUTH OF THE NORTH LINE OF LOT 9, SAID BLOCK 5, AS THE SAME IS PRODUCED EAST AND NORTH OF THE SOUTH LINE OF LOT 19, BLOCK 5, AS THE SAME IS PRODUCED EAST, AS VACATED BY ORDINANCE NO 89867;

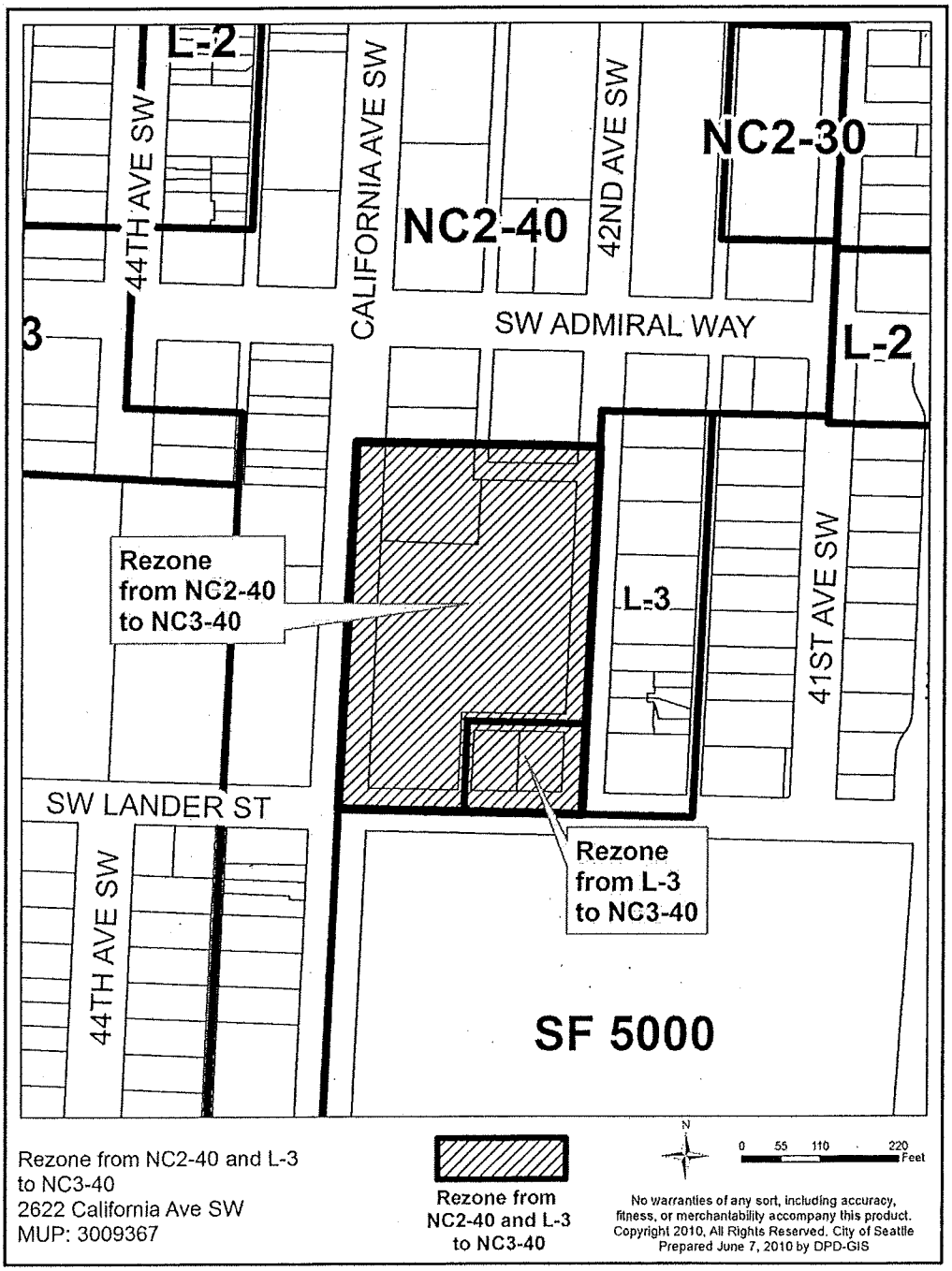
AND TOGETHER WITH THE EAST HALF OF VACATED ALLEY ADJOINING LOT 20, SAID BLOCK 6, AS VACATED BY ORDINANCE 107509;

ALSO THE VACATED ALLEY IN BLOCK 6, AND BETWEEN BLOCKS 5 AND 6, WEST SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 9 OF PLATS, PAGE 10, IN KING COUNTY WASHINGTON, LYING BETWEEN THE NORTH AND SOUTH LINES AND THEIR PRODUCTION WEST OF LOT 8, SAID BLOCK 6 AND EXTENDING FROM THE WEST LINE OF 42ND AVE SOUTHWEST TO THE EAST LINE OF SAID BLOCK 5, AS VACATED BY ORDINANCE NO 94514 TO THE CITY OF SEATTLE

PARCEL C: THE WEST 64 FEET OF LOTS 22, 23 AND 24, BLOCK 6, WEST SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO PLAT RECORDED IN VOLUME 9 OF PLATS, PAGE 10, IN KING COUNTY WASHINGTON

PARCEL D: THE EAST 61 FEET OF LOTS 22, 23 AND 24, BLOCK 6, WEST SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO THE PLAT RECORDED IN VOLUME 9 OR PLATS, PAGE 10, IN KING COUNTY

ATTACHMENT 2 – REZONE MAP – Property Use and Development Agreement – 2622 California Ave SW



Michael Jenkins
Fiscal Note – C.F. 311301
2622 California Ave SW. – PUDA amendment
March 8, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative	Michael Jenkins, 5-1674	NA

Legislation Title:

AN ORDINANCE approving an amendment of the Property Use and Development Agreement approved by Ordinance 123320 for property located at 2622 California Ave SW.

Summary of the Legislation:

This legislation accepts an amendment to an existing Property Use and Development Agreement (PUDA) for a site at 2622 California Ave SW, approved under Ordinance 123320. The PUDA amendment would allow the uses of a mixed use development, approved as part of a contract rezone, to be altered. The original PUDA authorized the construction of a new 59,000 square foot grocery store with rooftop and at grade parking, and an additional structure attached to the grocery store containing no more than 40 dwelling units and 20,000 square feet of flex work office space with underground parking. The amendment would allow the dwelling units in the separate structure to be increased from 40 to 79 dwelling units while eliminating the 20,000 square feet of flex work office space.

Background:

This bill approves an amendment to a PUDA originally presented to the Council as a petitioner-generated rezone, 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 309869 and under Ordinance 123320.

This legislation would approve an amendment to the PUDA approved for this rezone. If approved, the PUDA would be amended and a new version recorded on the property for the life of the uses.

- *Please check one of the following:*

X This legislation does not have any financial implications.

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