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CB117335

Wentlandt / Walker / Freeman
DPD Incentive Zoning Framework ORD v.12.docx
November 2, 2011
Version 12

ORDINANCE _____

AN ORDINANCE relating to land use and zoning, establishing procedures for application of incentive provisions for affordable housing; amending sections 23.30.010, 23.34.008, 23.40.020, 23.45.502, 23.45.510, 23.47A.002, 23.47A.013, 23.58A.002, 23.58A.014, 23.84A.018 of the Seattle Municipal Code; and adding new Sections 23.58A.025, 23.58A.026, and 23.58A.028.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.30.010 of the Seattle Municipal Code, which section was last amended by Ordinance 122311, is amended as follows:

23.30.010 Classifications for the purpose of this subtitle((.))

((~~All land within the City shall be classified as being within one (1) land use zone.~~))

A. General Zoning Designations. The zoning classification of land shall include one of the designations in this subsection 23.30.010.A. Only in the case of land designated "RC" the classification shall include both "RC" and one additional designation in this subsection 23.30.010. A, which shall be a designation for a multifamily zone.

Zoning Designation	Abbreviated
Residential, Single-family 9,600	SF 9600
Residential, Single-family 7,200	SF 7200
Residential, Single-family 5,000	SF 5000
Residential Small Lot	RSL
Residential, Multifamily, Lowrise 1	LR1
Residential, Multifamily, Lowrise 2	LR2
Residential, Multifamily, Lowrise 3	LR3
Residential, Multifamily, Midrise	MR
Residential, Multifamily, Highrise	HR
Residential-Commercial	RC
Neighborhood Commercial 1	NC1
Neighborhood Commercial 2	NC2
Neighborhood Commercial 3	NC3
Seattle Mixed	SM

Zoning Designation	Abbreviated
Commercial 1	C1
Commercial 2	C2
Downtown Office Core 1	DOC1
Downtown Office Core 2	DOC2
Downtown Retail Core	DRC
Downtown Mixed Commercial	DMC
Downtown Mixed Residential	DMR
Pioneer Square Mixed	PSM
International District Mixed	IDM
International District Residential	IDR
Downtown Harborfront 1	DH1
Downtown Harborfront 2	DH2
Pike Market Mixed	PMM
General Industrial 1	IG1
General Industrial 2	IG2
Industrial Buffer	IB
Industrial Commercial	IC

B. Suffixes--Height Limits ((~~and~~)) , Letters and Incentive Provisions.

The zoning classification for land subject to some of the designations in subsection 23.30.010.A ((~~of this section may~~)) include one (((~~1~~))) or more numerical suffixes indicating height limit(s) or a range of height limits, or one or more letter suffixes indicating certain overlay districts or designations, or numerical suffixes enclosed in parentheses indicating the application of incentive zoning provisions, ((~~or both~~)) or any combination of these. A letter suffix may be included only in accordance with provisions of this title expressly providing for the addition of the suffix. A zoning classification that includes a numerical or letter suffix or ((~~both~~)) other combinations denotes a different zone than a zoning classification without any suffix or with additional, fewer or different suffixes. Except where otherwise specifically stated in this title or where the context otherwise clearly requires, each reference in this title to any zoning designation in subsection 23.30.010.A ((~~of this section~~)) without a suffix, or with fewer than the

maximum possible number of suffixes, includes any zoning classifications created by the addition to that designation of one or more suffixes.

* * *

Section 2. Section 23.34.008 of the Seattle Municipal Code, which section was last amended by Ordinance 121700, is amended as follows:

23.34.008 General Rezone Criteria

* * *

J. Incentive Provisions. If the area is located in a zone with an incentive zoning suffix a rezone shall be approved only if one of the following conditions are met:

1. The rezone includes incentive zoning provisions that would authorize the provision of affordable housing equal to or greater than the amount of affordable housing authorized by the existing zone; or

2. If the rezone does not include incentive zoning provisions that would authorize the provision of affordable housing equal to or greater than the amount of affordable housing authorized by the existing zone, an adopted City housing policy or comprehensive plan provision identifies the area as not a priority area for affordable housing, or as having an adequate existing supply of affordable housing in the immediate vicinity of the area being rezoned.

* * *

Section 3. Section 23.40.020 of the Seattle Municipal Code, which section was last amended by Ordinance 123046, is further amended as follows:

23.40.020 Variances

A. Variances may be sought from the provisions of Subtitle III, Divisions 2 and 3 of this Land Use Code, except for the establishment of a use that is otherwise not permitted in the zone in which it is proposed, for a structure height in excess of that shown on the Official Land Use Map, from the provisions of Section 23.55.014.A, or from the provisions of Chapters 23.52 and 23.58A. Applications for prohibited variances shall not be accepted for filing.

* * *

Section 4. Section 23.45.502 of the Seattle Municipal Code, which section was last amended by Ordinance 123495, is amended as follows:

23.45.502 Scope of provisions

A. This Chapter 23.45 establishes regulations for the following multifamily zones:

Lowrise 1 (LR1);

Lowrise 2 (LR2);

Lowrise 3 (LR3);

Midrise (MR) (references to Midrise zones include the Midrise/85 (MR/85) zone unless otherwise noted); and

Highrise (HR).

B. Multifamily zones listed in subsection 23.45.502.A and having an incentive zoning suffix are subject to this Chapter 23.45 and Chapter 23.58A, Incentive Provisions.

* * *

Section 5. Section 23.45.510 of the Seattle Municipal Code, which section was last amended by Ordinance 123564, is amended as follows:

23.45.510 Floor Area Ratio (FAR) Limits

* * *

B. FAR limits in LR zones.

Floor area ratio limits apply in LR zones as shown in Table A for 23.45.510~~.~~, provided that if the LR zone designation includes an incentive zoning suffix, then the applicant shall comply with Chapter 23.58A, Incentive Provisions, to obtain gross floor area exceeding that allowed by the FAR shown in the suffix designation.

* * *

Section 6. Section 23.47A.002 of the Seattle Municipal Code, which section was last amended by Ordinance 123046, is amended as follows and the code reviser is directed to reletter subsequent subsections:

23.47A.002 Scope of provisions

A. This chapter describes the authorized uses and development standards for the following commercial zones:

Neighborhood Commercial 1 (NC1),

Neighborhood Commercial 2 (NC2),

Neighborhood Commercial 3 (NC3),

Commercial 1 (C1),

Commercial 2 (C2).

B. Commercial zones listed in subsection 23.47A.002.A and having an incentive zoning suffix are subject to this Chapter 23.47A and Chapter 23.58A, Incentive Provisions.

* * *

Section 7. Section 23.47A.013 of the Seattle Municipal Code, which section was last

amended by Ordinance 123564, is further amended as follows:

23.47A.013 Floor area ratio

* * *

B. Except as provided in subsections ((~~C, D and E of this section~~)) 23.47A.013.C, 23.47A.013.D, and 23.47A.013.E, maximum FAR allowed in C zones and NC zones is shown in Table A for 23.47A.013((.)), provided that if the commercial zone designation includes an incentive zoning suffix, then the applicant shall comply with Chapter 23.58A, Incentive Provisions, to obtain gross floor area exceeding that allowed by the FAR shown in the suffix designation.

C. Maximum FAR allowed in NC zones or C zones within the Station Area Overlay District is shown in Table B for 23.47A.013 ((.)) provided that if the commercial zone designation includes an incentive zoning suffix, then the applicant shall comply with Chapter 23.58A, Incentive Provisions, to obtain gross floor exceeding that allowed by the FAR shown in the suffix designation.

* * *

Section 8. Section 23.58A.002 of the Seattle Municipal Code, which section was last amended by Ordinance 123589, is amended as follows:

23.58A.002 Scope of chapter; general rules

A. This chapter contains rules for workforce housing and other incentive programs in areas for which the provisions of the zone specifically refer to this chapter or in zones having an incentive zoning suffix. This chapter does not apply to Downtown zones, except in South Downtown. The provisions in this chapter specify conditions under which extra floor area may

be allowed, as exceptions to the otherwise applicable floor area or base height limit, or both, subject to the maximum limits stated in the provisions of the zone and to all other applicable requirements and approvals. Nothing in this chapter authorizes allowance of extra floor area, or the construction or use of any structure, contrary to any other provisions of this Title 23 or Title 25. Projects for which extra floor area is sought may be subject to conditions under other chapters and titles of this Code, including without limitation conditions imposed pursuant to Chapter 25.05, Environmental Policies and Procedures.

B. The provisions of this subchapter I apply generally to projects using any of the incentive provisions in this Chapter 23.58A, unless otherwise expressly provided in the applicable subchapter of this Chapter 23.58A or in the provisions of the zone.

C. Nothing in this Chapter 23.58A shall be construed to confer on any owner or developer any development rights or property interests. The availability and terms of any allowance of extra floor area depend on the regulations in effect on the relevant date for consideration of a permit application for the project proposing to use such extra floor area, pursuant to Section 23.76.026, notwithstanding any prior approvals, interpretations or agreements by the Director, Housing Director or other official regarding the eligibility of any actual or proposed facility or feature to satisfy conditions for extra floor area.

* * *

Section 9. Section 23.58A.014 of the Seattle Municipal Code, which section was last amended by Ordinance 123209, is amended as follows::

* * *

C. Payment option. The payment option is available only where the maximum height for residential use under the provisions of the zone is more than 85 feet and only if the Director determines that the payment achieves a result equal to or better than providing the affordable housing on-site and the payment does not exceed the approximate cost of developing the same number and quality of housing units that would otherwise be developed; or for development of a single purpose commercial structure in zones with an incentive zoning suffix.

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D. ((~~If a rental housing building on a lot contained four or more dwelling units that were occupied and demolished on the site of the new project within 18 months prior to a Master Use Permit application to establish bonus residential floor area on the lot, the~~)) If a Master Use Permit application includes establishment of bonus residential floor area and the proposed development entails demolition of a building containing four or more dwelling units occupied as rental housing within 18 months prior to that Master Use Permit application, then the amount of low-income housing to be provided under 23.58A.014.B.1 is increased by the ((~~gross square footage of any~~)) number of units within the building or buildings to be demolished that were rented to tenants who received or are eligible to receive a tenant relocation assistance payment under Chapter 22.210. ((~~, and~~)) ((~~t~~))The additional low-income housing is subject to the following requirements:

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Section 10. A new Subchapter IV is added to Chapter 23.58A of the Seattle Municipal Code, which includes new Sections 23.58A.025, 23.58A.026, and 23.58A.028 as follows:

Subchapter IV Extra Floor Area In Zones With An Incentive Zoning Suffix

23.58A.025 Scope of subchapter

This subchapter IV includes provisions under which applicants may gain extra floor area for development in zones with an incentive zoning suffix.

23.58A.026 Application of floor area limits in zones with an incentive zoning suffix

In zones with an incentive zoning suffix, extra floor area may be allowed in addition to the maximum gross floor area allowed by the FAR limit indicated by the incentive zoning suffix. All extra floor area shall be considered extra residential floor area regardless of the use. Extra floor area may be gained up to the maximum non-exempt gross floor area allowed by the FAR limit of the applicable Commercial or Multifamily zone. For single purpose commercial structures in zones with an incentive zoning suffix, extra floor area may be allowed when the applicant qualifies by using the performance option or the payment option in accordance with Sections 23.58A.014, or a combination of these options. Subchapter II provisions under which applicants may gain extra residential floor area shall apply.

23.58A.028 Application of incentive zoning in legislative rezones

A. When the City Council approves a Type V legislative rezone pursuant to Section 23.76.062, the Council may elect to apply the incentive zoning provisions of this chapter to all or part of the area being rezoned. If the Council decides to apply this chapter, then the maximum

floor area ratio permitted within the area subject to this chapter is the floor area ratio of the previous zone, as described in subsection 23.58A.028.B below, unless the applicant for project approval gains additional floor area ratio pursuant to this chapter.

B. For the sole purpose of establishing base FAR and/or base residential floor area under this chapter, the following shall be applied as the base FAR and/or base residential floor area when rezoning from one of the following zones:

1. Single-Family zones: .75

2. Lowrise 1 Zones: 1.2

3. Lowrise 2 Zones: 1.3

4. Lowrise 3 Zones:

a. Outside urban centers, urban villages, and the Station Area Overlay District: 1.6

b. Inside urban centers, urban villages, and the Station Area Overlay District: 2.0

5. Commercial zones as shown in Table A for 23.58A.028.

Table A for 23.58A.028			
Base FAR outside of the Station Area Overlay District			
	Height Limit		
	30'	**40'**	**65'**
	Base FAR		
1.	2.25	3	4.25
Base FAR in the Station Area Overlay District			
	Height Limit		
	30'	**40'**	**65'**
	Base FAR		
2.	3	4	5.75

6. Within an overlay district, other than the Station Area Overlay District, where overlay district provisions for FAR prevail over the FAR provisions of the underlying zone, the FAR prescribed in the overlay provisions shall be used to establish the Base FAR and/or Base Residential Floor Area.

* * *

Section 11. Section 23.84A.018 of the Seattle Municipal Code, which section was last amended by Ordinance 122311, is amended as follows:

23.84A.018 "I((.))"

* * *

"Incentive zoning suffix" means a modification to a zoning designation listed in Section 23.30.010. The designation is indicated by a listed zoning designation followed by a number in parentheses that establishes base FAR and/or base residential FAR for purposes of application of Chapter 23.58A, Incentive Provisions.

* * *

Section 12. 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.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Form revised: July 12, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Planning & Development	Wentlandt 4-3586 / Freeman 48178	Joe Regis 615-0087

Legislation Title: AN ORDINANCE relating to land use and zoning, establishing procedures for application of incentive provisions for affordable housing; amending sections 23.30.010, 23.34.008, 23.40.020, 23.45.502, 23.45.510, 23.47A.002, 23.47A.013, 23.58A.002, 23.58A.014, 23.84A.018 of the Seattle Municipal Code; and adding new Sections 23.58A.025, 23.58A.026, and 23.58A.028.

Summary of the Legislation: The bill enables application of the City's existing incentive zoning for affordable housing under Chapter 23.58A in urban villages and similar areas of the city. The legislation creates a framework within the land use code to allow incentive zoning provisions to be consistently applied at the time of rezones to Lowrise and Commercial zones that create additional development capacity.

Note: Council amended Council Bill (CB) 117302 to include clarifying changes to provisions in 23.58A.014. Because those amendments changed the title to CB 117302, Council introduced a new bill.

Background:

In December 2008 the City Council adopted Ordinance 122882, which created a new Chapter 23.58A, "Incentive Provisions," in the Land Use Code. The intent of Chapter 23.58A was three-fold: to encourage growth where it is most appropriate and reduce development pressure on fragile natural environments and lower density areas; promote housing affordability; and encourage other benefits to serve growth such as new open space and landmark preservation. Currently, incentive zoning only applies outside of downtown (including South Downtown) and South Lake Union, in Multifamily Midrise and Highrise zones and the Dravus Neighborhood. Chapter 23.58A contains the provisions of the incentive zoning program, including the provision of bonus residential and commercial floor area for affordable housing: e.g. length of the affordability term for housing, how much housing must be provided, housing affordability levels, etc. The proposed legislation amends the land use code to create a framework for how incentive zoning is to be captured in a notation and indicated on the official land use map in certain cases.

- **Land Use Map Designation.** At the time of a rezone action where incentive zoning is applied, the Land Use Map would depict the new zone, plus an FAR maximum noted in

parenthesis, equal to the maximum development possible in the prior zone, to establish the base development amount.

- **Broad Applicability.** The procedure can be applied broadly to accommodate a spectrum of rezones that could occur over time.

- **FAR-based system.** The procedure would be a singular measure of base and maximum development for the purposes of incentive zoning in urban villages and similar areas. This is consistent with existing Chapter 23.58A provisions, which stipulate that if the maximum height limit is 85' or less, all extra floor area shall be earned through affordable housing-related incentives.

- **Limited to Zones with Height Limits 85' and Below**
  At this time, DPD recommends that the procedural approach apply only to rezones with height limits of 85' and below.

__X__ This legislation has financial implications.

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

This legislation would likely generate minor financial implications for the City discussed below. This legislation does not implement incentive zoning for affordable housing within any specific area of the city. Area specific fiscal impacts are evaluated in the context of specific rezone proposals. This legislation does not represent an expansion of incentive zoning to areas that would not already be slated for incentive zoning by existing city policy. The legislation is solely the creation of a method for activating the program.

Impact to DPD
There is some minimal cost to DPD associated with creation of the incentive zoning framework. The Office of Housing (OH) is also affected by the proposal, though there is no additional cost impact to OH as discussed below. DPD must allocate staff time for the training of planning and permit review staff. Training needs would likely require 4 – 8 hours of time of roughly 15 – 20 project review staff in the department. This reflects a labor cost in the range of $15,000 - $40,000 estimated at land use review fee rates.

DPD would also incur the cost of some additional permit review time on a project-by-project basis for those projects in incentive zoning suffix areas. The following table estimates the permit

review time impacts on a project with and without a review for the incentive zoning program under the proposed method.

Table 1: Estimated Average Additional Permit Review Time Per Typical Lowrise and Neighborhood Commercial Project Due to Incentive Zoning

1.Zone Classification of Project	2. Est. Avg. review time (hours) no IZ program.	3.*Est. Avg. added Land Use review time with IZ.	4. **Est. Avg. added Constr. Permit coordination time with IZ.	5. Added review cost at $250 / hr.
Typical lowrise zone project (LR1,LR2,LR3).	25-35	+ 1.5 Hour	.5 Hour	+ $500
Typical Neighorhood Commercial (NC1, NC2, NC3).	65-70	+ 3 Hour	.5 Hour	+ $875

*Added hours per review shown in column 3 is a calculation that totals additional time required for review attributed to the incentive zoning calculation and analysis only in the land use permit review. Review time can vary substantially depending on individual project circumstances.
** Added hours per review shown in column 4 is attributable to increased coordination time required between the construction permit reviewer and the land use planner during the construction permit phase. This amount is calculated at land use review times, as the increase would be billed under the land use review.

Since the proposed Incentive Zoning method will be limited to small areas of the City (initially only the Roosevelt Urban Village), the additional review time impact will be very small relative to the overall citywide volume of permit reviews. The Roosevelt area rezone may be taken as an example of the small overall magnitude of the staffing impact. As indicated in the table above the review time impact can be measured on a project-by-project basis at 2 hours of total added review time for a lowrise project, and 3.5 hours of total added review time per neighborhood commercial project. The program's initial implementation will apply to an estimated 100 redevelopable parcels pursuant to DPD's development capacity modeling. The 100 parcels are projected to develop on a timeline that extends over 20 years. Parcels would typically be expected to develop in clusters of at least two parcels per project. Therefore, one could conservatively estimate that up to 50 projects in the Roosevelt area could be subject to the incentive zoning method over a 20 year time horizon if every likely development project elected to participate in the program. Assuming half lowrise projects and half commercial projects this would result in:

- **137.5 additional hours of DPD project review time over a 20 year time horizon**

The small magnitude of the method's application enables DPD to deem the overall impact on staffing levels and workflow to be negligible in the near term. No additional staffing would be required. The cost of additional hours of review time would be passed on directly to project applicants in the form of permit fees. As noted in the table above permit costs would be expected to increase by:

- **$500 estimated additional permit fees for a lowrise project**
- **$875 estimated additional permit fees for a neighborhood commercial project**

Potential Future Staffing Impacts

If the incentive zoning framework is applied broadly at the time of numerous legislative rezones in the coming years, DPD would expect to revisit the staffing impacts. Several legislative rezones are anticipated in the coming years, however the full extent and scope of other rezones is not currently known. DPD will evaluate the additional review time anticipated to be required with future rezones that include incentive zoning, and monitor whether additional staffing is necessary.

Impact to Office of Housing

Currently, one staff person at OH administers the affordable housing incentive zoning program. OH works with DPD on all incentive zoning-related legislation and all developers who take advantage of affordable housing zoning incentives work with the OH staff person on bonus floor area and affordable housing set-aside calculations and low-income housing covenants and any other legal or administrative documents. Monitoring of all incentive zoning housing created or preserved with the required 50 year affordability terms is undertaken by staff in OH's Asset Management Unit.

Ordinance 123589 (South Downtown rezone), which Council passed on April 25, 2011, amended the permit fees section of the Municipal Code to enable DPD to collect $550 on behalf of OH from each applicant for a land use permit who seeks to obtain extra floor area pursuant to Sections 23.48.011, 23.49.012, 23.49.014, 23.49.015, 23.49.181, 23.50.052, 23.50.053, 23.58A.014 or 23.58A.024. The new permit fees section related to OH fees (22.900G.015) also provides for an annual fee of $65 per unit of low-income housing to determine compliance with bonus requirements. Prior to closing any sale or other transfer of owner-occupied low-income housing produced via incentive zoning, after the initial sale or transfer of such housing, an owner pays a fee in the amount of $300 to OH to determine compliance with bonus requirements. The $550 permit fee, $65 per unit fee for monitoring of affordable rental housing, and $300 fee for transfer or sale of affordable owner-occupied housing will apply to any housing produced under incentive zoning if expanded to Roosevelt and other neighborhoods to be upzoned in the future. Therefore, this specific legislation has no specific fiscal impacts for OH.

b) What is the financial cost of not implementing the legislation?

Over time greater financial impacts are expected if the legislation is not passed. If the legislation is not passed specific procedures to activate the incentive zoning program within each area of the city proposed for legislative rezone would continue to be developed. The legislation establishes a broadly applicable framework method that standardizes the City's approach. Individual and area-specific approaches to activating the program are costly because they require substantial DPD and OH review and development time for each rezone area. Moreover individual and area-specific approaches are complicated and confusing to administer on an ongoing basis, adding to project review time. Individual and area-specific approaches are also more difficult for private property owners and developers to evaluate and become familiar with adding to project soft costs on an ongoing basis.

c) Does this legislation affect any departments besides the originating department?

Yes. The Office of Housing is affected as discussed above.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

An alternative to the proposal is to continue creating area-specific incentive zoning procedures and zoning standards within the land use code to activate the program within each area of the city proposed for legislative rezone.

Another alternative is not to enact the incentive zoning program, which would result in fewer units of affordable housing over time within the City of Seattle.

e) Is a public hearing required for this legislation?

The City Council is required to hold a public hearing on the proposal and will conduct a public hearing during their review of the proposed legislation anticipated to be held in 2011.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

No specific property is affected by this legislation. The framework for incentive zoning is expected to be first applied in the Roosevelt Urban Village at the time of the Roosevelt legislative rezone.

h) Other Issues:

List attachments to the fiscal note below:

Please also refer to Director's Report and related materials associated with the Roosevelt legislative rezone.