CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE related to land use and zoning amending Seattle Municipal Code Sections 23.49.011, 23.49.013, and 23.49.014 to remove provisions related to the bonus for a Landmark performing arts theater (LPAT); increase the base floor area ratio (FAR) of a lot with a Landmark performing arts theater (LPAT) to provide a new incentive for rehabilitating and maintaining these structures and amend the Downtown Amenity Standards to remove provisions related to the bonus for the restoration and preservation of a Landmark performing arts theatre, which is proposed to be repealed, and make minor corrections.

WHEREAS, Downtown Seattle is home to some of the City's most historic live-performance venues; and

WHEREAS, in 2011 the City Council adopted Resolution 31341 establishing the Downtown Historic Theatre District and recognizing the economic and cultural contributions of live-performance venues; and

WHEREAS, the Large landmark theaters are the anchors of the Downtown Historic Theatre District and are critical to the vitality of the district and success of a wide variety of businesses; and

WHEREAS, the City recognizes that, due to the size and unique characteristics of design and function, these large Landmark theaters present extraordinary challenges for ongoing maintenance and operation, and the City desires to support and promote the continued preservation and operation of these historic theaters and the downtown neighborhood where they are located; and

WHEREAS, changes to the City's Land Use Code to increase the base FAR of lots with Landmark performing arts theaters will provide additional incentives to support the preservation, promotion and use of these historic theaters, and the continued success of the Downtown Historic Theatre District; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.49.011 of the Seattle Municipal Code, last amended by Ordinance 124172, is amended as follows:

23.49.011 Floor area ratio

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A. General standards

* * *

2. Chargeable floor area shall not exceed the applicable base FAR except as expressly authorized pursuant to this Chapter 23.49.

* * *

3. In a DOC1, DOC2, DRC, or DMC zone, the base FAR specified on Table A for 23.49.011 is increased by 4 FAR for a lot that includes a qualifying Landmark structure with a performing arts theater, provided that in no case shall the increased base FAR exceed the maximum FAR for the lot also specified on Table A for 23.49.011, and provided that the conditions of this subsection 23.49.011.A.3 are met.

a. For purposes of this subsection 23.49.011.A.3, a "qualifying Landmark structure with a performing arts theater" is a structure that is a designated Landmark pursuant to Chapter 25.12 and that meets the following:

1) the structure contains performing arts theater space that has combined seating capacity for at least 800;

2) the structure is subject to an ordinance granting incentives for and imposing controls on the Landmark structure, or the owner of the theater executes, prior to the transfer of development rights under any agreement with respect to such theater, or the use of additional chargeable floor area gained as a result of the increase in the base FAR under the provisions of this subsection 23.49.011.A.3, an incentives and controls agreement approved by the City Council; and

3) the lot on which the structure is located and that is used for the purposes of calculating FAR is the lot that is included in the incentives and controls agreement approved by the City Council;

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b. At the time a qualifying Landmark structure with a performing arts theater uses the additional base FAR, either on site or through transfer of TDR to another site, the following conditions shall be met:

1) the area configured for use as performing arts theater space shall be ensured by binding covenants between the property owner and the City for at least 40 years; and

2) the Director, after consulting with the theater owner, determines, as a Type I Decision, that the annual use of the theater for live theater performances, combined with any other use of the theater space, is adequate to contribute sufficiently to the presence of live theater in the Historic Theater District recognized by Council Resolution 31341 and to support the desired level of activity in the area near the theater.

c. A lot that uses the additional base FAR allowed by this subsection 23.49.011.A.3 is not allowed to gain the additional increment of FAR provided for under subsection 23.49.011.A.2.j.

((~~3~~))4. The Master Use Permit application to establish any bonus development under this subsection 23.49.011.A.((~~3~~))4 shall include a calculation of the amount of bonus development sought and shall identify the manner in which the conditions to such bonus development shall be satisfied. The Director shall, at the time of issuance of any Master Use Permit decision approving any such bonus development, issue a Type I decision as to the amount of bonus development to be allowed and the conditions to such bonus development, which decision may include alternative means to achieve bonus development, at the applicant's option, if each alternative would be consistent with this Section 23.49.011 and any other conditions of the permit, including Design Review if applicable.

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Section 2. Section 23.49.013 of the Seattle Municipal Code, last amended by Ordinance 124072, is amended as follows:

23.49.013 Bonus floor area for amenities

A. An applicant may achieve a portion of the chargeable floor area to be established in addition to base FAR through bonuses for amenities, subject to the limits in this ((~~c~~))Chapter 23.49. Amenities for which bonuses may be allowed are limited to:

1. Public open space amenities, including hillside terraces on sites shown as eligible for bonuses on Map 1J, urban plazas in DOC1, DOC2 and DMC 340/290-400 zones, parcel parks in DOC1, DOC2, DMC, DMR, DH2, and IDM zones, public atria in DOC1, DOC2, DMC 340/290-400, and DMC 85/65-150 zones, green street improvements and green street setbacks on designated green streets;

2. Hillclimb assists or shopping corridors on sites shown as eligible for these respective bonuses on Map 1J;

3. Human services uses as follows:

a. Information and referral for support services;

b. Health clinics;

c. Mental health counseling services;

d. Substance abuse prevention and treatment services;

e. Consumer credit counseling;

f. Day care services for adults; and

g. Jobs skills training services;

4. Public restrooms; and

((~~5. For projects in a DOC1, DOC2, or DMC 340/290-400 zone, rehabilitation and preservation of Landmark performing arts theaters, provided that the following conditions are met:~~

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~~a. the theater contains space that was designed for use primarily as, or is suitable for use as, a performing arts theater;~~

~~b. the theater is located in a DOC1, DOC2, DRC, or DMC zone;~~

~~c. the theater is a designated Landmark pursuant to Chapter 25.12;~~

~~d. the theater is subject to an ordinance establishing an incentive and controls, or the owner of the theater executes, prior to the approval of a floor area bonus under any agreement with respect to such theater, an incentives and controls agreement approved by the City Landmarks Preservation Board;~~

~~e. the theater has, or will have upon completion of a proposed plan of rehabilitation, a minimum floor area devoted to performing arts theater space and accessory uses of at least 20,000 square feet; and~~

~~f. The theater will be available, for the duration of any commitment made to qualify for a floor area bonus, for live theater performances no fewer than 180 days per year; and~~

~~6~~))5. Transit station access for fixed rail transit facilities.

B. Standards for amenities

1. Location of amenities. Amenities provided by the applicant by performance shall be located on the lot using the bonus, except as follows:

a. Green street improvements may be located within an abutting right-of-way subject to applicable Director's rules.

b. An open space amenity, other than green street improvements, may be on a lot other than the lot using the bonus, provided that it is within a Downtown zone and all of the following conditions are satisfied:

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1) The open space must be open to the general public without charge, must meet the eligibility conditions of the Downtown Amenity Standards, and must be one of the open space features cited in subsection 23.49.013.A.1.

2) The open space must be within 1/4 mile of the lot using the bonus, except as may be permitted pursuant to subsection 23.49.013.B.1.b.4.

3) The open space must have a minimum contiguous area of 5,000 square feet, except as may be permitted pursuant to subsection 23.49.013.B.1.b.4.

4) Departures from standards for the minimum size of off-site open space and maximum distance from the project may be allowed by the Director as a Type I decision if the Director determines that if such departures are approved, the proposed open space will meet the additional need for open space caused by the project, and improve public access to the open space compared to provision of the open space on-site.

5) The owner of any lot on which off-site open space is provided to meet the requirements of this Section 23.49.013 shall execute and record an easement or other instrument in a form acceptable to the Director assuring compliance with the requirements of this Section 23.49.013, including applicable conditions of the Downtown Amenity Standards.

c. Public restrooms shall be on a ground floor; shall satisfy all codes and accessibility standards; shall be open to the general public during hours that the structure is open to the public, although access may be monitored by a person located at the restroom facility; shall be maintained by the owner of the structure for the life of the structure that includes the bonused space; and shall be designated by signs sufficient so that they are readily located by pedestrians on an abutting street or public open space. The Director is authorized to establish standards for the design, construction, operation and maintenance of public restrooms qualifying for a bonus, consistent with the intent of this subsection 23.49.013.B.1.c to encourage the provision of accessible, clean, safe and environmentally sound facilities.

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2. Options for provision of amenities. ((

~~a.~~))Amenities must be provided by performance except as expressly permitted in this Section 23.49.013. The Director may accept a cash payment for green street improvements and a related voluntary agreement from the applicant, subject to this Section 23.49.013, the Downtown Amenity Standards and the Green Street Director's Rule, DR 11-2007, if the Director determines that improvement of a green street abutting or in the vicinity of the lot within a reasonable time is feasible. The cash payment must be in an amount sufficient to improve fully 1 square foot of green street space for each 5 square feet of bonus floor area allowed for such payment. The cash payment shall be maintained in a restricted account and shall be used to improve a green street abutting or in the vicinity of the lot.

((~~b. Rehabilitation and preservation of a Landmark performing arts theater may consist of financial assistance provided by the applicant for rehabilitation work on a Landmark performing arts theater, or for retirement of the cost of improvements made after February 5, 1993, if:~~

~~1) The assistance is provided pursuant to a linkage agreement between the applicant and the owner of the Landmark performing arts theater satisfactory to the Director, in which such owner agrees to use such financial assistance to complete such rehabilitation and agrees that the applicant is entitled to all or a portion of the bonus floor area that may be allowed therefore;~~

~~2) The owner of the Landmark performing arts theater executes and records covenants enforceable by the City, agreeing to maintain the structure and the performing arts theater use, consistent with the Downtown Amenity Standards; and~~

~~3) Prior to the issuance of any building permit after the first building permit for the project using the bonus, and in any event before any permit for any construction activity other than excavation and shoring issued for that project, unless the~~

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~~rehabilitation work has then been completed, the applicant posts security for completion of that work, consistent with the Downtown Amenity Standards.~~))

3. Ratios and limits

a. Amenities may be used to gain floor area according to the applicable ratios, and subject to the limits in Section 23.49.011 and in Table A for 23.49.013.

Table A for 23.49.013
Downtown ((~~A~~))amenities

Amenity	Zone ((~~L~~))location of ((~~L~~))lots ((~~E~~))eligible to ((~~U~~))use ((~~B~~))bonus							Bonus ((~~R~~))ratio	Maximum square feet (SF) of floor area eligible for a bonus or maximum floor area gain
	DOC1	DOC2	DMC 340/290-400	DH2,DMC 125, DMC 160, DMC 85/65-150, and DMC 240/290-400	DRC	DMR	IDM		
Hillside Terrace	Only eligible for bonus at locations specified on Map 1J of Chapter 23.49							5:1	6,000 SF
Urban Plaza	X	X	X					5:1	15,000 SF
Commercial Parcel Park	X	X	X	X			X	5:1	7,000 SF
Residential Parcel Park			X	X		X	X	5:1	12,000 SF
Green Street Parcel Park	Eligible for bonus only on lots abutting a designated green street							5:1	7,000 SF
Public Atrium	X	X	X					5:1	5,500 SF
Green Street Improvement	Eligible for bonus only on lots abutting a designated green street							5:1	No limit
Green Street Setback	Eligible for bonus only on lots abutting a designated green street that are not subject to property line street wall requirement							1:1	10 times the length of lot's green street frontage
Hillclimb Assist	Only eligible for bonus at locations specified on Map 1J of Chapter 23.49							Not applicable	Maximum gain of 0.5 FAR
Shopping Corridor	Only eligible for bonus at locations specified on Map 1J of Chapter 23.49							5:1	7,200 SF

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Table A for 23.49.013 Downtown ((~~A~~))amenities									
	Zone ((~~L~~))location of ((~~L~~))lots ((~~E~~))eligible to ((~~U~~))use ((~~B~~))bonus								
Amenity	**DOC1**	**DOC2**	**DMC 340/290-400**	**DH2,DMC 125, DMC 160, DMC 85/65-150, and DMC 240/290-400**	**DRC**	**DMR**	**IDM**	**Bonus ((~~R~~))ratio**	**Maximum square feet (SF) of floor area eligible for a bonus or maximum floor area gain**
Transit Station Access	X	X	X	X	X	X		Not ((~~A~~))applicable	Maximum gain of 1.0 FAR
Public Restroom	X	X	X	X	X	X		7:1	No limit
Human Services	X	X	X	X	X	X		7:1	10,000 SF
((~~Preservation of Landmark Theater~~	~~X~~	~~X~~	~~X~~					~~Variable; maximum of 12:1~~	~~Maximum gain of 1.0 FAR~~))
"X" indicates that bonus is potentially available.									

((~~b. Any bonus for rehabilitation and preservation of a Landmark performing arts theater shall not exceed a maximum of one FAR. Such bonus may be allowed at a variable ratio, as described in the Downtown Amenity Standards, of up to 12 square feet of floor area granted per 1 square foot (12:1) of performing arts theater space rehabilitated by the applicant, or previously rehabilitated so as to have a useful life at the time the bonus is allowed of no less than 20 years, in each case consistent with any controls applicable to the Landmark performing arts theater and any certificates of approval issued by the Landmarks Preservation Board. For purposes of this subsection, performing arts theater space shall consist only of the following: stage; audience seating; theater lobby; backstage areas such as dressing and rehearsal space; the restrooms for audience, performers and staff; and areas reserved exclusively for theater storage. For any Landmark performing arts theater from which TDR has been transferred,~~

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~~or that has received any public funding or subsidy for rehabilitation or improvements, the bonus ratio shall be limited, pursuant to a subsidy review, to the lowest ratio, as determined by the Director of Housing, such that the benefits of the bonus, together with the value of any TDR and any public funding or subsidy, are no more than the amounts reasonably necessary to make economically feasible:~~

~~1) The rehabilitation and preservation of the Landmark performing arts theater; and~~

~~2) Any replacement by the owner of such theater of low-income housing that is reasonably required to be eliminated from the lot of the Landmark performing arts theater to make rehabilitation, preservation and operation of the performing arts theater economically feasible.~~))

* * *

Section 3. Section 23.49.014 of the Seattle Municipal Code, last amended by Ordinance 124072, is amended as follows:

23.49.014 Transfer of development rights

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E. TDR ((~~S~~))sales ((~~B~~))before ((~~B~~))base FAR ((~~I~~))increases and ((~~C~~))changes in ((~~E~~))exemptions. Except for transfers of TDR from a sending lot with a major performing arts facility, or from a Landmark performing arts theater satisfying the conditions of subsection 23.49.011.A.3, transfers of TDR from any lot from which a TDR transfer was made prior to August 26, 2001, are limited to the amount of TDR available from such lot immediately prior to that date.

F. Projects ((~~D~~))developed ((~~U~~))under ((~~P~~))prior ((~~C~~))code ((~~P~~))provisions((~~.~~))

1. Any project that is developed pursuant to a master use permit issued under the provisions of this ((~~t~~))Title 23 as in effect prior to August 26, 2001, which permit provides for

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the use of TDR, may use TDR that were transferred from the sending lot consistent with such prior provisions prior to August 26, 2001.

2. In addition or in the alternative, such a project may use TDR that are transferred from a sending lot on or after August 26, 2001.

3. The use of TDR by any such project must be consistent with the provisions of Title 23 applicable to the project, including any limits on the range of FAR in which a type of TDR may be used, except that open space TDR may be used by such a project in lieu of any other TDR or any bonus, or both, allowable under such provisions.

G. TDR ((~~S~~))satisfying ((~~C~~))conditions to ((~~T~~))transfer ((~~U~~))under ((~~P~~))prior ((~~C~~))code((~~.~~))

1. If the conditions to transfer Landmark TDR, as in effect immediately prior to August 26, 2001, were satisfied on or before December 31, 2001, such TDR may be transferred from the sending lot in the amounts eligible for transfer as determined under the provisions of this Title 23 in effect immediately prior to August 26, 2001. If the conditions to transfer housing TDR were satisfied prior to August 26, 2001, under the provisions of this Title 23 then in effect, such TDR may be transferred from the sending lot in the amounts eligible for transfer immediately prior to that date. If the conditions to transfer TDR from a major performing arts facility were satisfied prior to August 26, 2001, under the provisions of this Title 23 then in effect, such TDR may be transferred from the sending lot after that date, for use on any receiving lots in zones where housing TDR may be used according to Table A for 23.49.014 or as provided in Section 23.50.053, in an amount as determined under subsection 23.49.014.B, provided that the cumulative amount of TDR that may be transferred after June 1, 2005, from any sending lot based on the presence of a major performing arts facility is limited to 150,000 square feet.

2. For purposes of this subsection 23.49.014.G, conditions to transfer include, without limitations, the execution by the owner of the sending lot, and recording in the King

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County real property records, of any agreement required by the provisions of this Title 23 or the Public Benefit Features Rule in effect immediately prior to August 26, 2001, but such conditions do not include any requirement for a master use permit application for a project intending to use TDR, or any action connected with a receiving lot. TDR transferable under this subsection 23.49.014.G are eligible either for use consistent with the terms of Section 23.49.011 ((~~or Section 23.50.051~~))or for use by projects developed pursuant to permits issued under the provisions of this Title 23 in effect prior to August 26, 2001. The use of TDR transferred under this subsection 23.49.014.G on the receiving lot shall be subject only to those conditions and limits that apply for purposes of the master use permit decision for the project using the TDR.

H. Time of ((~~D~~))determination of TDR ((~~E~~))eligible for ((~~T~~))transfer. Except as stated in subsection 23.49.014.G, the eligibility of a sending lot to transfer TDR, and the amount transferable from a sending lot, shall be determined as of the date of transfer from the sending lot and shall not be affected by the date of any application, permit decision or other action for any project seeking to use such TDR.

I. Use of ((~~P~~))previously ((~~T~~))transferred TDR by ((~~N~~))new ((~~P~~))projects. Any project using TDR according to applicable limits on types and amounts of TDR in Section 23.49.011 may use TDR that were transferred from the sending lot consistent with the provisions of this Title 23 in effect at the time of such transfer. For purposes of this subsection 23.49.014.I, the owner of TDR that were transferred based upon a housing commitment accepted by the City shall be entitled to have such TDR considered as housing TDR.

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Section 4. 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 _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Exhibit A: Amendments to Downtown Amenity Standards

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