

Director’s Report and Recommendation

Downtown Land Use Code: Incentives for Landmark Performing Arts Theaters

August 16, 2013

INTRODUCTION

The Department of Planning and Development (DPD) is proposing to amend the Downtown Chapter of the City’s Land Use Code (SMC, Title 23), to improve incentives for the rehabilitation and use of designated Landmark structures that include performing arts theaters, referred to as Landmark performing arts theaters (LPAT).

In 2011, the City Council reaffirmed its commitment to downtown’s Landmark performing arts theaters in Resolution 31341 by creating a Downtown Historic Theater District. This resolution includes an Implementation Plan that, among other long-range strategies, directs the City to “review City zoning, financing, and development incentives and other policies for opportunities to support Downtown Historic Theatres’ operations, renovations, or expansion.” Following the requested review of City zoning and development incentives, DPD is proposing the amendments discussed in this report to strengthen support for LPATs in the Land Use Code.

PROPOSAL SUMMARY

In the current Land Use Code, Landmark performing arts theaters are eligible for two incentives: 1) “Landmark performing arts theater transfer of development rights” (LPAT TDR) and 2) a floor area bonus for the “restoration and preservation of Landmark performing arts theaters” (LPAT bonus). At the request of stakeholders advocating for the historic theaters, DPD reviewed the performance of these incentives, and concluded the following:

- While the use of LPAT TDRs has been successful, two of the three eligible LPATs have sold all their development rights, so this incentive is no longer available to them; and
- The LPAT bonus has never been used, primarily because of uncertainties as to how it is to be administered and because the types of improvements that can be funded to gain the bonus are too narrowly defined. There is also a concern that modifying the bonus to make it more usable could, over the long-term, have negative consequences on the use of incentives for other amenity features.

As an alternative to amending the existing LPAT bonus provisions, DPD is proposing to introduce a new incentive that would increase the base floor area ratio (FAR)¹ of a lot that

¹ “Floor area ratio” means a ratio expressing the relationship between the amount of gross floor area or chargeable floor area permitted in one or more structures and the area of the lot on which the structure is, or structures are, located,

includes a LPAT. The higher base FAR would result in the following positive outcomes: 1) additional chargeable floor area could be added to the lot with a LPAT, potentially allowing for more revenue generating space in a qualifying theater structure, provided the Landmarks Board approves any changes; and 2) the increase in base FAR would also create more floor area that could be sold and transferred as Landmark TDR (transfer of development rights) to other eligible receiving sites. This would benefit the LPATs that have already sold their allowed LPAT TDR, since the increase in base FAR would provide more TDR to sell.

The chart below summarizes the proposed amendments to the Land Use Code by section, including related changes to the Downtown Amenity Standards:

Summary of Proposed Amendments for Landmark Performing Arts Theaters in Downtown Zones		
Ordinance Section	Code Section	Description of proposed changes
Chapter 23.49 DOWNTOWN ZONING		
1.	23.49.011 Floor area ratio	Add a new subsection 23.49.011.A.3 to increase the base FAR for qualifying lots that include a Landmark performing arts theater (LPAT). This increase in base FAR provides the incentive of additional chargeable floor area on the lot, or adding floor area that may be transferred from the lot as Landmark TDR. This subsection includes the criteria for qualifying Landmark performing arts theaters. The original subsection 23.49.011.A.3 will be renumbered 23.49.011.A.4.
2.	23.49.013 Bonus floor area for amenities	Delete subsections 23.49.013.A.5 23.49.013.B.2.b, and 23.49.013.B.3.b, which establish the bonus provisions for the rehabilitation and preservation of Landmark performing arts theaters, and remove Preservation of Landmark Theaters as a bonus amenity from Table A for 23.49.013. This action removes the bonus, to be replaced by the incentive provided through the increase in base FAR.
3.	23.49.014 Transfer of development rights	Amend subsection 23.49.014.E to allow floor area gained through the increase in the base FAR on a lot with a qualifying Landmarks performing arts theater to be used as Landmark TDR. In most cases, under current Code provisions, floor area gained through an increase in the base FAR is not available to be used as TDR on lots that have already sold TDR.
4.	Downtown Amenity Standards	Update Section I, subsection E. Art in Bonused Amenity Features to replace the “Seattle Arts Commission” with the appropriate Committee (“Public Art Advisory Committee”) Remove provisions related to the floor area bonus for the “Restoration and Preservation of Landmark Performing Arts Theatre” (Section II, subsection Q), which, under the proposal, would be eliminated and replaced with new incentives created by increasing the base FAR for lots with LPATs.

BACKGROUND AND ANALYSIS

Background

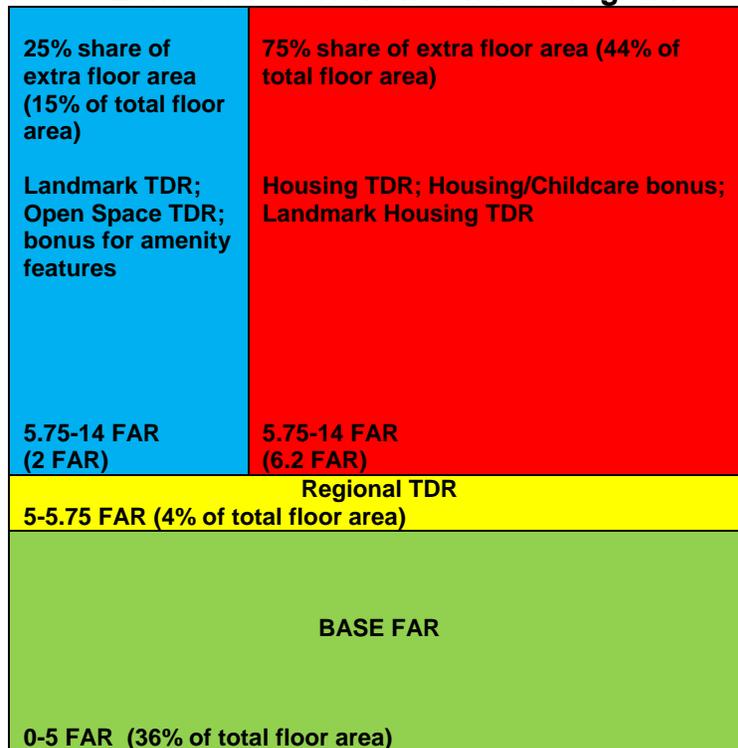
Advocates for historic theaters located both within downtown and adjacent areas (theater advocates) approached the City seeking a renewal of support for these cultural resources. The City Council ultimately responded by adopting a resolution establishing an Historic Theater District and identifying several long-range strategies for supporting these facilities. Of particular interest to the theater advocates was the desire to amend current zoning incentives to make them more effective as tools for theater rehabilitation. From their perspective, the existing Landmark theater bonus in the Downtown Code was not viable, and the following changes were requested:

- remove limitations on the types of theater improvements that are eligible for the bonus;
- remove the 1 FAR limit on the amount of floor area that can be gained in a development using the Landmark theater bonus to fund theater improvements;
- eliminate provisions for a variable bonus ratio and process for setting the value of the theater bonus and replace with a process to set the bonus value according to “fair market value;” and
- allow historic theaters located outside downtown to be eligible as TDR sending sites and to qualify as floor area bonus features that can be used to increase floor area in commercial projects built in downtown zones.

The actions proposed by the theater advocates have implications on the priorities for how the downtown zoning incentive programs are used to provide a variety of benefit features. These programs generate finite resources for a wide range of measures intended to mitigate the impact of higher density development, so it is important to understand the implications of changes that affect the amount and type of incentives that will be used over time. Furthermore, Downtown’s existing incentive programs were established in 1985 and have evolved since then. The existing provisions reflect the City’s current policies for balancing the various benefits that the incentives seek to achieve. These priorities are most directly reflected in the split in how incentives can be used to gain extra floor area above the base FAR, with 75 percent of the added floor area to be gained through housing/child care incentives, and the remaining 25 percent through other non-housing options (See Exhibit A below).

It is important to understand the evolution of the incentive programs to have a perspective on how certain features have been advanced over time, and to evaluate the extent to which certain features should be allowed increased access to the limited resources generated by downtown projects using bonuses and TDR. An outline of the evolution of the incentive programs and an inventory of the use of incentives since the LPAT bonus and TDR provisions were adopted is provided in Attachment A. Attachment B provides a chronology of ordinances related to the creation and use of LPAT bonus and TDR incentives.

Exhibit A: Current Incentive Program



DOC 2 Example (Base FAR 5; maximum FAR 14)

DPD proposal and Analysis

To make the LPAT incentives more effective, DPD first responded to theater stakeholders’ interest in amending the existing LPAT bonus. Unlike other features that benefit from the Downtown incentive programs, lots with LPATs can qualify both as TDR sending sites, allowing them to sell unused development rights, and as features that can receive funding from developers who are seeking to gain bonus floor area. Since two of the three qualifying LPATs have sold all their available TDR, there is increased interest in using the bonus incentive. All agreed the current bonus is problematic, as witnessed by the fact that it has never been used in the almost 20 years it has been in place. However, DPD decided against pursuing changes to the bonus, primarily for the following reasons:

- Setting a value for the bonus is problematic. Use of the bonus requires a case by case evaluation to determine its value in terms of the amount of added floor area a new project would gain relative to the funding provided for theater rehabilitation. The City would need to be involved in the negotiations for arriving at a value, and ensuring a consistent

process each time the bonus is used. Since the bonus would need to compete with the many other available TDR and on-site bonus amenity options, if the bonus value is set too high, it would not be able to compete with other available incentive options, and if set too low, it could preclude the use of incentives for any other amenity features. Furthermore, monitoring would be necessary to ensure that the funds provided for theater rehabilitation are used in a manner consistent with the agreement reached to establish the bonus value.

- The LPAT bonus has the potential to generate an inexhaustible amount of extra floor area for new development, since rehabilitation work for each of the qualifying theaters will be ongoing for the life of the structures. This could create an unfair advantage over other benefit features that rely on support through the incentive programs. Other bonuses can only generate a limited amount of extra floor area for a project based on the size of the bonus feature and any other applicable caps the Code sets. Also, for other amenity features, ongoing maintenance is not a bonusable item in itself; it is the responsibility of the party benefitting from the gain in floor area through the use of the bonus. In the case of TDR incentives, the use of TDR is limited to the finite amount of unused development rights on any given sending site. Once those development rights are sold and transferred, they are no longer available, and that asset has been extinguished. There is no clear limit to the amount of extra floor area that can be gained over time through a bonus that is based only on the need to fund rehabilitation work to maintain a structure.

To address this issue, DPD considered measures such as a metering provision, which would limit how much floor area could be gained through the LPAT bonus over a set period of time. For example, the City would permit a bonus transaction between a theater and a developer for whatever amount of the 25% share of the extra floor area that a project could gain, given the cost of the theater improvements and the amount the developer would pay. Once that deal is completed, another theater bonus transaction would not be allowed until after an equivalent amount of extra floor area was gained through the use of other bonus and TDR options (unless no other options were available at the time a project is seeking extra floor area). This would prevent the theater bonus from monopolizing the use of the 25% share of extra floor area during active development periods, when several projects may be looking to use bonuses, while allowing an individual transaction to capture the full 25% share of the extra floor area sought in a particular project. In the end, however, DPD concluded that such a provision would be too cumbersome and difficult to administer.

After reviewing the existing LPAT incentives and potential alternatives, DPD is proposing a different approach whereby the incentive is derived from an increase in the base FAR for lots that include a qualifying LPAT. The greater base FAR allows Landmark theaters to increase chargeable floor area permitted on the lot without requiring participation in the Downtown incentive programs, and also provides the opportunity to sell and transfer any additional unused floor area resulting from the FAR increase as Landmark TDR to eligible receiving sites. This approach provides additional opportunities for LPATs to participate in the incentive program, but, to keep incentives available to as wide a range of benefit features as possible, the amount of

additional base FAR granted to the LPAT lot sets an ultimate limit on the use of LPAT incentives.

The proposal would accomplish the following as a response to problems and ambiguities identified with the current LPAT bonus:

- Let the “value” of the incentive be set by the market. By creating the potential to sell more TDR, the value of the incentive would be market based, determined by buyer and seller agreement. Under the current LPAT bonus provision, the value is based on an assessment made by the Director of DPD.
- Remove the current 1 FAR limit on the amount of extra floor area that a project using the LPAT bonus can gain as a “non-housing” incentive. The proposed amendment would remove this limit. However, there would be no change to the overall limit on the total amount of extra floor area that can be gained through “non-housing” incentives. “Non-housing” incentives can only be used to gain 25 percent of the total extra floor area allowed above the base FAR, while affordable housing incentives must be used for the remaining 75 percent. Furthermore, once the additional floor area created by raising the base FAR is used, either on site or as TDR, the LPAT would not be eligible for further incentives.
- Remove restrictions on how the funds generated by the LPAT bonus are used. Currently, the Code limits the use of bonus funds to very specific improvements to the LPAT. Under the proposed amendments, use of funds generated by TDR sales would not be limited, beyond requiring that the LPAT structure to be maintained as specified by the Landmarks Board and that the theater space be operational for a minimum of 40 years.
- Maintain criteria for identifying the theaters eligible for the LPAT incentive, which includes designated Landmarks within Downtown zones that include space for performing arts theaters. Additional criteria related to the size of the theater space and operation of the theaters would be modified to provide additional flexibility while limiting the incentives to the major anchor theaters of the Historic Theater District. Currently, there are three such structures—the Moore Theater, the Paramount Theater, and ACT Theater/Eagles Auditorium located within downtown (see Attachment C). The proposal would not extend the incentive to theaters located outside of downtown (theater advocates proposed including Town Hall Theater on First Hill) or to theaters in structures that historically did not accommodate some form of performance space or other space suitable for live performances.

Key aspects of the proposal are described in more detail below:

Incentive through increase in base FAR. The proposal is to increase the base FAR by 4 FAR, or up to the maximum FAR limit of the zone, whichever is less on the LPAT lot. Exhibit B shows the resulting increase in base FAR for the three qualifying LPATs:

Exhibit B: Additional Base FAR proposed for lots with LPAT			
LPAT	Zone	Current Base/ Maximum FAR	Proposed Base FAR for LPAT lot
Moore Theater	DMC 240/290-400	5 FAR base 7 FAR maximum	7 FAR (& FAR is currently the maximum FAR allowed in zone)
Paramount	DMC 340/290-400	5 FAR base 10 FAR maximum	9 FAR base
Eagles/ACT	DMC 340/290-400	5 FAR base 10 FAR maximum	9 FAR base

In addition to allowing more chargeable floor area to be added on the LPAT lot, this action would increase the supply of TDR available to sell from qualifying LPATs by about 211,548 square feet. Added to the current supply of unused LPAT TDR (116,100 SF from the Moore Theater), the total supply would be 374,088 square feet (See Exhibit C).

Exhibit C: Floor area information for Existing Landmark Performing Arts Theaters

Landmark performing arts theater (LPAT)	Zone	Current base and maximum FAR	Lot area	Existing floor area*	Previous TDR transfer?	TDR gain with proposal (4 FAR max)	Total TDR-available and used
Theaters meeting proposed Code criteria							
Moore	DMC 240/290-400	5 Base; 7 Max	23,220 SF	95,530 SF	No 116,100 SF available to transfer	46,440 SF Limited to amount between base and maximum FAR (2 FAR)	162,540 SF
Paramount	DMC 340/290-400	5 base; 10 Max	34,036 SF	95,201 SF	Yes: current base FAR transferred 170,180 SF	136,144 SF	306,324 SF
Eagles/ACT	DMC 340/290-400	5 Base; 10 Max	21,000 SF	131,463 SF	Yes: current base FAR transferred 105,000	84,000 SF	215,463
TOTAL						266,584 SF	684,327 SF
Other theaters that could be potential candidates							
5th Avenue (currently not a designated landmark)	DOC1 U/450-U	6 Base; 20 Max	42,600 SF	195,253 SF chargeable	No; not eligible	127,800	383,400 SF
GRAND TOTAL						394,384 SF	1067,727 SF

*excludes basement floor area

One of the consequences of this action is that it adds a fairly substantial amount of additional floor area to the supply of TDR within Downtown. It should be noted that it took 20 years of development to absorb the 676,000 square feet of TDR available from two LPATs (the Paramount and Eagles) and one MPAF (Benaroya Hall), and under conditions more favorable to the use of this incentives, since projects permitted between 1993 and 2001 could can all of their FAR above the base FAR through these incentives.

Currently, the supply of TDR from designated Landmark sites and certified public open space sites in Downtown, and historic TDR sites in South Downtown is estimated to be about 6 million square feet. This figure does not include the potential supply of within-block TDR, or TDR that may become available in the future as additional structures are designated as Landmarks or new public open space sending sites are created. Such a large TDR supply increases the competition between properties eligible to sell TDR, which could affect the price of TDRs and the types of TDR that get used, as well as the extent to which other incentives, such as floor area bonuses for on-site amenities, will get used. DPD maintains that this added support for LPATs is warranted because of the significant and exceptional public benefit they provide and the unique challenges they face to remain economically viable, as stated below:

- The Landmark performing arts theaters provide the anchors for Downtown Historic Theater District that the City Council established in 2011 by Resolution 31341. These anchors generate nighttime and weekend activity, enlivening the area and attracting people downtown beyond the normal workday. This extended activity and synergy benefits other businesses in the area, and, in addition to increased economic vitality, promotes a safer downtown environment.
- The size and special function that these structures were originally designed for make them exceptionally difficult to adapt to other uses. Also, unlike most downtown Landmarks, both the interior and exterior features of these structures are protected by the designating ordinance, posing further limits on how the structures can be used and creating additional demands for ongoing rehabilitation and maintenance.
- These theaters are located in the Downtown zones that are subject to the greatest redevelopment pressure, which is a factor in assessing their economic viability. The variation in architectural style and scale that they provide contributes to a desirable diversity in these densely developed areas, and the opportunity to transfer unused development potential from these lots to other appropriate locations would help maintain capacity for growth needed to meet Comprehensive Plan growth targets.
- The performing arts space is only one component of these structures, which often include floor area for other uses, such as housing, retail, hotel rooms, and offices. Incentives that allow for readapting this floor area for contemporary uses can help support the economic viability of the theater structure, while also contributing to the vitality of the area.

Furthermore, the proposal sets a limit on the amount of extra floor area that could be gained through LPAT incentives, which would be established by the amount of floor area gained on the LPAT lot through the increase in the base FAR. The incentive is also limited to LPATs located

in specified Downtown zones. Given the abundant supply of TDR potentially available Downtown, expanding the incentive to theaters beyond Downtown would likely dilute its effectiveness. Under the proposed amendments, and consistent with current provisions, other theaters that are included in the Downtown Historic Theater District but that are not located in a Downtown zone, such as Town Hall (located in the Highrise (HR) multifamily residential zone on First Hill) would not be eligible for the proposed incentive, and there is no proposal to allow such structures to transfer unused development rights for use in projects in downtown zones. However, as part of the Highrise multifamily incentive program, Town Hall is currently eligible to transfer unused development rights as Landmark TDP to other eligible receiving lots also located within the First Hill HR multifamily zone.

Eligibility criteria. Currently, for a structure to be eligible to use the LPAT bonus, it must meet the following criteria:

- contains space that was designed for use primarily as, or is suitable for use as, a performing arts theater;
- location in a DOC1, DOC2, DRC, or DMC zone;
- status as designated Landmark pursuant to Chapter 25.12 and subject to an ordinance establishing an incentives and controls agreement approved by the City Landmarks Preservation Board;
- minimum floor area devoted to performing arts theater space and accessory uses of at least 20,000 square feet; and
- available for live theater performances for no fewer than 180 days per year.

Early recommendations by the theater stakeholders called for removing some or all of these criteria. However, in addition to their historic, architectural, and cultural value, part of the argument for extending special incentive opportunities to LPATs that are not available to other amenity features is the added public benefit that LPATs provide as activity-generating uses consistently enlivening downtown areas beyond the normal work day, supporting nearby businesses and contributing to public safety. Any loosening of the current criteria needs to consider the importance of these additional, secondary benefits. Since downtown development will only be able to absorb a limited amount of extra floor area generated by an LPAT incentive, these resources should be targeted to facilities that provide the greatest public value on several fronts. With that in mind, in addition to retaining the requirement that the theater space be located in a designated Seattle Landmark, the proposal includes the following criteria to identify qualifying LPATs:

- **Location of LPAT.** The proposal retains the existing requirement that the LPAT be located in the zones that comprise the high density Downtown core, where the pressure for redevelopment is greatest. Given the limits on demand for using incentives overall, extending incentives to a wider range of facilities located either elsewhere within Downtown or in other areas outside Downtown dilutes the effectiveness of the incentive, and could further restrict the use of incentives for other benefits that the Downtown community values. The problem could be further compounded if incentives are extended to theaters located outside of Downtown. Not only would this create more competition for the use of incentives, but conditions in areas outside of Downtown, where lower land values, greater amounts of floor area available to transfer, or other factors could provide

an unfair advantage that would make using incentives for these facilities more attractive than facilities located within Downtown.

- **Theater capacity.** In addition to being a designated Seattle Landmark, the proposal continues to require that the LPAT structure includes performing arts theater space. Two of the current LPATs were historically built as performing arts theaters. For the third, Eagles Temple Building/Act Theater, the proscenium stage of the original auditorium was converted to a theater-in-the-round venue, which accommodates live performances, but in a manner different from the historic auditorium. A size threshold based on seating capacity is proposed to replace the current requirement for a 20,000 square foot minimum area for performance space. The proposal sets a seating capacity threshold at 800 seats. Currently, seating capacity for the Paramount Theater is 2,807 seats, 1,419 seats for the Moore Theater, and 993 seats in three venues for the Eagles/ACT Theater. The criteria for seating capacity and historic presence of theater space is intended to limit use of this incentive to facilities that are expected to be the largest and most expensive to maintain, and, because of their size and number of patrons accommodated, will contribute the most to secondary benefits for the surrounding area, including support for nearby businesses and increased public safety in the evening hours.
- **Operation.** The criterion for how often the theater is required to be in operation for live performances would be changed from a set standard (a minimum of 180 days a year) to a discretionary decision by the Director of DPD. At the time that the LPAT seeks to use the added base FAR or sell the additional TDR made available with the increase in base FAR, the Director would consult with the LPAT operator to determine that the level of operation of the theater for live performances that, combined with other activities programmed for the theater space, would be sufficient to contribute to the presence of live theater in the Historic Theater District recognized by Council Resolution No. 31341 and to support the desired level of activity in the nearby area.
- **Locations where development is eligible to use LPAT incentives.** The Code currently limits lots that can use the LPAT bonus to locations in the DOC1, DOC2, or DMC 340/290-400 zones. Beyond the benefit of increased chargeable floor area permitted by the higher base FAR for each LPAT lot, LPAT lots would also be eligible to sell unused development rights as Landmark TDR to any zone permitting receiving sites for Landmark TDR. Receiving sites for Landmark TDR are permitted in DOC1, DOC2, and all DMC zones allowing extra floor area above the base FAR, not just the DMC 340/290-400 zone, so more development lots could use the Landmark TDR incentive from LPATs.
- **Scope of required LPAT improvements.** One issue with the current LPAT bonus is that it is too limiting in terms of the improvements that qualify for bonus funding. Today, the funds for the bonus can only be used for rehabilitation of performing arts theater space, which is defined as 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.

This language raises the issue that other types of improvements might not qualify for bonus funds, such as seismic upgrades of the structure, new additions that expand existing theater spaces, improvements that provide revenue generating space, like restaurants or bars, that technically aren’t part of the performance space, a new roof for the structure that may not be directly connected to performing arts space, and so on. Since many of the landmark theaters are within structures that accommodated uses other than theater space, such as housing, retail, office suites, etc., a strict application of the rule would not allow improvements to this floor area to qualify for the bonus, even though the improvements may be critical to maintaining the structure.

The proposal to restructure the incentive as an increase in base FAR for the LPAT lot avoids the necessity of defining qualifying improvements. The conditions that allow for adding chargeable floor area on the lot or selling unused development rights as Landmark TDR from a Landmark structure stipulate that the structure must be maintained as required by the Landmarks Preservation Board in the designating ordinance, and therefore improvements would be consistent with the definition of “rehabilitation” in the *Secretary of the Interior’s Standards for the Treatment of Historic Properties*. The Code would also require that the theater be in operation for a specified period of time—a minimum of 40 years. Provided these conditions are met, the Code would not limit the use of funds generated by the sale of development rights or the use of the additional chargeable floor area allowed on the lot.

- **Limits on use of the LPAT incentive.** The Code has been amended several times over the years to respond to the City’s changing priorities for supporting different types of amenities through the Downtown incentive programs. Attachment A shows how various incentives have been used at different stages in the evolution of these programs. After amendments in 1993 targeted the use of incentives for LPATs and MPAFs, a substantial share of the extra floor area in new development was gained through the use of these incentives (14% for LPATs and 27% for MPAFs), compared to 27% for affordable housing, and 32% for everything else. Later amendments in 2001 sought to reprioritize the programs to emphasize affordable housing.

Under the current incentive provisions, non-housing amenity features, such as the LPAT bonus and LPAT TDR, can only be used to gain a maximum of 25 percent of the total extra floor area allowed above the base FAR limit. Many worthy features must compete to be chosen as the means for gaining this limited amount of extra floor area. To maintain a balance among the features that must compete for the 25 percent share, the Code now limits the amount of floor area that a project can gain by using the LPAT bonus to a maximum of 1 FAR; a measure that was put in place to help encourage the use of the full range of incentive options. There is currently no limit on the use of Landmark TDR from a LPAT.

Under the proposal, there would be no additional restrictions on the use of the additional floor area allowed by raising the base FAR on LPAT lots. If the additional chargeable floor area is used on the LPAT site, it would be floor area that would not have to be gained through the use of incentives, as would be the case on other sites where

development exceeds the otherwise applicable base FAR. Furthermore, if the LPAT elects to sell and transfer development rights as Landmark TDR, there would be no limit on the amount of this TDR a receiving site could use, provided it did not exceed the 25 percent share of extra floor area that is allowed to be gained through non-housing incentives. Consequently, a receiving site in a DOC 1 zone could add up to 3.25 FAR of TDR from a LPAT site, and about 2 FAR on a DOC 2 site. Removing some of the restrictions that currently apply to the use of the existing LPAT bonus (primarily the 1 FAR limit on the amount of extra floor area a project using the bonus can gain) is considered reasonable given that the number of qualifying LPATs that can use the incentive is intentionally limited, focusing on Downtown structures that are most critical to the Downtown Historic Theater District. As a form of TDR, there is also an ultimate limit on the use of the incentive; it could no longer be used once all the TDR is transferred. After the TDR supply is exhausted, developers would have to consider other options for gaining extra floor area in projects.

RECOMMENDATION

The proposed amendments will provide additional incentives to support the continued maintenance and operation of Downtown Landmark performing arts theaters, while maintaining a balance in the use of incentive options for a variety of Downtown amenities. DPD, in making the proposed recommendations to amend the provisions of the City’s Land Use Code, has considered comments from citizens, affected departments, and other agencies and interests. These comments, as well as all environmental documentation that was prepared relevant to the proposed amendments, are available upon request.

The proposed amendments are consistent with the goals and policies of Seattle’s Comprehensive Plan and reinforce neighborhood plan goals and objectives (see an inventory of these goals and policies in Attachment D). DPD recommends approval of the proposed amendments.

List of Attachments to the Directors Report:

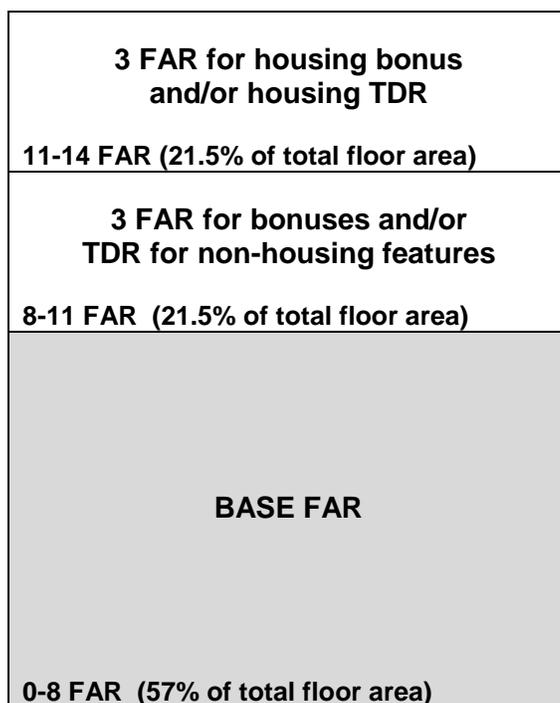
- Attachment A: Evolution and Performance of Downtown Incentive Programs
- Attachment B: Chronology of ordinances related to Landmark performing arts theater incentives
- Attachment C: Map of Existing Landmark Performing Arts Theaters and Downtown Zoning
- Attachment D: Consistency of the Proposed Amendments with Comprehensive Plan Goals and Policies

Attachment A: Evolution and Performance of Downtown Incentive Programs

The charts below illustrate how the zoning structure for incentives has evolved in the Downtown Code since the original program was adopted in 1985, using the Office Core 2 (DOC 2) zone as an example.

Original 1985 program. The 1985 incentive programs allowed the use of both floor area bonuses and the transfer of development rights (TDR) to enable developers to add floor area above a base development allowance (the base floor area ratio, or base FAR). The features provided to gain added floor area address impacts associated with the increased project density on various elements of the physical and social environment. A wide range of options was available for gaining the extra floor area, including the use of TDR for within-block transfers, the preservation of landmarks and low-income housing structures; bonuses for a wide variety of on-site amenities; and a housing bonus to produce affordable housing either on or off the project site. The program was designed as a “tiered” system (see Chart A-1). Tiering is the division of the amount of extra floor area allowed above the base FAR into portions or “tiers” assigned to different types of incentives. Generally, floor area for each tier above the base is gained through a different menu of options for the developer, and each lower tier must be filled before the menu for the next tier can be used. Initially, the first tier contained a wide variety of non-housing amenity options, with the second tier reserved exclusively for housing bonus and TDR options.

**Chart A-1: DOC 2 Incentive program from original 1985 Zoning
(14 FAR maximum)**



The first major restructuring of the incentive program occurred when voters approved the Citizens Alternative Plan (CAP) Initiative in 1989. Under CAP, the permitted density and height limits were significantly reduced in several Downtown zones, and the original tiering structure was revised to create three tiers above the lowered base FAR (see Chart A-2). Use of the top tier was limited exclusively to participation in the low-income housing TDR program.

**Chart A-2: DOC 2 incentives adopted under CAP in 1989
 (10 FAR maximum)**

2 FAR Housing TDR only
8-10 FAR (20% of total floor area)
2 FAR for housing bonus and TDR and Landmark TDR
6-8 FAR (20% of total floor area)
2 FAR for bonuses and TDR for non- housing bonus features
4-6 FAR(20% of total floor area)
BASE FAR
0-4 FAR (40% of total floor area)

After 1989, new TDR choices reduced the tiering structure’s focus on housing in favor of other City objectives (primarily support for cultural facilities). In 1993, to support efforts to preserve Landmark performing arts theaters, particularly those that also had low-income housing units, such as the Paramount Theater and Eagles Auditorium, the City Council amended the Downtown Code to allow projects to increase the amount of extra floor area they could gain through the use of Landmark performing arts theater TDR (LPAT TDR) purchased from these theaters. Furthermore, a new bonus was created to allow new development to gain more floor area by funding the rehabilitation of a LPAT. In addition to Landmark theaters, major performing arts facilities (MPAF), which included Benaroya Hall, were also allowed to sell TDR (MPAF TDR), and both LPAT and MPAF TDR were allowed to be used in all three tiers above the base FAR, including the third tier that was originally reserved for exclusively for housing TDR (see Cahrt A-3).

Chart A-3: DOC 2 Incentives under 1993 Amendments establishing MPAF TDR and LPAT bonus and TDR (10 FAR maximum)

2 FAR Housing TDR; MPAF TDR; LPAT TDR
8-10 FAR (20% of total floor area)
2 FAR for housing bonus and TDR; MPAF TDR; LPAT TDR and Landmark TDR
6-8 FAR (20% of total floor area)
2 FAR for non-housing bonus features and TDR; MPAF TDR; LPAT TDR
4-6 FAR (20% of total floor area)
BASE FAR
0-4 FAR (40% of total floor area)

Historic theaters eligible to sell development rights and receive funding through the bonus were limited to designated Landmark theaters in specified Downtown zones that met additional criteria, including the size of the performance space and availability for live performances. Three theaters currently meet the Code’s criteria as LPATs; the Paramount Theater, Moore Theater, and Eagles Temple Building/ACT Theater. While under the original provisions the bonus could be gained for funding general rehabilitation of the Landmark theater, currently, the bonus is only available for funding improvements to defined areas of the theater space. The value of this bonus was to be set on a case by case basis, taking into consideration factors such as other subsidies the theaters received and previous sales of TDR. To date, this bonus has never been used, although both the Paramount and Eagles Auditorium have sold and transferred LPAT TDR and also, in the case of the Paramount, one FAR of (MPAF) TDR.

Following the adoption of the City’s Comprehensive Plan in 1994, Downtown Urban Center neighborhoods prepared plans to further the goals and policies of the Comprehensive Plan. A major outcome of this effort was an overhaul of the Downtown incentive, which, as described above, had been significantly modified over the years to respond to changing downtown development objectives and priorities. The primary emphasis of this overhaul was to refocus the use of incentives on addressing the need for affordable housing in downtown. Up to that time, the greatest share of the extra floor area gained by using incentives in new commercial development was through the use of non-housing related incentives. The resulting Code changes, adopted in 2001 (Ordinance 120443), reprioritized incentives to promote development of affordable housing and streamlined the bonus and TDR programs. These amendments established a split in how incentives can be used to gain extra floor area above the base FAR, with 75 percent of the added floor area to be gained through housing/child care incentives, and the remaining 25 percent through other non-housing options (see Chart A-4).

Chart A-4: DOC 2 Incentives under current provisions (14 FAR maximum)

25% share of extra floor area (15% of total floor area)	75% share of extra floor area (44% of total floor area)
Landmark TDR; Open Space TDR; bonus for amenity features	Housing TDR; Housing/Childcare bonus; Landmark Housing TDR
5.75-14 FAR (2 FAR)	5.75-14 FAR (6.2 FAR)
Regional TDR	
5-5.75 FAR (15% of total floor area)	
BASE FAR	
0-5 FAR (36% of total floor area)	

The incentives for LPATs, which were eligible to both sell development rights and receive funding for rehabilitation from other developments seeking a floor area bonus, fell into the category of non-housing incentive options that could be used to gain the 25 percent share of extra floor area allowed above the base FAR. Recognizing the great number of benefit features that would be competing to be used by developers seeking to gain this limited portion of extra floor area, the theater bonus was among several proposed to be eliminated in 2001 to streamline the program and make it more effective. The City Council, however, decided to retain the LPAT bonus, but set a limit on the amount of extra floor area that could be gained in any individual project using it (the current 1 FAR maximum established in 23.49.013.B.3.b). This limit was intended to balance opportunities for developers use incentives for other amenity features.

In 2006, Ordinance 122054 created an increment of FAR above the base FAR that was required to be gained through certification of a project as LEED Silver. This provision sunset in 2011, but in 2013, Ordinance 124172 restored the FAR increment that was previously gained through LEED Silver certification, substituting participation in the regional TDR program as the means for gaining this increment.

Performance of Incentive Programs Since Introduction of LPAT Bonus and TDR options in 1993

The following tables provide an inventory of the amount of “extra” floor area (floor area permitted above the base FAR) that was added in downtown zone over selected time periods, and the particular incentives that were used to gain this floor area.

Table A-1 shows which incentives were used to gain extra floor area between 1993, the year the LPAT bonus and TDR incentives were adopted, and 2001, when the Downtown Incentive Program was significantly restructured (See Chart A-3 and A-4). During this period, the use of the LPAT incentives accounted for almost 14 percent of the total amount of extra floor area gained. Combined with the Major Performing Arts Facility (Benaroya Hall) TDR incentive, the percentage gained by performing arts facilities increases to almost 41 percent of the total.

Table A-1: Use of Incentives by Downtown Non-residential Projects between 1993 adoption of LPAT bonus and TDR amendments and 2001							
Project (or intermediary TDR owner*)	LPAT TDR	MPAF TDR	On-site amenities	Childcare bonus	Landmark TDR	Housing TDR	Housing Bonus
Expeditor’s International			55,145 SF (2 FAR)				8,663 SF (0.33 FAR)
Paramount Hotel			20,753 SF (1.58 FAR)				
“W” Hotel	45,779 SF 2.5 FAR <i>(Paramount from TDR bank)</i>		35,741 SF (1.96 FAR)			84,233 SF (4.6 FAR)	
700 Olive (Nordstrom Office Tower)	41,608 SF (0.8 FAR) 29,003 SF from Paramount; 12,605 SF from Eagles)		107,723 SF (2.0 FAR)			40,367 SF (2.0 FAR)	102,180 SF (2.0 FAR)
IDX Tower (Madison Tower)		313,158 SF (4.9 FAR)	96,990 SF (1.5 FAR)	18,277 SF (0.3 FAR)		58,460 SF (1.0 FAR)	28,222 SF (0.5 FAR)
Millennium Tower	77,760 SF (4.0 FAR)	3,500 SF (0.2 FAR)	35,716 SF (1.8 FAR)		1,748 SF		
TOTAL 1,176,023 SF	165,147 SF	316,658 SF	352,068 SF	18,277 SF	1,748 SF	183,060 SF	139,065 SF

Table A-2 below illustrates the shift in bonus priorities following the Downtown Code amendments in 2001 to the present. Use of housing incentives during this period accounted for 70 percent of the total extra floor area gained through incentives, with LPAT and MPAF incentives accounting for just over 10 percent.

**Table A-2:
 Use of Incentives by Downtown Non-residential Projects
 From 2001 Neighborhood Plan Amendments to 2012**

Project	Extra Floor Area Gained Above the Base FAR Limit							TOTAL	
	25% share allowed through non-housing options*						75% share		
	LPAT Landmark Performing Art Theater TDR*	MPAF Major Performing Arts Facility TDR**	On-site amenities	Open Space TDR	Within-block TDR	Landmark TDR	Landmark theater bonus		Housing TDR and housing/childcare bonus options
5 th and Yesler			34,875 SF					97,532 SF \$2,145,693	132,407 SF
Schnitzer West 1918 8 th Ave		69,070 SF \$1,243,260	40,433 SF					330,653 SF \$7,274,366	440,156 SF
Schnitzer West 818 Stewart St		20,751 SF \$373,518						62,253 SF \$1,369,566	83,004 SF
West 8 th Tower		35,189 SF \$527,835			35,188 SF			211,126 SF \$4,406,776	281,503 SF
Olive 8 Tower-Hotel	16,692 SF \$0							50,075 SF \$1,101,644	66,767 SF
King County Chinook			25,739 SF					77,218 SF \$1,447,838	102,957 SF
Hotel 1000		915 SF \$13,728						3,661 SF \$60,404	4,576 SF
Sheraton Hotel		24,075 SF \$361,125		23,551 SF \$353,265				142,808 \$2,913,280	190,434 SF
Four Seasons Hotel			41,180 SF						41,180 SF
Washington Mutual Center		9,842 SF \$147,630		91,076 SF \$1,498,980				283,405 SF \$5,969,802	384,323 SF
Madison Hotel amenity replacement	17,989 SF (2007) \$0 380 SF (2012) \$0							53,965 SF \$1,187,236	72,334 SF
2201 9 th Ave (ENSO)			55,353 SF	27,269 SF					82,622 SF \$409,035
Downtown Mini-warehouse						2,065 SF			2,065 SF
TOTAL 25% share: 571,632 SF	35,061 SF	159,842 SF \$2,667,096	197,580 SF	141,896 SF \$1,852,245	35,188 SF	2,065 SF	0	1,312,696 SF \$26,879,845	1,884,328 SF

*Note: No Landmark TDR used during this period, but today Landmark Performing Art Theater TDR is included as Landmark TDR

**Major Performing Arts Theater TDR was required to be used for 50% of the non-housing floor area gain while it was still available

Looking at the extended period between 1993 and 2012, Landmark performing arts theaters (the Paramount Theater and Eagles Auditorium) transferred 241,144 square feet of Landmark performing arts theater with housing (LPAT/H) TDR and 34,036 square feet of Major performing arts facility (MPAF) TDR (34,036 SF). Of the TDR generated from the two LPAT/H sites, 200,208 square feet has been used to achieve additional FAR for downtown commercial development projects. This amount represents 6.5% percent of the total extra floor area gained in all development during that period. Combined with the 476,500 square feet of Major performing arts theater TDR from Benaroya Hall, the total extra floor area gained through TDR from three performing arts theaters is 676,708 square feet, or about 22 percent of the total extra floor area awarded in a twenty year time span. Over the same period, incentives for affordable housing, which is the City's priority public benefit, have been used to gain about 1,634,821 square feet or 53 percent of the total extra floor area, with the remaining 24 percent gained by all the other available incentives.

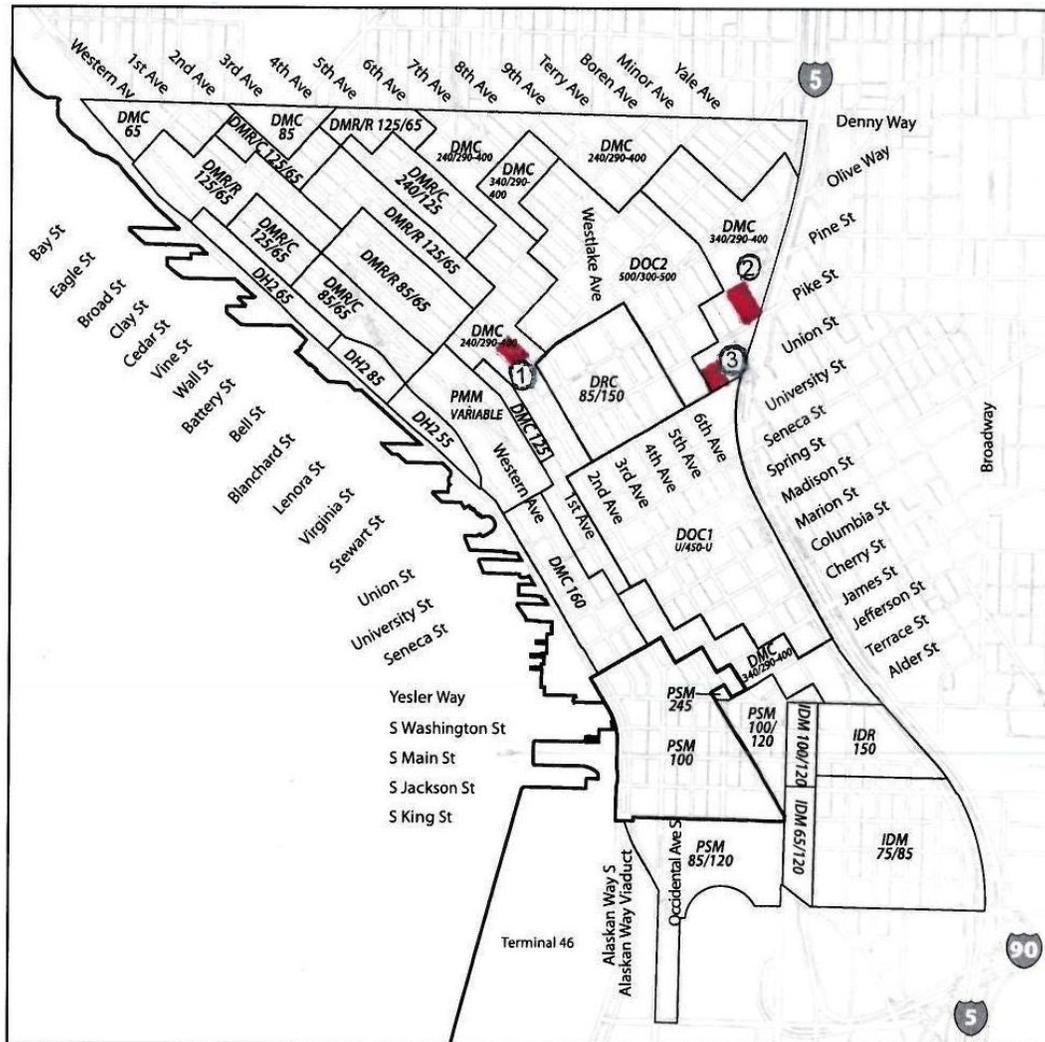
Attachment B: Chronology of ordinances related to Landmark performing arts theater incentives

- Ordinance 116513 (January, 1993) amended the Land Use Code, modifying and clarifying provisions related to the transfer of development rights and floor area bonuses for Downtown landmark performing arts theaters and low-income housing, granting priority for transfer of development rights from landmark performing arts theaters, authorizing the City TDR Bank to purchase, lease, or option development rights for LPATs, and directing the DPD Director to amend the Public Benefits Features Rule.
- Ordinance 117006 (December 1993) The Washington State Convention and Trade Center deeded the Eagles Auditorium Building to ACT Theater/Seattle Housing Resources Group Partnership and contemplated a performance agreement regarding the reservation of a portion of the development rights available from the building and receipt of housing bonus benefit, which was concluded in May, 1994.
- Ordinance 117342 (October 1994) Established a Development Rights Fund (re-designated as a sub-fund in Ordinance #117977) for the purchase of development rights from LPATs to aid in their preservation, and transferred \$3,100,000 from undesignated and unreserved balances in the General Fund to the Development Rights Fund.
- Ordinance 117501 (February, 1995) Authorized appropriation of \$1,800,000 from the Development Rights Fund to purchase development rights from the Paramount Theater.
- Ordinance 117600 (April, 1995) Authorized the purchase by the City of development rights from the owner of the Eagles Building, a Seattle Landmark, to be restored as a performing arts theater and low-income housing; authorized additional City funding for the rehabilitation of the Eagles Building in return for public benefits; appropriated \$383,420 from the Development Rights Fund for purchase of LPAT/Housing TDRs, and appropriated \$916,580 from the General Fund.
- Ordinance 118307 (September 1996) Authorized sale of 130,012 Low Income Housing and LPAT TDRs from the City’s TDR Bank to a hotel developer. Non-financial consideration includes the rights to use of space in the hotel for events and commitments to employment and training opportunities for low-income persons in connection with the hotel project. \$833,064.00 deposited into the Low Income Housing Fund, TDR/Mitigation Subfund, and the balance deposited into the General Fund, Development Rights Subfund. \$745,462.00 appropriated for the development and preservation of Downtown low-income housing.
- Ordinance 119098 (August 1998) Authorized sale of 119,368 square feet of LPAT TDRs from the City’s TDR Bank to the owner of the Downtown YMCA, a landmark low-income housing services project. Non-cash payment: the owner of the YMCA committed to provide low-income housing, housing-related case management human services and

access to health and fitness facilities for low-income individuals for a period of 20 years and execute covenants for the preservation of the landmark structure as consideration for the purchase of TDRs from the City's Bank.

- Ordinance 120443 (August, 2001) resulted in the restructuring of the incentive provisions for commercial development in Downtown zones, including the requirement that 25 percent of the total floor area permitted above the base FAR be gained through non-housing incentive options, and the remaining 75 percent through options related to affordable housing and childcare.
- Ordinance 122054 (May, 2006) amended the Downtown Code to accommodate height and density increases in several downtown zones, and also established an increment of FAR above the base FAR that was to be gained through LEED Silver certification.
- Ordinance 124172 (June, 2013) Legislation for South Lake Union rezone, including provisions for Downtown zones that reestablish the increment of FAR above the base FAR, originally gained through certification as LEED Silver, but now to be gained through participation in the regional TDR program.

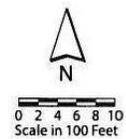
Attachment C: Map of Existing Landmark Performing Arts Theaters and Downtown Zoning



DOC1	Office Core - 1
DOC2	Office Core - 2
DRC	Retail Core
DMC	Mixed Commercial
DMR/R	Mixed Residential / Residential
DMR/C	Mixed Residential / Commercial
PSM	Pioneer Square Mixed
IDM	International District Mixed
IDR	International District Residential
PMM	Pike Market Mixed
DH1	Harborfront - 1
DH2	Harborfront - 2

Existing Landmark Performing Arts Theaters

- ① Moore Theater
- ② Paramount Theater
- ③ Eagles Temple Building/ACT Theater



DOWNTOWN ZONING

Map 1A

Downtown Zones

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 sort, including accuracy, fitness, or
 merchantability accompany this product.

Attachment D: Comprehensive Plan Goals and Policies

Cultural Resource Element

A. Community

using cultural resources to implement the urban village strategy policies

CR7 Promote the development or expansion of cultural facilities, including libraries, schools, parks, performing arts and art exhibition facilities, museums, and community centers, in areas designated as urban villages and urban centers.

CR9 Work with neighborhoods and agencies to identify resources of historic, architectural, cultural, artistic, or social significance, especially in urban centers and urban villages. Encourage neighborhood-based efforts to preserve these resources, and apply public resources where appropriate. Identify structures, sites and public views, in addition to those already recognized, that should be considered for protection measures.

B. Civic Identity

providing a sense of continuity & community through our historic legacy goals

CRG6 A city that celebrates and strives to protect its cultural legacy and heritage, to preserve and protect historic neighborhoods and to preserve, restore and re-use its built resources of cultural, heritage, architectural, or social significance in order to maintain its unique sense of place and adapt to change gracefully.

CR11 Identify and protect landmarks and historic districts that define Seattle’s identity and represent its history, and strive to reduce barriers to preservation. As appropriate, offer incentives for rehabilitating and adapting historic buildings for new uses.

defining & advancing Seattle’s place in the region & the world goals

CRG8 A city that continually builds on the strengths of its cultural resources to advance as an international cultural center.

CRG9 A city that maintains its place as the cultural center of the region, while participating as a partner in the region’s network of cultural infrastructure — universities and educational institutions, libraries, arts and heritage organizations and facilities, and creative individuals and supporters — to sustain this infrastructure and provide greater access for all.

CR17 Promote partnerships among the City and other public and private entities in the region to:

- provide mutual support for the preservation, maintenance and development of regional cultural facilities where people experience world-class cultural events; and
- make these resources visible, accessible and integrated with the community.

CR20 Because of their central location and historic role as the region’s meeting places, and the added benefits that come from having a recognized district of related activities, continue to support the concentration of regional cultural facilities in downtown Seattle and Seattle Center.

developing the economy goal

CRG10 A city that utilizes its wealth of cultural resources to promote employment, small business development, trade, and tourism and to attract businesses to the Pacific Northwest.

CR25 Recognize the economic value of Seattle’s cultural resources in attracting tourism; reinvest a share of the revenue derived from tourism to sustain and expand cultural resources.

Urban Village Element

UV9 Preserve developments of historic, architectural, or social significance that contribute to the identity of an area.

Land Use Element

C-2 Historic Districts and Landmarks

LU205 Encourage the preservation, restoration and reuse of designated historic districts and landmarks.

Economic Development Element

A Economic Development & the Urban Village Strategy policies

ED4 Use cultural resources, such as public art and historic resources, as a tool for stimulating economic development in Seattle’s neighborhoods, as these resources provide attractions that can draw people to and enhance public perception of an area.

D Business Climate policies

ED29 Support Seattle’s artists, arts organizations, and institutions because of their significant contributions to the city’s healthy business climate; their role in creating a

cultural environment that attracts other living wage employers, as well as tourists, to the region; and the substantial benefits they provide to Seattle’s

Neighborhood Planning Element

B-10 Downtown Neighborhood Plan

pre-eminent regional center goal

DT-G1 Maintain downtown Seattle as the most important of the region’s urban centers - a compactly developed area supporting a diversity of uses meeting the employment, residential, shopping, culture, service and entertainment needs of the broadest range of the region’s population.

culture & entertainment goal

ST-G3 Strive to reinforce downtown as a center of cultural and entertainment activities to foster the arts in the City, attract people to the area, create livable neighborhoods, and make downtown an enjoyable place to be shared by all. Encourage facilities for artists to live and work in downtown.

urban form goal

DT-G4 Use regulations in the Land Use Code and other measures to encourage public and private development that contributes positively to the downtown physical environment by:

1. enhancing the relationship of downtown to its spectacular setting of water, hills and mountains;
2. preserving important public views;
3. ensuring light and air at street level and in public parks;
4. establishing a high quality pedestrian oriented street environment;
5. reinforcing the vitality and special character of downtown’s many parts;
6. creating new downtown parks and open spaces at strategic locations;
- 7. preserving downtown’s important historic buildings to provide a tangible link to the past; (*emphasis added*)**
8. adequately mitigating impacts of more intensive redevelopment on the quality of the physical environment.

land use regulation policies

DT-LUP11 Provide incentives to maintain variations in building scale, create public open space, and preserve buildings and uses that are scarce public benefit resources through allowing transfer of development rights. Consistent with priorities for use of development incentives, limit the sites that may transfer development rights. Among sites eligible to transfer development rights, consider including:

1. housing with a minimum amount of residential floor area occupied by units affordable to households with incomes at or below 50 percent of median income;
- 2. Seattle landmarks in downtown areas not subject to special review district or historical district provisions; (*emphasis added*)**
3. Seattle landmarks and other historic properties within the Pioneer Square Preservation District and the International Special Review District;
4. publicly available open space meeting minimum size and other standards; and
5. sites on the same block as the receiving site in high density areas where it is desirable to retain varied building scale.

Limitations on Sending and Receiving Site Locations. Limit sending and receiving sites so as to promote development that is consistent with the development objectives of different land use districts and to promote other goals and policies of this Plan. The proportion of floor area that may be gained through TDRs from particular sources may be limited. Limit sites eligible to transfer TDRs to those that provide limited downtown resources of public benefit, such as low-income housing, designated landmark structures or historic structures in historic districts, and open space, except where TDRs are allowed to be sent to nearby lots in areas where a variable scale of development is desired.

urban design policies

DT-UDP1 Encourage the preservation, restoration and re-use of individual historic buildings and groupings of buildings threatened by development pressure through development regulations and incentives.

DT-UDP3 Provide the following development incentives to increase the attractiveness of preserving landmark structures and encourage adaptive reuse of historic resources:

Seattle Landmarks Transfer of Development Rights. Allow the transfer of development rights from designated Seattle Landmarks located in downtown areas where these resources are most threatened by development pressure. Subject transfers from designated Seattle Landmarks to limits, including limits on sending and receiving sites implementing Policy LU 11: Transfer of Development Rights, and to other appropriate conditions to promote the rehabilitation and public enjoyment of designated landmark features.

Incentives. Provisions for allowing floor area above the base should not create incentives for the demolition of designated landmark structures.

Floor Area Allowance. Within downtown mixed-use residential zones where the floor area of existing structures may exceed the density limits for non-residential use, provide an economic incentive for the use and rehabilitation of designated Seattle Landmarks by allowing the total existing floor area of a landmark structure committed to long term preservation to be occupied by permitted non-residential uses, regardless of FAR limits and without use of bonuses or TDR. Allow this incentive under the conditions that there is no reduction in the amount of floor area occupied by residential use prior to

rehabilitation nor any increase in the floor area in non-residential use beyond the total floor area of the structure prior to rehabilitation. Consider limiting this incentive to lots not benefiting from other incentives, such as TDR transfers.

Commercial Core Urban Center Village

goals

COM-G1 Maintain the Commercial Core as a major employment center, tourist and convention attraction, shopping magnet, residential neighborhood, and regional hub of cultural and entertainment activities.

policies

COM-P3 Strive to maintain the neighborhood's historic, cultural and visual resources.