



**Legislative Department
Seattle City Council
Memorandum**

Date: September 5, 2014
To: Nick Licata, Chair
Jean Godden, Vice-Chair
Tim Burgess, Member
Finance and Culture Committee
From: Martha Lester, City Council Central Staff
Subject: **C.B. 118163 – Proposal to Modify Land Use Code Incentives for Landmark Performing Arts Theaters – for September 10 Finance and Culture Committee Meeting**

Council Bill (C.B.) 118163 would amend the Land Use Code to provide additional development rights for designated Landmark performing arts theaters (LPATs) that meet eligibility criteria, which credits could be sold by the theaters as TDR (transferable development rights) to generate revenue. The bill was introduced on July 28 and referred to the Finance and Culture Committee. A public hearing is scheduled for the September 10 committee meeting. No vote is anticipated for that meeting.

This memo provides background, describes the proposed legislation, and describes several issues. Based on the issues presented on pages 5-6 (the poor match between the source of the problem and the proposed remedy, the likely effects on other parts of the incentive zoning program, and possible unintended consequences), I recommend the Council not pass C.B. 118163.

Please let me know if you have any questions or would like additional information.

Background on Theaters

Several historic performing arts theaters exist in or near downtown Seattle. Most often, the list includes the following five theaters:

- Paramount Theater
- Eagles Auditorium / ACT
- Moore Theater
- Fifth Avenue Theater
- Town Hall

Each of these is in a slightly different situation vis-à-vis location, ownership, and Landmark status.

Location: The first four theaters are in “Downtown” as defined in the Comprehensive Plan and the Land Use Code. The Paramount, Eagles Auditorium / ACT, and the Moore are in the Downtown Mixed Commercial (DMC) zone. The Fifth Avenue is in the Downtown Office Core 1 (DOC1) zone. Town Hall is not in “Downtown” – it is in the First Hill / Capitol Hill Urban Center, and is zoned Highrise (HR), which is a residential zone. This proposed legislation affects only theaters in a Downtown zone.

Ownership: Three of the theaters – the Paramount, Eagles Auditorium / ACT, and Town Hall – are owned by the same entity that operates the theater. The Moore, on the other hand, is leased by the owner to Seattle Theater Group, which is the operator. The Fifth Avenue is owned by the University of Washington (UW), and is leased to the theater operator.

Landmark status: Three of the theaters – the Paramount, Eagles Auditorium / ACT, and the Moore – are designated City Landmarks, with controls-and-incentives ordinances in place. Having a controls-and-incentives ordinance means that the City has imposed controls (to which, in almost all cases, the owner has agreed) to preserve specified components of the building, and the City has granted incentives to the property owner in return. Changes to the protected components are allowed only after the building owner obtains a Certificate of Approval from the City’s Landmarks Preservation Board.

These three theaters – the Paramount, Eagles Auditorium / ACT, and the Moore – are the only theaters that currently fall within the Land Use Code definition of “Landmark performing arts theater” (LPAT).

Town Hall has been designated as a City Landmark by the Landmarks Preservation Board (the first step). I understand that a controls-and-incentives ordinance has been negotiated and is undergoing final review, but no ordinance has been submitted to or passed by the Council yet.

The Fifth Avenue Theater is not a City Landmark and has no controls-and-incentives ordinance. The City attempted to designate the Fifth Avenue Theater as a City Landmark, but the UW sued to challenge the City’s authority to designate a Landmark in the UW’s downtown Metropolitan Tract and won.

Note that other types of designation (other than City Landmark designation with a controls-and-incentives ordinance) exist, but may not provide any actual protection against a building being altered or demolished. For example, a structure may be included on the National Register of Historic Places. Inclusion on the National Register recognizes historic value and may make a building eligible for some incentives, but it does not require the owner of an historic structure to make any commitment to preserve the building.

Downtown Historic Theatre District

In December 2011, the Council adopted Resolution 31341, designating a “Downtown Historic Theatre District.” The resolution recited criteria for a theater to be included in the District, and stated that the five theaters listed above all meet the criteria and constitute the Downtown Historic Theatre District. Note that the extent of “Downtown” for the Downtown Historic Theatre District is larger than “Downtown” as defined in the Comprehensive Plan and Land Use Code.

An Implementation Plan was attached to the resolution, identifying a list of strategies by which the City “may be able to assist in exploring ideas, programs, and initiatives with the Downtown Historic Theatre owners and operators that would support the promotion, preservation, and maintenance of the Downtown Historic Theatre District and its constituent venues.”

One strategy included in the list is “Review City zoning, financing, and development incentives and other policies for opportunities to support Downtown Historic Theatres’ operations, renovations, or expansion.” The proposal embodied in C.B. 118163 arose in part out of this statement in the resolution.

Background on Land Use Code Provisions for Landmark Theaters

As you know, the Land Use Code (Seattle Municipal Code Title 23) includes complex incentive zoning provisions. The code has included special benefits for LPATs since the mid-1980s. There are two existing provisions related to LPATs in Downtown zones:

- TDR: An LPAT may sell unused commercial development rights – sell them as transferable development rights (TDR) to a commercial development on another site.

- **Bonus:** An LPAT is eligible for a “bonus” under which it could make certain eligible capital improvements to its structure, DPD would review those improvements and convert them to a floor area amount of “value,” and a proposed new commercial development Downtown would pay the LPAT to gain the additional floor area in the new commercial development.

The TDR mechanism has been used successfully. Two of the three LPATs (Paramount and Eagles Auditorium / ACT) have sold all of their development rights. The Paramount has sold 136,144 square feet of LPAT TDR, and the Eagles Auditorium / ACT has sold 105,000 square feet of LPAT TDR.

(Note that the Paramount qualifies not only as a “Landmark performing arts theater” (LPAT) but also as a “major performing arts facility” (MPAF) (a Land Use Code category created primarily for Benaroya Hall). Thus the Paramount was also eligible for TDR due to its MPAF status, and it has sold 34,036 square feet of MPAF TDR.)

The Moore has not sold any TDR.

The bonus mechanism has not ever been used. It is seen as cumbersome and restrictive, and has uncertainties about how it would be administered.

Between 1993, when the Council amended the Land Use Code to target incentives for LPATs and MPAFs, and 2001, a substantial share of the extra floor area in new commercial development was gained through use of these incentives:

Square Feet of Extra Floor Area in New Commercial Developments Gained via Various Incentives

322,000 sf	27%	affordable housing TDR and bonus
317,000 sf	27%	MPAF TDR
165,000 sf	14%	LPAT TDR
2,000 sf	0%	other Landmark TDR
352,000 sf	30%	on-site amenity bonus
<u>18,000 sf</u>	<u>2%</u>	childcare bonus
1,176,000 sf	100%	

Later Land Use Code amendments passed in 2001 reprioritized the programs to emphasize affordable housing, and in most zones limited non-housing options to no more than 25 percent of the total extra floor area in a new commercial development. Between 2001 and 2012, extra floor area was gained as follows:

1,313,000 sf	70%	affordable housing TDR and bonus, and childcare bonus
160,000 sf	8%	MPAF TDR
35,000 sf	2%	LPAT TDR
2,000 sf	0%	other Landmark TDR
35,000 sf	2%	within-block TDR
142,000 sf	8%	open space TDR
<u>198,000 sf</u>	<u>10%</u>	on-site amenity bonus
1,884,000 sf	100%	

Between 1993 and 2012, the TDR transferred from the Paramount and Eagles Auditorium / ACT represents 9 percent of all extra floor area gained by all new commercial development. If the MPAF TDR from Benaroya Hall is included, the TDR transferred from the three theaters represents about 23 percent of all extra floor area gained.

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Operators of the historic theaters approached DPD to explore Land Use Code changes that would benefit the theaters. Initially, the theater advocates suggested modifying the provisions governing the bonus system to broaden the zones in which the bonus is available, broaden eligibility of structures, broaden the types of improvements eligible for the bonus, and expand the ability of new commercial development to gain bonus floor area from an historic theater.

DPD considered this request, and concluded that even with modifications, the bonus program would still be of limited use to the theaters. DPD suggested instead that perhaps the TDR program could be expanded to benefit the theaters, and the theaters agreed to such an approach.

Councilmember Licata met with the theater advocates, and based on their discussions, he requested that DPD prepare legislation. DPD analyzed the issues, drafted legislation, conducted SEPA review, and prepared a Director's Report. However, neither DPD nor the Mayor formally submitted this as proposed legislation to the Council. It is instead Council-generated legislation sponsored by Councilmember Licata. A preliminary briefing on an earlier draft of this legislation was held in the Planning, Land Use and Sustainability (PLUS) Committee on September 19, 2013.

In a nutshell, C.B. 118163 would increase by up to 4 the "base FAR" (commercial base floor area ratio) of an eligible LPAT – the amount of development allowed on the site of an LPAT – thereby creating more TDR than an LPAT could sell. If an increase of 4 FAR would cause an LPAT to exceed the maximum FAR specified in the Code for that zone, then the increase would be reduced below 4 FAR so as not to exceed the maximum. The premise for granting an increase in base FAR is that the City recognizes the contributions of the historic theaters – the character of the Landmark structures, the owners' commitment to preservation as evidenced by the controls-and-incentives ordinance, the theaters' contribution to evening and weekend activity downtown, and more.

The C.B. lists criteria for an LPAT to be eligible for the increase in base FAR, including the following (this is a summary – see pages 2-3 of the bill for the details):

- Located in a DOC1, DOC2, DRC, or DMC zone;
- Built before 1930;
- Contains performing arts theater space with seating capacity for at least 800;
- Designated Landmark that is subject to a controls-and-incentives ordinance;
- Performing arts theater use is ensured by binding covenants for at least 40 years;
- Property owner has a contract with one or more theater groups for regular performances; and
- Use of structure for live theater performances will contribute sufficiently to the presence of live theater in the Downtown Historic Theatre District to support the desired level of activity in the area.

In practice, if the theaters meet all the listed criteria, then two of the three existing LPATs in Downtown (the Paramount and Eagles Auditorium / ACT) would get an increase in base FAR of 4, while the Moore would get an increase in base FAR of 2 (because this would cause the Moore to reach the maximum FAR for the zone in which it is located).

This increase in base FAR would increase available TDR by 266,584 square feet. This is in addition to the existing development rights that the Moore has but has not sold (116,100 square feet).

C.B. 118163 would also repeal the existing bonus provisions available to LPATs, which have never been used and are generally regarded as not workable.

Issues

At the September 19, 2013, PLUS Committee briefing, Councilmembers identified several issues to be analyzed. These and others are presented briefly below. If you would like more information about any of these, please let me know.

- A. Land use remedy for non-land use problem: The challenges that Seattle’s historic theaters face are similar to those faced by many arts and cultural institutions here and elsewhere, and they are largely *financial* challenges. In discussions to date on this proposed legislation, I have not heard that *land use* regulations have caused these problems for Seattle’s historic theaters. Given that the challenges are not related to land use, it may not be appropriate to try to fashion a land use strategy to address the challenges. The potential land use “remedy” is not really related to the source of the financial problems, and may cascade into unintended land use consequences.

In addition, the City’s land use regulatory authority is constrained by state and federal law. Using land use strategies to address non-land use problems may raise legal issues.

- B. One-time strategy for ongoing financial challenges: The challenges facing the historic theaters are *ongoing* challenges – primarily identifying sufficient revenue to cover operating, maintenance, and preservation costs. C.B. 118163 would provide a *one-time* infusion of TDR that a qualifying theater could sell. But after selling the TDR and spending the proceeds, the theater would face the same ongoing costs of operations, maintenance, and preservation, and there would be no ongoing revenue. What would the theaters do then?
- C. Part of complex incentive zoning program: The City’s incentive zoning program is complex with many competing priorities. Over the years, the Council has periodically revised its priorities – for example, requiring that commercial developers attain 75 percent of their extra floor area via housing incentives. Each time the Council changes the incentive zoning rules for one sector or another, the effects ripple through the system.

Looking back, between 2001 and 2012, under the current system of limiting non-housing options to no more than 25 percent of the total extra floor area in new commercial development, the total square footage gained via all non-housing options was 571,000 square feet, or an average of about 52,000 square feet per year. This proposed change for LPATs alone would add 266,584 square feet of TDR – a large amount in comparison.

Should the Council first assess how this increase would fit into the larger incentive zoning program? Would passing this bill indicate that the Council regards LPATs as more important than competing features such as affordable housing, open space, non-theater Landmarks, and other bonus-able features? DPD is currently engaged in a comprehensive, city-wide review of the incentive zoning program, focusing on affordable housing, historic preservation, open space, and other elements. Perhaps this request to increase the benefits for LPATs should be folded into that broader review.

- D. Effect of increasing supply of TDR on TDR value: DPD estimates there is a current supply of about 6 million square feet of available TDR from Landmarks and public open space in Downtown, and from South Downtown Historic TDR. This does not include other categories, including within-block TDR, TDR from newly-designated Landmarks, or TDR from new public open spaces. C.B. 118163 would add more TDR to the market, and by increasing the supply of TDR may reduce the price that TDR can command in the marketplace.
- E. No requirement that TDR proceeds be spent to preserve the structure: If a building owner sells TDR, there are no restrictions on how the owner spends the proceeds. The owner of an LPAT would still

have to preserve the theater as required by the controls-and-incentives ordinance, but there is no guarantee that the TDR proceeds would be reinvested in the building. This might be a particular issue for an LPAT that is not owned by the theater operator, such as the Moore Theater.

- F. Possible unintended consequences: Enacting Land Use Code amendments to benefit the small group of LPATs may result in unintended consequences. Additional TDR for LPATs may mean that other holders of TDR are unable to sell them for a reasonable price, or to sell them at all. Other entities may lobby for similar benefits – e.g., other arts or culture spaces in Downtown, other theaters, non-Landmark facilities, structures housing other City priorities such as social service providers, or others. The Council should recognize these possibilities, although it is admittedly impossible to anticipate all possible consequences.

Recommendation

Because of the poor match between the source of the problem and the proposed remedy, the likely effects on other parts of the incentive zoning program, and possible unintended consequences as described above, I recommend the Council not pass C.B. 118163.

cc: All Councilmembers