

**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

AN ORDINANCE relating to land use and zoning; amending subsection 23.49.156.A of the Seattle Municipal Code to clarify bonus allowances in the Living Building Pilot Program.

WHEREAS, on December 14, 2009, the Seattle City Council adopted Ordinance 123206, establishing a Living Building Pilot program; and

WHEREAS, the Council intended for the Living Building Pilot Program to be one of the City's Climate Strategies to fundamentally reshape Seattle's building and transportation systems for a fossil-free future; and

WHEREAS, Seattle's buildings produce over one-third of the city's greenhouse gases and, reducing these building emissions is critical in becoming a carbon-neutral community by 2050; and

WHEREAS, as part of the Living Building Pilot Program, projects explore fundamentally different approaches to building design, construction, and operations, and Program applicants are eligible for additional height and/or floor area ratio bonuses as well as departures from the Land Use Code; and

WHEREAS, early design guidance for project 3036043-LU was applied for on February 2, 2020 under 3034374-EG. A Master Use Permit for the project was applied for on August 4, 2020, and was reviewed by the design review board and approved by the Director of the Department of Construction and Inspections on August 14, 2023, granting certain departures under the Living Building Pilot program including additional height; and

WHEREAS, the Master Use Permit decision 3036043-LU, was approved on August 14, 2023 and appealed by Belltown Livability Coalition to the Seattle Hearing Examiner along

1 with a request for code interpretation on August 28, 2023, alleging that the subject lot  
2 was not eligible for additional height under the Living Building Pilot Program because  
3 the height limitation was constrained by a lot size restriction codified in subsection  
4 23.49.156.A of the Seattle Municipal Code (SMC); and

5 WHEREAS, as part of the appeal, Seattle Department of Construction and Inspections (SDCI)  
6 interpreted SMC 23.49.156.A.1 in light of the Living Building Pilot Program code  
7 provisions including SMC 23.40.060 and SMC 23.49.008.F and concluded that the  
8 subject development project could take advantage of height bonuses to 175 feet without a  
9 minimum lot size of 19,000 square feet under the Living Building Pilot Program; and

10 WHEREAS, on January 4, 2024, the Hearing Examiner disagreed with SDCI’s interpretation,  
11 stating that “The legislative body set the minimum lot size at 19,000 square feet for  
12 buildings over 145 feet. Regardless of policy reasonableness, only the City Council has  
13 authority to enact code. The Examiner only interprets that code. The legislative body  
14 could provide set criteria so the Department could determine appropriate lot sizes when  
15 specified criteria are met or waive the lot size requirement entirely for living buildings. It  
16 has not done so”; and

17 WHEREAS, the Examiner’s determination would limit the intent of the Living Building Pilot  
18 Program and constrain the City’s goal of providing more housing, especially family-sized  
19 housing; and

20 WHEREAS, SDCI proposes this code amendment to explicitly authorize building height in  
21 excess of 145 feet in the Downtown Mixed Residential zone on lots smaller than 19,000  
22 square feet in size to enable the City to allow the proposed 182 units of housing in the  
23 Downtown Urban Center, including ten three-bedroom units as proposed in Master Use

1 Permit 3036043-LU and to encourage additional lots in the Downtown Urban Center to  
2 apply for the Living Building Pilot Program; and

3 WHEREAS, this ordinance is necessary to make clear that the City Council intends that the  
4 Living Building Pilot Program may allow height bonuses for buildings in the LBPP  
5 located in the downtown mixed residential/commercial zone regardless of lot size and  
6 incentivize additional properties in this zone to join the LBPP; and

7 WHEREAS, SDCI evaluated the environmental impact of the proposed ordinance, prepared a  
8 threshold determination under the State Environmental Policy Act (SEPA) and sought  
9 public comment on the ordinance; however, the ordinance is exempt from administrative  
10 or judicial appeal under RCW 36.70A.070(2) for certain development regulations and  
11 non-project actions that “increase housing capacity, increase housing affordability, and  
12 mitigate displacement”; and

13 WHEREAS, this ordinance is exempt from administrative or judicial appeal because the  
14 ordinance will increase housing capacity, including at least 182 units, ten of which are  
15 family-sized units as well as anticipated additional units in the zone; NOW,

16 THEREFORE,

17 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

18 Section 1. Subsection 23.49.156.A of the Seattle Municipal Code, which section was last  
19 amended by Ordinance 125371, is amended as follows:

20 **23.49.156 Downtown Mixed Residential, minimum lot size**

21 A. This subsection 23.49.156.A applies to DMR zones outside of South Downtown.

22 1. The minimum lot size is 19,000 square feet for any structure over 145 feet high,  
23 except that a project in a DMR zone that is part of the Living Building Pilot Program pursuant to

1 Section 23.40.060 and uses a height bonus pursuant to subsections 23.40.060.C.5, 23.40.070.C.5,  
2 or 23.49.008.F, is exempt from this requirement. Pursuant to subsection 23.76.026.E, an  
3 applicant may elect to use this exemption even if the applicant’s application vested before the  
4 effective date of this ordinance.

5           2. To meet the minimum lot size requirement, a lot may be combined with one  
6 or more abutting lots, whether occupied by existing structures or not, provided that:

7                   a. The total area of the combined lots meets the minimum lot size  
8 requirement;

9                   b. All lots have frontage on the same avenue;

10                  c. Any existing structure does not exceed a height of 145 feet;

11                  d. The lot coverage of both the proposed and any existing structures does  
12 not exceed applicable lot coverage limits in Section 23.49.158; and

13                  e. The fee owners of the abutting lot(s) execute a deed or other  
14 agreement, recorded with the King County Recorder's Office as an encumbrance on the  
15 abutting lot(s), that restricts future development of the abutting lot(s) to a maximum height of  
16 145 feet for the life of the proposed structure, and that precludes the use of the abutting lot(s)  
17 in combination with any other abutting lots for purposes of meeting the minimum lot size  
18 requirements for any other lot.

19                                   \* \* \*

1           Section 2. This ordinance shall take effect as provided by Seattle Municipal Code  
2 Sections 1.04.020 and 1.04.070.

3           Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
4 and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of  
5 \_\_\_\_\_, 2024.

6 \_\_\_\_\_  
7           President \_\_\_\_\_ of the City Council

          Approved /   returned unsigned /   vetoed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

8 \_\_\_\_\_  
9           Bruce A. Harrell, Mayor

10          Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

11 \_\_\_\_\_  
12          Scheereen Dedman, City Clerk

13 (Seal)