

Director’s Report and Recommendations

Incentive Zoning – Open Space and Landmark Preservation

Introduction

In September 2008, the Mayor submitted a proposal to the City Council that would have amended the Land Use Code to create incentive zoning programs in particular zones or areas. Incentive zoning allows additional floor area to be accommodated on a site in exchange for public benefit. In addition to floor area bonuses for providing workforce housing, other incentives include provisions that allow a developer to provide open space or preserve landmark structures. Other options would allow unused development rights to be transferred from lots occupied by uses determined to be a public benefit, such as a designated landmark structure or a site improved as a public open space. This form of incentive is referred to as transfer of development rights (TDR) or transfer of development potential (TDP). Different terms are used in anticipation of the need to distinguish among transfer programs for different parts of the city or for different types of floor area.

Land Use Code provisions governing incentive zoning would not change current zoning standards relating to height or density. However, when development regulations for zones or areas are revised that would allow additional housing floor area, Incentive Provisions, Chapter 23.58A, would apply, if a developer chooses to take advantage of the additional development capacity. It is anticipated that in the future, provisions will be added for incentives for additional capacity for nonresidential (commercial) floor area as well.

In December 2008, the City Council adopted Ordinance 122882 that adopted part of an incentive zoning proposal. The Council adopted provisions that addressed incentives for workforce housing and added a framework for incorporating other public benefits, but did not go so far as to include specific provisions for open space and landmark preservation. This proposed legislation would add those provisions to the Land Use Code, Chapter 23.58A, Incentive Zoning, and update or clarify provisions for workforce housing incentives.

Background

The concept of incentive zoning has been used in Seattle for a many years to advance public benefit goals. Major milestones include:

- Incentive zoning downtown has preserved and produced hundreds of new housing units and generated millions of dollars to support the production of much more.
- Downtown’s Commercial Bonus Program was amended in 2001 to strengthen the emphasis on affordable housing incentives, update bonus options, and apply more uniform and consistent requirements for commercial development adding extra floor area in downtown zones.
- Washington State House Bill (HB) 2984 was adopted in 2006 and amended in 2009, providing express authority for local jurisdictions to enact or expand affordable housing incentive programs.
- A Residential Bonus Program was established in 2006 for residential development downtown: residential developers in DOC1, DOC2, and DMC zones with heights

exceeding 160 feet may develop floor area above the base height limit for residential use only, if they provide affordable housing or a payment in lieu of providing the affordable housing.

- City Council adopted Resolution 30939 in December, 2006, affirming the Council's and Mayor's support for the use of new affordable housing incentive program authority; affirming support for the use of affordable housing incentive programs in rezones or changes to development standards that increase development potential.
- City Council adopted Ordinance 122882 in 2008, establishing an incentive zoning chapter (23.58A - Incentive Provisions) in the Land Use Code with provisions for adding residential capacity when providing workforce housing.

Incentive zoning programs operate by allowing a development density bonus, such as increasing floor area ratios (FAR) or allowing additional height, that would increase development potential in exchange for the providing a public benefit, such as affordable housing. Incentive zoning can also be used for other public benefits in addition to housing, such as open space or other public amenities.

Since Seattle's incentive zoning program is a voluntary program, cost of compliance with bonus conditions must be set to ensure that there is a balance between the cost/benefit of the housing or amenities provided and an adequate economic benefit to the developer to encourage use of the bonus incentive. Incentive zoning may also include transfers of development rights (TDR) or development potential (TDP). Allowing the transfer of development rights recognizes the value of buildings that may be historic or otherwise deemed important to a community or property owner. The development rights, the difference between what is built and what could be built, can be transferred to another site, therefore, helping to perhaps save the building from future demolition. TDR has been used with success in preserving historic structures Downtown.

Although incentive zoning was first implemented with great success in downtown zones, it has also been used to a lesser extent in both the South Lake Union area and in the Highrise multifamily zone on First Hill. The proposal would not change incentive zoning programs as they apply downtown, but is intended to be applied to zones outside downtown in the future. The proposal provides a framework for incentive zoning that could be applied incrementally to other neighborhoods when zoning or development standards are changed to allow significant additional development capacity. Over the next 20 years, Seattle expects to add up to 100,000 residents and 84,000 jobs. Incentive zoning can play an important role in the city's ability to accommodate expected growth while also addressing the growing need for affordable housing, new or expanded open spaces, and preservation of historic structures.

Relationship to the Comprehensive Plan

Comprehensive Plan policies support the use of zoning incentives for public benefits.

The goals and strategies laid out in the Comprehensive Plan's Urban Village, Land Use and Neighborhood Planning Elements were the basis for the proposed incentive zoning program. There are specific policies about providing zoning incentives that are advanced by this proposal:

Land Use Policy 5 (#2) -- *Seek opportunities to incorporate incentive programs for development of housing affordable to lower-income households into legislative rezones or changes in development regulations that increase development potential. Consider development regulations that condition higher-density development on the provision of public benefits when such public benefits will help mitigate impacts of development attributable to increased development potential.*

Land Use Policy 102 -- *Use zoning incentives and other development-related tools to provide for, or preserve, public benefits. Public benefits or other features may include housing affordable to low-and moderate income households, preservation of historic resources or provisions of new public open space.*

The Incentive Zoning Program

The proposal would amend Chapter 23.58A of the Land Use Code, governing incentive zoning. The amended Chapter would be organized as follows:

Chapter 23.58A Incentive Provisions

<i>Subchapter I General provisions</i>	
23.58A.002 Scope of chapter; general rules	Adopted in Ordinance 122882
23.58A.004 Definitions	Adopted in Ordinance 122882 Proposed to be updated/clarified with this bill
23.58A.006 Permitting conditions—Incentive Plans	Adopted in Ordinance 122882
23.58A.008 Limits on use of incentives	Adopted in Ordinance 122882
<i>Subchapter II: Extra residential floor area</i>	
23.58A.010 Scope of subchapter	Adopted in Ordinance 122882
23.58A.012 Methods to achieve extra residential floor area	Adopted in Ordinance 122882
23.58A.013 Affordable housing incentive program: purpose and findings	Adopted in Ordinance 122882 Proposed to be updated/clarified with this bill
23.58A.014 Bonus residential floor area for affordable housing	Adopted in Ordinance 122882 Proposed to be updated/clarified with this bill
23.58A.016 Bonus residential floor area for amenities	Proposed to be added to 23.58 with this bill
23.58A.018 Transfer of residential development potential	Proposed to be added to 23.58 with this bill

Key elements of the program include:

- Voluntary use of incentive zoning (the developer has the choice to develop under as-of-right zoning limits without seeking the benefits of incentive zoning);
- Performance and payment options– the developer may choose to provide open space (performance option) or make a payment in-lieu of providing the open space (payment option);
- The use of incentive zoning to allow extra residential floor area as follows:

In eligible zones with height limits up to 85’, all extra floor area would be achieved by providing for affordable housing using the performance option;

In eligible zones where height limits are greater than 85’, at least 60% of the extra floor area would be required to be achieved through an affordable housing performance or payment option; zoning for particular areas could allow up to 40% of extra floor area to be gained through other options including public open space and a transfer of residential development potential (“TDP”) from landmarks or open space.

Updates/Clarifications to Workforce Housing Provisions

In 2009 the state enacted revisions to RCW 36.70A.540 related to workforce housing incentive programs. Amendments are proposed to ensure consistency between the Land Use Code (Sections 23.58A.004, 23.58A.013 and 23.58A.014) and state law without altering the intent of the original program. The primary changes are intended to update definitions and to allow a developer to provide affordable housing or contribute to affordable housing in a wider geographic area. This greater flexibility will help the City better achieve program goals.

Open Space and Landmark Preservation Options and Transfer of Development Potential for Extra Residential Floor Area

Seattle neighborhoods, particularly in older parts of the city often contain designated landmarks or structures that may be eligible for landmark designation. The proposed amendments would extend the option to gain additional development potential by transferring development potential from a designated landmark to developers seeking to increase development potential on a site.

The proposed amendments also include provisions to allow additional floor area or height in exchange for providing public open space (including green street setbacks on designated green streets) An in lieu of payment option is also available for an open space bonus. The proposed program would also include provisions to allow additional floor area to be gained by acquiring development rights transferred from open space locations within the community, similar to the program for protecting landmark structures.

The open space bonus is intended to allow increased density for projects that mitigate the impacts of added density on open space in the area. The impact is measured in relation to goals for usable open space in urban villages and for “breathing room” that are established in the Comprehensive Plan. These goals are translated into the amount of open space amenity, 150

square feet per housing unit, needed to mitigate the demand created by each additional household above the base density limit. Given the open space goals and standard assumptions about household density and unit sizes,. 1.4 people on average are anticipated to occupy a unit with a net area of 850 square feet. For gross square footage, the applicable floor area is 1,062.5 gross square feet, for a density of 1.32 people per 1,000 square feet. DPD's analysis shows that 0.141 square feet of open space is needed per gross residential square foot. This translates into a ratio of one square foot of open space to meet the demand associated with seven square feet of residential floor area ($1062.5/150 = 7.08$).

Two types of open space amenities are eligible for a bonus:

- 1) Neighborhood open space; and
- 2) Green street setback.

The neighborhood open space is generally the larger of the two amenities, and includes standards for size, location, and design that promote access and flexible use. The green street setback is eligible for a bonus only on lots abutting a designated green street. This amenity is a continuous, landscaped setback area that abuts the green street property line and is designed to complement green street improvements and allow for public access. These amenities are intended to provide both usable open space for future residents in the area and to introduce greenery and maintain access to light and air in dense urban neighborhoods.

Additional bonuses or other sending sites for transfer of development potential could be added to the Code in the future as part of a planning process undertaken in individual areas or neighborhoods.

TDP

Currently, in the Highrise (HR) zone, additional height may be gained through actions related to historic preservation or contributions to public open space. However, there is no method prescribed for determining the amount of bonus floor area that one can achieve through application of this bonus. Consequently, the bonus currently requires a case-by-case negotiation. Using TDP to provide the incentive for historic preservation and open space amenities will provide a consistent mechanism for allowing extra floor area to be added to a project by allowing the transfer of a square foot of unused development potential from the landmark or open space lot for each added square foot of floor area on the project site (receiving lot).

An eligible sending lot for landmark TDP must be a lot that includes a designated Seattle Landmark structure. The structure on the sending lot must be rehabilitated and maintained as required by the Landmarks Preservation Board. An open space lot must meet specific criteria related to the location, size, access, and maintenance to be eligible as a sending lot for open space TDP.

Recommendation

The Director recommends adoption of the proposed Land Use Code amendments.