Director's Report and Recommendations – Workforce Housing Incentive

Broadening Incentive Zoning in Seattle
September 10, 2008

Introduction

Mayor Nickels is proposing amendments to the Land Use Code to create an incentive zoning program. The proposed Code Chapter would not change current zoning standards relating to height or density. When development regulations for zones or areas are revised that allow additional housing or nonresidential (commercial) floor area, the new Incentive Zoning Chapter (23.58A) would apply, if developers choose to take advantage of the additional development capacity.

In addition to floor area bonuses for providing public amenities, such as workforce housing, other incentives include provisions that allow a developer to acquire unused development rights 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.

Incentive zoning has the potential to:

- Encourage growth where it is most appropriate and reduce development pressures on fragile natural environments and low-density, single-family areas;
- Promote housing affordability; and
- Encourage other benefits to serve growth such as new open spaces and landmark preservation.

Background

The Need for Workforce Housing: Moderate-income wage earners increasingly find themselves priced out of the housing market. One of Seattle's housing goals is to have a range of housing opportunities so people of different means are able to afford to live in the city. Seattle has a long history of helping to meet the housing needs of poor or low-income earners. The majority of Seattle's housing funds are targeted for development and preservation of housing for extremely low-income households (0-30% of median income), and nearly all local, state, and federal funds must be used for housing for households with incomes below 60% of the area median income, despite the fact that Seattle housing prices are also out of reach for most individuals and families with more moderate incomes. Over the past 20 years, through Housing Levies and other programs, nearly 10,000 homes have been created for those earning up to $50,000 a year. Affordable zoning incentive programs are part of a broader strategy to help fill the gap between subsidized housing and the higher-end market rate housing that is currently being produced.

There is a significant need for housing for moderate income households. To address this, the incentive zoning proposal targets households at 80% of median income for rental units and 100% of median income for ownership units.*

** To ensure consistency with State law, households with moderate incomes, as described above, are considered "low-income" for the purposes of RCW 36.70A.540.*

<u>The Concept of the Incentive Zoning Program</u>:
Incentive zoning has been used in Seattle for a number of decades to help achieve affordable housing and other public benefit goals. Some of the milestones include:

- Incentive zoning has been in place for over twenty years in downtown zones, and has produced hundreds of new housing units and generated millions of dollars to support the development of many more.
- Downtown's Commercial Bonus Program was amended in 2001 to apply more uniform and consistent requirements to commercial development throughout office core and mixed commercial (DOC 1, DOC 2 and DMC) zones.
- Washington State House Bill (HB) 2984 was adopted in 2006, 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 Downtown zones may develop floor area above the base height limits for residential use only, if they provide affordable housing or payment in lieu.
- 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.

Incentive zoning programs for affordable housing operate by allowing a development density bonus, such as increasing floor area ratios (FAR) or allowing other modifications to zoning requirements that would increase development potential in exchange for the production of affordable housing on or off site (performance option). This requirement may also be met by payment into a fund administered by the City for the purpose of supporting the construction of affordable housing units within a specified area (payment in-lieu option). Incentive zoning can also be used to provide for other public benefits in addition to housing, such as open space or other public amenities.

Since this is a voluntary program, costs 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 while ensuring that there will be 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). This recognizes the value of buildings that may be historic or otherwise deemed important to a community. The development rights could be transferred to another site, therefore, helping to save the building from future demolition. TDR has been used with success in preserving historic structures under Downtown zoning provisions.

Incentive zoning was first implemented with great success in downtown zones, as well as to a lesser extent in 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 multifamily zones, including the Highrise multifamily zone on First Hill. The proposal would provide 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 100,000 residents and 84,000 jobs. Incentive zoning can play an important role in the city's ability to accommodate this 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 affordable housing and other 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 for affordable housing (adopted by the City Council in 2006) and protecting the environment (including responding to the impacts of climate change) that are advanced by 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.*

Housing Policy 34 -- *Promote the continued production and preservation of low-income housing through incentive zoning mechanisms, which include density and height bonuses and the transfer of development rights. Consider expanding the use of incentive zoning for affordable housing in neighborhoods outside downtown, particularly in urban centers.*

The proposed amendments are consistent with land use, housing and environmental policies, including those most directly related to incentive zoning.

The Incentive Zoning Program

The proposed amendments to incorporate incentive zoning would be contained in a new Chapter 23.58A of the Land Use Code. The new Chapter would be organized as follows:

Chapter 23.58A Incentive Provisions

Subchapter I General provisions

23.58A.002 Scope of chapter; general rules
23.58A.004 Definitions
23.58A.006 Permitting conditions—Incentive Plans
23.58A.008 Limits on use of incentives

Subchapter II: Extra residential floor area

23.58A.010 Scope of subchapter
23.58A.012 Methods to achieve extra residential floor area
23.58A.013 Affordable housing incentive program: purpose and findings
23.58A.014 Bonus residential floor area for affordable housing
23.58A.016 Extra residential floor area for amenities
23.58A.018 Transfer of residential development potential

Subchapter III Extra nonresidential floor area

23.58A.020 Scope of subchapter
23.58A.022 Methods to achieve extra nonresidential floor area
23.58A.024 Bonus nonresidential floor area for affordable housing and child care
23.58A.026 Bonus nonresidential floor area for amenities
23.58A.028 Transfer of development rights

Key elements of the proposed program include:

- Use of incentive zoning would be voluntary (the developer has the choice to develop under as-of-right zoning limits without seeking the benefits of incentive zoning);
- Use of incentive zoning includes performance and payment options for housing and identified other public benefits – the developer may choose to provide affordable housing (performance option) or make a payment in-lieu of providing the housing (payment option);
- Where height limits in eligible zones are 85' or less, only the housing performance or payment in-lieu option may be used to gain floor area above the base;
- Use of incentive zoning may allow extra residential or nonresidential (commercial) floor area as follows:

  Extra residential floor area:

  - In eligible zones where height limits are greater than 85' at least 60% of the extra floor area must be achieved through provision of affordable housing or payment in lieu; zoning for particular areas could allow up to 40% of extra floor area to be gained through other options including bonuses for public open space and transfer of residential development potential ("TDP") from landmarks or open space.

Extra nonresidential (commercial) floor area:

- In eligible zones where height limits are greater than 85', 75% of the extra floor area must be achieved through provision of affordable housing and child care (or payments in lieu) or the use of transfer of development rights (TDR) from housing; 25% of extra floor area must be gained through other bonus options including public open space or via TDR mainly from landmarks or open space.

<u>Affordable Housing Options for Extra Residential Floor Area</u>

Summary of the housing program for extra residential floor area:

1. A minimum of 11% of net bonus square feet (an efficiency factor of 80% is applied to gross bonus floor area to account for areas such as elevator lobbies and mechanical rooms) must be provided as affordable housing meeting specified conditions; or a payment made in lieu of providing the affordable housing: a maximum of $18.94/sq.ft. and a minimum of $15/sq.ft. of net extra floor area;
2. Affordable housing must be maintained as affordable for a minimum of 50 years; and
3. Income, rent, and sales price restrictions will apply as follows:
    - Rental: income of residents not to exceed 80% of median income; monthly rents, including tenant paid basic utilities, are not to exceed 30% of maximum eligible household monthly income;
    - Homeownership: income of residents not to exceed 100% median income; the Housing Director must determine that the proposed housing sale price is affordable for income-eligible households, generally aiming for monthly housing costs to not exceed 35% of maximum eligible household monthly income.

When changes to zoning include incentive provisions to allow extra residential floor area, developers will have the option of exceeding base height or density limits, or both, if they include housing units that are affordable to moderate-wage workers in their developments (performance option). At the developer's discretion, a financial contribution may be made to a housing account established for this purpose, in lieu of providing the housing (payment option).

Under the performance option, the affordable housing obligation totals 11% of a minimum of 60% of the net bonus floor area when zoned height limits are greater than 85' (the 11% obligation applies to 100% of the net bonus floor area if the zoned height limit is 85' or less). The developer may choose to provide the required affordable units either on- or off-site, either directly or through an approved contribution of money or property to another developer's affordable housing project.

If a developer chooses the payment option, the payment amount per square foot of net extra residential floor area is calculated based on a formula outlined in the code, but must be a minimum of $15.00 and maximum of $18.94.

Affordable units produced with developer contributions would be built or rehabilitated in the following areas, in order of priority as follows:

1. Within the same neighborhood where the development using the extra residential floor area is located;
2. Within one-half mile of light rail or bus rapid transit stations on routes serving the neighborhood where the development using the extra floor area is located; or
3. Within one of six sectors of the city, as defined by the Code, where the development using the extra floor area is located.

The goal is to have the affordable housing be located in the same neighborhood as the development that includes the extra residential floor area. In recognition that this may not always be feasible, there is flexibility for the Housing Director to allow the housing to be provided in other reasonable areas.

Other Bonus Options and Transfer of Development Potential for Extra Residential Floor Area

The proposed Incentive Zoning Program includes provisions to allow additional floor area or height for providing public open space (including green street setbacks on designated green streets) and provisions for transfer of development potential from open space or from landmarks. Seattle neighborhoods, particularly in older parts of the city, often include designated landmarks and structures that may be eligible for designation as a landmark. The proposed program would include provisions by which a developer would be allowed to gain additional development potential by transferring development potential from a designated landmark. Additional bonuses, and possibly other sending sites for transfer of development potential could be identified and would be added to the Code as part of planning processes undertaken in individual areas or neighborhoods.

The proposed program would also include provisions through which development regulations for a zone or area could allow a floor area bonus for the provision of neighborhood open space, as well as allow floor area gained by acquiring development rights transferred from open space locations within the community, similar to the program for protecting landmark structures.

Affordable Housing and Child Care Options for Extra Nonresidential Floor Area

The incentive provisions for extra nonresidential floor area are similar to the provisions currently in effect downtown. The following is a summary of the housing and child care provisions for extra nonresidential floor area:

1. A minimum of 15.6% of gross bonus square footage must be provided as affordable housing meeting specified conditions and an amount of child care space (equivalent to 0.000127 of a child care slot per gross square foot); or a payment made in lieu of either or both: $18.75 per square foot of nonresidential bonus floor area for housing

and $3.25 per square foot of nonresidential bonus floor area for child care facilities, the amounts approved by City Council in 2001.

2. Affordable housing must be maintained for a minimum of 50 years; and
3. Income, rent, and sales price restrictions will apply as follows:
    - Rental: income of residents not to exceed 80% of median income; monthly rents, including tenant paid utilities, are not to exceed 30% of maximum eligible household monthly income;
    - Homeownership: income of residents not to exceed 100% median income; the Housing Director must determine that the proposed housing sale price is affordable for income-eligible households, generally aiming for monthly housing costs to not exceed 35% of maximum eligible household monthly income.

As with incentives for residential floor area, when changes to zoning include incentives to allow extra nonresidential floor area, developers will have the option of exceeding base height or density limits, or both, if they include housing units that are affordable to and reserved for income-eligible households (performance option). At the developer's discretion, a financial contribution may be made to a housing fund established for this purpose, in lieu of providing the housing (payment option).

Under the performance option, the affordable housing obligation totals 15.6% of bonus nonresidential floor area for housing plus a certain amount of child care facility space for 75% of the gross bonus floor area when zoned height limits are greater than 85'. The housing and child care obligation applies to 100% of the gross bonus floor area if the zoned height limit is 85' or less. Developers have the option to use housing TDR in lieu of a portion or all of their housing-child care obligation. The developer may choose to provide the required affordable housing units either on- or off-site, either directly or through an approved contribution of money or property to another developer's affordable housing project.

If a developer chooses the payment option, the payment amount per square foot of net extra residential floor area is calculated based on a formula outlined in the code, but must be a minimum of $15.00 and maximum of $18.94.

Affordable units produced with developer contributions would be built in the following areas, in order of priority as follows:

1. Within the neighborhood where the development using the extra nonresidential floor area is located;
2. Within one-half mile of light rail or bus rapid transit stations on routes serving the neighborhood where the development using the extra floor area is located; or
3. Within one of six sectors of the city, as defined by the Code, where the development using the extra floor area is located.

The goal is to have the affordable housing be located in the same neighborhood as the development that includes the extra non-residential floor area. In recognition that this may not always be feasible, there is flexibility for the Housing Director to allow other reasonable areas. Similar flexibility is envisioned for location of child care facilities.

Other Bonus Options and Transfer of Development Potential for Extra Nonresidential Floor Area

In nonresidential zones, additional bonus options, comparable to those included in the downtown nonresidential development bonus incentive program, are also proposed for gaining extra nonresidential floor area. The options include the following:

- Public open space amenities including: hillside terraces, urban plazas, parcel parks, public atria, green street improvements and green street setbacks on designated green streets;
- Hillclimb assists or shopping corridors;
- Human services uses as follows:
    - Information and referral for support services;
    - Health clinics;
    - Mental health counseling services;
    - Substance abuse prevention and treatment services;
    - Consumer credit counseling;
    - Day care services for adults;
    - Jobs skills training services;
- Public restrooms; and
- Transit station access for transit facilities.

The proposed program could include provisions by which development regulations in an area could allow a developer to gain additional development potential, by using one of the listed items, or transfer of development rights from a designated landmark or open space. Additional public benefits or types of transfers of potential could be identified and would be added to the Code as developed as part of planning processes undertaken in individual areas or neighborhoods.

Summary of incentives other than for housing and child care to obtain extra nonresidential floor area:

- Would apply when the maximum height limit is greater than 85';
- A payment in-lieu will be available as practical; and
- Transferable Development Rights (TDR) may be allowed.

Administration of the Housing Program

The Office of Housing (OH) is exploring best practices for administration of the housing incentive programs so that there is more opportunity to leverage funds and maximize efficiency in housing production. In addition, the Office of Housing will review the City's housing incentive programs no later than 2010, and every 3 to 5 years thereafter. The purpose of the review will be to assess market conditions and exercise the Housing Director's authority to adjust in-lieu payment amounts in order to maintain programs that provide both incentives to developers and community benefits.