



City of Seattle

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**Seattle Department of Construction and Inspections**  
Nathan Torgelson, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR  
OF THE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS**

**SEPA Threshold Determination  
Living Building Pilot Program**

- Project Sponsor:** City of Seattle Department of Construction and Inspections
- Location of Proposal:** Downtown Seattle. The changes primarily affect land and projects in the Downtown Mixed Residential zone that are participating in the Living Building pilot program.
- Scope of Proposal:** A legislative action to amend the Living Building Pilot program development regulations to clarify height bonus allowances in the DMR zones.
- No Appeal Opportunity:** Action taken by a city to comply with the requirements of RCW 36.70A.070(2) is exempt from administrative or judicial appeal.

**BACKGROUND**

**Proposal Description and Background**

The Department of Construction and Inspections proposes to edit the text of the Land Use Code (Seattle Municipal Code, Title 23) to implement RCW 36.70A.070(2) regarding application of certain height bonuses available through the Living Building Pilot Program as it applies to Section 23.49.156.A of the Downtown Mixed Residential zone. The proposed legislation clarifies that projects utilizing the Living Building Pilot Program height bonuses that exceed 145 feet in height regardless of lot size under SMC 23.49.156.A.

Projects reviewed under the Living Building Pilot Program explore fundamentally different approaches to building design, construction, and operations, and Program applicants are eligible for additional height and/or floor area ratio as well as departures from the Land Use Code.

A particular project, 3036043-LU was applied for on February 2, 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, which granted the Living Building Pilot program project additional height.

The Master Use Permit decision for 3036043-LU, was appealed to the Seattle Hearing Examiner along with a request for code interpretation on August 28, 2023, alleging that the subject lot was not eligible for additional height under the Living Building Pilot Program because the height limitation was constrained by a lot size restriction codified in subsection 23.49.156.A of the Seattle Municipal Code (SMC). As part of the appeal, Seattle Department of Construction and Inspections (SDCI) interpreted SMC 23.49.156.A.1 in light of the Living Building Pilot Program code provisions including SMC 23.40.060 and SMC 23.49.008.F, and concluded that the subject development project could take advantage of height bonuses to 175 feet even though the lot size was less than 19,000 square feet.

The Hearing Examiner disagreed with SDCI's interpretation, stating that "The legislative body set the minimum lot size at 19,000 square feet for buildings over 145 feet." The purpose of the Living Building Pilot program is specifically to modify development standards, including height. The proposed amendment would specifically clarify this provision to make it clear the possibility of additional height should be allowed under the Living Building Pilot Program regardless of lot size in the DMR zone. Without this correction, the Examiner's determination would limit the intent of the Living Building Pilot Program and constrain the City's goal of providing more housing, especially family-sized housing in this zone.

### Public Comment

Proposed changes to the Land Use Code require City Council approval. Public comment will accepted during the 14-day SEPA comment period and during future Council hearings.

### **ANALYSIS - SEPA**

The following describes the analysis conducted to determine if the proposal is likely to result in *probable significant adverse environmental impacts*. This threshold determination is based on:

- the copy of the proposed Ordinance;
- the information contained in the *SEPA checklist* (dated June 13, 2024);
- information in relevant policy and regulatory documents including the Comprehensive Plan, the City's SMC Title 25 and Title 23, and
- the experience of SDCI analysts in reviewing similar documents and actions.

## **ELEMENTS OF THE ENVIRONMENT**

### **Short -Term Impacts**

As a non-project action, the legislation will not have any short-term adverse impact on the environment. No project specific action is proposed with this legislation.

### **Long-Term Impacts**

As a non-project action, the proposal is anticipated to have minor long-term impacts on the environment. Future development affected by this legislation will be reviewed under existing laws. Although the legislation clarifies the intent of the Living Building Pilot Program scope, all other use and development standards would remain unchanged, and all other procedures and aspects of the land use code would continue to apply.

The primary effect of this legislation over the long term is to make clear Council's original intent in implementing the Living Building Pilot program to encourage both innovative design and housing opportunities in the DMR zone. The proposed bill will allow utilization of height and FAR bonuses and availability of land use departures for projects that elect to use the Living Building Pilot Program and that are less than 19,000 lot size in the DMR zone.

### **Natural Environment**

The natural environment includes potential impacts to earth, air, water, plants/animals/fisheries, energy, natural resources, environmentally sensitive areas, noise, releases of toxic or hazardous materials. Adoption of the proposed legislation is not anticipated to result in likely adverse impacts on any of these elements of the natural environment, compared to development that might occur under existing regulations. The proposal could incrementally increase the likelihood of additional pilot projects seeking departures on lots less than 19,000 square feet in area. In those cases, Design Review or other deliberative land use permit processes would be required. It is not expected that such construction would increase the duration or intensity of impacts in any significant way to earth, air, water, plants/animals/fisheries, energy, natural resources, environmentally sensitive areas, noise, or releases of toxic or hazardous materials. At most, this amendment may result in a few taller buildings located on lots that are less than 19,000 square feet in area; as such, any increase in impacts to energy use would be marginal as compared to development under existing regulations. Other development standards regulating site coverage, landscaping, trees

and environmental and energy performance and floor area are not altered by the proposed legislation. Therefore, additional adverse impacts on the natural environment are not expected.

## **Built Environment**

The proposed legislation will have only minor effects on the built environment because the primary objective of the legislation is to allow for additional pilot projects on lots less than 19,000 square feet in area in the Downtown Urban Center. The impacts to the built environment include any impacts related to land and shoreline use, height/bulk/scale, housing, and historic preservation. Below is a discussion of the relationship between the proposal and built environment:

### *Land Use*

The proposal would not encourage uses incompatible with the City's Comprehensive Plan or Shoreline Master Program or other adopted plans. The proposal concerns changes to allow for additional pilot projects seeking departures on lots less than 19,000 square feet in area in the Downtown Urban Center only. The legislation could affect land use by allowing a greater density of residents than would otherwise be allowed in the absence of the legislation. The change would be to incrementally increase the intensity of activity and use patterns stemming from a greater number of residents living in an area. The impact could be experienced as a greater volume of people using services and parks or visiting businesses and stores. This could cause some congestion or cause some incremental increase in wait times to access services or park facilities or other features of the community. The proposal does not allow or encourage incompatible uses with the City's Comprehensive Plan since the locations affected are already planned for and allow other types of multifamily residential uses.

### *Housing*

The proposed legislation could have an incremental and minor impact on housing if the legislation encourages the construction of more residences than would otherwise occur. This is considered by the City to be a positive impact on housing because increasing housing supply is a policy goal for the city.

With or without the proposed legislation, development of residential uses in the Downtown Urban Center would be subject to the City's Mandatory Housing Affordability (MHA) requirements.

### *Height/Bulk/Scale, Shadows, and Views*

There are some potential impacts on Height/Bulk/Scale, Shadows and Views because the proposed legislation pertains to additional height allowances. The legislation would not change the overall height that is available through the Living Building Pilot program, and only clarifies that lots less than 19,000 square feet are eligible for such height bonuses. There would only be minor impact to the height/bulk/scale or shadow or view effects because overall standards regulating the scale of development are not proposed to be changed.

#### *Noise, Light & Glare, Environmental Health*

The proposed legislation does not alter the applicability of several standards concerning noise, light and glare and environmental health. The proposal could incrementally increase noise if a greater number or density of people could live in the Downtown Urban Center. The increment of noise would be attributed to living activities such as talking, recreating, and playing music and cooking as well as entering and leaving homes. In the context of an urban environment these incremental impacts are common and customary and are not considered by the City to be more than minor.

#### *Conclusion*

The proposed changes fall within the scope and intent of adopted policy goals for the City of Seattle. Future development using these provisions may be subject to SEPA, if required, to address potential adverse impacts. Therefore, no mitigation pursuant to SEPA policies is warranted.

#### **DECISION – SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(c).

[ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

**RECOMMENDED CONDITONS--SEPA**

None

**Signature:** [On File]

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Emily Lofstedt, Land Use Policy and Technical Planner, Policy and Technical Group  
Department of Construction and Inspections

**Date:** 7/8/2024