Honorable Mary E. Roberts
Noted for oral argument October 19, 2018, at 8:30 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

1426 FIRST AVENUE LLC, Plaintiff, v. CITY OF SEATTLE Defendant.	No. 18-2-21872-1 SEA CITY OF SEATTLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND OTHER RELIEF

CONTENTS

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Appendices:

1. Ordinance 125650.

2. Text of Seattle Municipal Code provisions cited in this brief:

- ❑ SMC 23.40.002.A;
- ❑ SMC 23.76.040.A;
- ❑ SMC 23.76.060.C;
- ❑ SMC 23.76.026.A - .C;
- ❑ SMC 25.24.030.C;
- ❑ SMC 25.24.060.A;
- ❑ SMC 25.24.070; and
- ❑ SMC 25.24.080.D.

The Code is searchable on-line at: https://library.municode.com/wa/seattle/codes/municipal_code.

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I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff challenges a City of Seattle ordinance that temporarily extends the boundary of an historical district to include Plaintiff's property. Because Plaintiff challenges a development regulation—not a decision on an application for a project permit—the City respectfully asks this Court for partial summary judgment and other relief to set this case on its proper procedural footing and prune baseless claims.

The City asks the Court to dismiss Plaintiff's claim under the Land Use Petition Act ("LUPA"), which covers decisions only on project permit applications, and set this case on a civil case schedule to resolve Plaintiff's claim for declaratory relief. In the alternative, the City asks this Court to dismiss Plaintiff's Declaratory Judgments Act claim because LUPA would provide an adequate alternative remedy.

The absence of a project permit application sinks two other claims the City asks the Court to dismiss. Plaintiff's takings claim is unripe because Plaintiff has not received a final decision on a project permit application. Plaintiff's appearance of fairness claim does not apply outside of a local contested case hearing—which would have been held to decide a project permit application, but not to pass the development regulation here. In any event, Plaintiff waived its appearance of fairness claim by not raising it with the City Council before it acted.

The City also asks this Court to dismiss Plaintiff's compelled speech claim because the development regulation does not compel Plaintiff to continue using the property as a music venue, and to bifurcate Plaintiff's monetary claims to enhance convenience and judicial economy.

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II. FACTS

Plaintiff owns a building at 1426 First Avenue, which houses the Showbox Theater, a music performance venue. *See* Petition at 1 – 2. In this motion, the "Showbox site" refers to the property on which the building is located.

According to Plaintiff, it contracted to sell the Showbox site to Onni Group ("Onni") in April 2018. Petition at 3.

On or around July 24, 2018, Onni initiated a pre-application process with the Seattle Department of Construction and Inspections ("SDCI"). Declaration of Lisa Rutzick. Onni has not yet submitted an early design guidance application or a building permit application to SDCI. *Id*.

On August 6, 2018, the City Council referred Council Bill ("CB") 119330 to the Council's Finance and Neighborhoods Committee. Declaration of Lish Whitson, Ex. A.

On August 8, 2018, the Finance and Neighborhoods Committee met, discussed CB 119330, and voted 6-0 to recommend its passage. *Id*. Although others commented on CB 119330 during the public comment period at that meeting, no one representing Plaintiff did. *Id*.

On August 12, 2018, Plaintiff's counsel submitted a letter to Council President Bruce Harrell regarding CB 119330. *Id*., Ex. 2. The letter did not mention the appearance of fairness doctrine, claim the CB 119330 process violated the doctrine, or ask Councilmembers to recuse themselves.

On August 13, 2018, the Council met, discussed, amended, and passed CB 119330. *Id*. Although others commented on CB 119330 during the public comment period at that meeting, no one representing Plaintiff did. *Id*.

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The City Mayor signed the legislation on August 24, 2018, which is now designated Ordinance 125650 ("Ordinance"). **Appendix 1.** The Ordinance finds that the Showbox is a significant cultural resource, the loss of which would erode the historical and cultural value of the neighborhood, and temporarily expands the boundaries of the Pike Place Market Historical District to include the Showbox site. The Ordinance, which expands the District boundary for no more than ten months, directs the Department of Neighborhoods to propose legislation to address the issues in the Ordinance by June 2019.

Even if the Council had not passed the Ordinance, a proposal to develop or establish a new use of the Showbox site will require a master use permit from SDCI, assessed under development regulations in Seattle Municipal Code ("SMC") Title 23. *See* SMC 23.40.002.A.

While the Ordinance remains in effect, a proposal to develop the Showbox site or change its use will also require a certificate of approval ("CoA") from the Pike Place Market Historical Commission under SMC Title 25. *See* SMC 25.24.060.A. The Commission's decision to grant a requested CoA must be based on guidelines the Commission adopts. SMC 25.24.030.C (Commission must adopt guidelines); SMC 25.24.080.D (the Hearing Examiner may reverse a CoA decision that violates the guidelines). The Guidelines contain standards to regulate changes to uses and structures. *See* Declaration of Sarah Sodt, Ex. A. Commission staff has received no application for a CoA for the Showbox site. *Id.*

Plaintiff filed a Land Use Petition and Complaint for Declaratory Relief and Constitutional Damages on August 31, 2018. The Petition appeals the Ordinance under LUPA and seeks declaratory and monetary relief.

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III. EVIDENCE RELIED UPON

The City relies on the Ordinance, the Declarations of Sarah Sodt, Lish Whitson, and Lisa Rutzick, and the other pleadings and papers on file with the Court for this action.

IV. ISSUES

1. LUPA applies only to a decision on an application for a project permit. The Ordinance is not a decision on a project permit application. Should this Court dismiss Plaintiff's LUPA claim?

2. Relief under the Declaratory Judgments Act is available only if there is no adequate alternative remedy. If Plaintiff's LUPA claim survives, it would provide an adequate remedy. Should this Court dismiss Plaintiff's Declaratory Judgments Act claim if Plaintiff's LUPA claim survives?

3. A takings claim is unripe until the property owner applies for and receives a decision on an application to develop the property. Plaintiff has not applied to develop the Showbox site. Should this Court dismiss Plaintiff's takings claim?

4. An appearance of fairness doctrine claim survives only if the claim arose in a contested case proceeding and only if the claimant timely raised it with the local decision-making body. The Council did not adopt the Ordinance through a contested case proceeding, and Plaintiff did not raise the doctrine with the City Council before it acted. Should this Court dismiss Plaintiff's appearance of fairness claim?

5. A compelled speech claim requires a law that compels speech. The Ordinance does not compel Plaintiff to maintain a music venue on the Showbox site. Should this Court dismiss Plaintiff's compelled speech claim?

6. Bifurcating claims is appropriate if it would lead to a more convenient, expeditious, or economical process. Bifurcating Plaintiff's monetary claims from its merits claims would lead to such a process. Should this Court bifurcate Plaintiff's monetary claims?

V. ARGUMENT

There is no genuine issue as to any material fact and the City is entitled to judgment as a matter of law on Plaintiff's LUPA (or alternatively, Declaratory Judgments Act), takings, appearance of fairness, and compelled speech claims. *See* CR 56(c). This Court should exercise

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its discretion to order this case placed on a civil case schedule and bifurcate Plaintiff's monetary claims. *See* LCR 4(d); CR 42(b).

A. This Court should dismiss Plaintiff's LUPA claim and issue a civil case schedule, or dismiss the Declaratory Judgments Act claim.

1. The Council's adoption of the Ordinance is not governed by LUPA or its expedited schedule because the Council's action was not a "determination on an application" for a "project permit" within the meaning of LUPA.

LUPA applies only to a "land use decision," defined as a final determination on "an application" for a "project permit" or for another governmental approval to develop, use, or transfer property. RCW 36.70C.020(2)(a), .030(1). A court may not expand its statutory authority by varying that definition. *Durland v. San Juan County*, 175 Wn. App. 316, 324, 305 P.3d 246 (2013), *aff'd*, 182 Wn.2d 55, 340 P.3d 191 (2014).

LUPA does not apply to the Ordinance because it was not a determination on an application for a project permit within the meaning of LUPA. The Legislature enacted LUPA (codified as chapter 36.70C RCW) in 1995 as part of a sweeping, integrated regulatory reform package that also amended the State Environmental Policy Act (chapter 43.21C RCW, "SEPA") and Growth Management Act (chapter 36.70A RCW, "GMA") and enacted the Local Project Review Act (codified as chapter 36.70B RCW). Wash. Laws 1995, ch. 347. Reading these four statutes together demonstrates this dispute involves no application and no project. *See Sheehan v. Central Puget Sound Regional Transit Authority*, 155 Wn.2d 790, 802-04, 123 P.3d 88 (2005) (courts read together provisions on the same topic even if codified separately).

All four statutes start with the concept of a "project" from SEPA, which defines a "project action" as a decision to license "any activity that will directly modify the environment." WAC 197-11-704(2)(a)(i). *See* RCW 43.21C.110(1)(f) (SEPA directs the Department of

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Ecology to define SEPA-wide terms). By contrast, a "*non*project action" includes amending regulations "that contain standards controlling use or modification of the environment." WAC 197-11-704(2)(b)(i). The 1995 regulatory reform package reinforced this distinction between environment-modifying projects and project-controlling regulations—it added a lengthy section to SEPA explaining that decisions on projects should not revisit earlier nonproject decisions to adopt or amend regulations. RCW 43.21C.240; Wash. Laws 1995, ch. 347, § 202.

The distinction between projects (which modify or develop land) and nonproject regulations (which guide decisions on applications for project permits) divides the GMA from the Local Project Review Act. See Laws 1995, ch. 347, §§ 101 – 116 (amending the GMA), §§ 401 – 433 (enacting the Local Project Review Act).[1] The GMA guides the creation and amendment of development regulations, which exclude "a decision to approve a project permit application." RCW 36.70A.030(7). *See* RCW 36.70A.020, .040 (guidelines and mandates for development regulations). The Local Project Review Act covers project permit applications, which seek a "permit or license required from a local government for a project action." RCW 36.70B.020(4). That statute requires local jurisdictions to have a process for making decisions on those applications. RCW 36.70B.120. An application is key throughout that process: the local government must determine whether an application is complete; the application must identify the permits the applicant seeks; and the local government must provide notice of the application and its decision on it. RCW 36.70B.070, .110 – .130.

[1] Other statutes also respect this distinction, even if using different terms. For example, one defines "permit" along the same lines as a SEPA "project action" (a "governmental approval required by law before an owner of a property interest may improve, sell, transfer, or otherwise put real property to use") and defines "regulation" like a SEPA nonproject action (an ordinance that "imposes or alters restrictions, limitations, or conditions on the use of real property"). RCW 64.40.010(2), .010(5). That law provides a cause of action only for those "who have filed an application for a permit." RCW 64.40.020(1).

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LUPA—born and integrated with the Local Project Review Act—is limited to appeals of project permit decisions of the sort controlled by the Local Project Review Act. LUPA begins where the local permit review process ends. *See Samuel's Furniture, Inc. v. State Dept. of Ecology*, 147 Wn.2d 440, 452 – 53, 54 P.3d 1194 (2002). LUPA jurisdiction is limited to a decision on: (1) an application; for (2) a "project permit" or some other governmental approval very much like it. RCW 36.70C.030(1).

Plaintiff presents neither element. No one applied to temporarily extend the Pike Place Market Historical District to the Showbox site; the Council did it of its own accord. The Council made no decision to license or permit a project; it amended the regulations applicable to future project applications. LUPA does not apply.

That the Ordinance affects one site does not alter this conclusion. A local jurisdiction *could* effect a site-specific rezone as a project permit decision under the Local Project Review Act, which *could* be appealed under LUPA, but only if it results from an application for a project permit. For example, the City Council will decide an application for a site-specific rezone (resulting in a "contract rezone" in the parlance of the City Code), but the new zoning designation is so tied to a project proposal that the zoning reverts to its original designation if the property owner does not promptly submit, and receive favorable decisions on, other applications needed for the proposed development project. SMC 23.76.060.C.1 (expiration of contract rezones); SMC 23.76.040.A.2 (rezone applications). Again, no one applied for a contract rezone—or any other project permit—for the Showbox site. LUPA does not apply.

Schnitzer West v. City of Puyallup, 190 Wn.2d 568, 416 P.3d 1172 (2018), which split 4-1-4, does not require a different result. "A plurality opinion has limited precedential value and is not binding." *Lauer v. Pierce County*, 173 Wn.2d 242, 258, 267 P.3d 988 (2011). As evidenced

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by the lead opinion's recitation of facts ultimately irrelevant to its ruling, the plurality was moved by unique circumstances. The Puyallup City Council, against the recommendation of its planning commission, without public comment or hearing, and with only four of seven council members present (excluding three who opposed the measure), passed an ordinance creating a new overlay zone that applied to one parcel, all after the parcel's developer had already filed a permit application that "vested" its project to pre-ordinance law. *Schnitzer*, 190 Wn.2d at 569 – 74.[2] *Schnitzer* addressed whether the developer could challenge the ordinance under LUPA.

Four justices ruled "site-specific rezones—regardless of the initiating party—are reviewable under LUPA." *Id.* at 583. Their rationale started from the incorrect premise that a local legislative body's action regarding land use could be challenged only through LUPA or the Growth Management Act, overlooking such options as the Declaratory Judgments Act, constitutional writs, and damages claims. *Id*. at 575 – 76. Skirting LUPA's requirement of an application, they assumed the city council had necessarily submitted an application to itself even though the city had no property interest in the parcel. *Id*. at 580.

Justice González concurred "[o]n narrower grounds." *Id*. at 584. Without addressing the other relief the developer could have sought or grounding his rationale in LUPA's text, his terse opinion ruled the developer could seek redress under LUPA because the ordinance was a site-specific rezone "targeting" a "vested" project. *Id*. at 583-84.

[2] Under Washington's statutory vested rights doctrine, a developer, usually by filing a certain type of permit application, may lock in the law under which that application will be considered. *See Snohomish County v. Pollution Control Hearings Board*, 187 Wn.2d 346, 358, 386 P.3d 1064 (2016). That the *Schnitzer* project "vested" is evident from the developer having submitted a construction or building permit application. *Schnitzer*, 190 Wn.2d at 572. *See* RCW 19.27.095(1) (statutory vesting); *Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250 – 54, 218 P.3d 180 (2009) (applying RCW 19.27.095(1)).

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The four-justice dissent aptly observed: "The lead opinion and concurrence seem most offended by the motivations of city council members and make much of the argument that the City deliberately 'targeted' the Schnitzer property, but this should make no difference under the statutory provisions." *Id*. at 585. Those four justices correctly noted the range of other relief available to the developer and established that deeming the city council an "applicant" under LUPA made "no logical or legal sense." *Id*. at 584 – 85.

To the extent *Schnitzer* offers a holding, it is distinguishable. "Where there is no majority agreement as to the rationale for a decision, the holding of the court is the position taken by those concurring on the narrowest grounds." *Davidson v. Hensen*, 135 Wn.2d 112, 954 P.2d 1327 (1998). Justice González provided the fifth vote not, as the lead opinion ruled, simply because the ordinance was a site-specific rezone, but also because the ordinance targeted a "vested" project. Here, no developer "vested" a project on the Showbox site before the City Council adopted the Ordinance. Under City law, a developer can "vest" by filing a building permit application or an application for early design guidance. SMC 23.76.026.A and .C. Neither occurred here. *See* Rutzick Decl.

Because this dispute is not subject to LUPA, it is also not subject to LUPA's expedited schedule. *Cf*. RCW 36.70C.090 ("The court shall provide expedited review of petitions filed under [LUPA]."). This Court should direct the Clerk to strike the LUPA-specific schedule and issue a civil case schedule to resolve Plaintiff's request for declaratory relief.

2. If Plaintiff maintains its LUPA claim, its Declaratory Judgments Act claim fails because LUPA provides an adequate alternative remedy.

Relief under the Declaratory Judgments Act, chapter 7.24 RCW, is available only if there is no adequate alternative remedy. *Grandmaster Sheng-Yen Lu v. King County*, 110 Wn. App. 92, 98-99, 38 P.3d 1040 (2002). LUPA is the exclusive means of judicial review of a land use

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decision, including claims that the decision is unlawful or unconstitutional. RCW 36.70C.030(1) and .130(1); *Durland v. San Juan County*, 182 Wn.2d 55, 64, 340 P.3d 191 (2014). If Plaintiff maintains its LUPA claim, this Court should dismiss the Declaratory Judgments Act claim because LUPA provides an adequate alternative remedy.

B. This Court should dismiss Plaintiff's takings claim as unripe because Plaintiff has not received a final decision on an application to develop the property.

A takings claim challenging the application of a land use regulation is not ripe until the challenger has exhausted administrative remedies by requesting and receiving a final decision from the local government applying the regulation to the claimant's property. *Palazzolo v. Rhode Island*, 533 U.S. 606, 618-21 (2001); *Asarco, Inc. v. Department of Ecology*, 145 Wn.2d 750, 760-61, 43 P.3d 471 (2001); *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 18-19, 829 P.2d 765 (1992); *Presbytery of Seattle v. King County,* 114 Wn.2d 320, 337-40, 787 P.2d 907 (1990). Until the City reaches a final decision on an application for a project permit on the Showbox site, Plaintiff's takings claim remains unripe.

C. This Court should dismiss Plaintiff's appearance of fairness doctrine claim because the doctrine applies only to contested case proceedings and Plaintiff waived its claim.

This Court should dismiss Plaintiff's appearance of fairness doctrine claim because the doctrine does not apply to the Council's consideration of the Ordinance and Plaintiff waived its claim by not timely raising it with the Council.

The appearance of fairness doctrine did not apply here. The Legislature limited the doctrine to local actions in a "hearing or other contested case proceeding." RCW 42.36.010. When adopting the Ordinance, the Council was not acting in a contested case proceeding to make a decision on an application or the appeal of an administrator's decision on an application.

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Cf. RCW 36.70B.020(1) and (3) (defining "open record hearing" and "closed record appeal" on an application).

Even if the doctrine applied, Plaintiff waived its claim. A court may not invalidate a local decision based on the appearance of fairness doctrine if the plaintiff knew (or reasonably should have known) the basis for invoking the doctrine but failed to raise it before the local government made its decision:

> Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of a decision-making body from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision.

RCW 42.36.080. *E.g.*, *Organization to Preserve Agricultural Lands v. Adams County*, 128 Wn.2d 869, 887-88, 913 P.2d 793 (1996). Plaintiff knew or should have known of what it characterizes in its Petition as Councilmembers' disqualifying "campaign against the development" from late July until the Council acted on August 13. Petition at 9 – 10. Yet the letter Plaintiff's counsel sent the Council President the day before the vote did not seek to disqualify Councilmembers and, although others offered public comment to the Council before it voted at its August 13 meeting, Plaintiff remained silent. Having failed to raise the appearance of fairness doctrine with the Council, Plaintiff may not wield the doctrine in court.

D. This Court should dismiss Plaintiff's compelled speech claim because the Ordinance does not compel Plaintiff to continue Showbox performances.

This Court should dismiss Plaintiff's compelled speech claim because the Ordinance does not, as Plaintiff alleges, "requir[e] continued performances at the Showbox." Petition at 15. City law does not force Market property owners to perpetuate their existing uses. Plaintiff or its tenant may apply for a certificate of approval from the Pike Place Market Historical Commission to

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establish a new use. *See* SMC 25.24.060.A and .070; Commission Guideline 2.7. *See* Sodt Decl. Ex. A.

E. Bifurcating Plaintiff's monetary claims would enhance convenience and judicial economy.

Whether this case proceeds under LUPA or the Declaratory Judgments Act, this Court should sever Plaintiff's monetary claims (for damages, compensation, or attorney fees) from its claims about the merits of the Ordinance and consider the damages claims only if the Court resolves the merits in Plaintiff's favor. A court may sever and proceed separately with any claim, especially where it would be more convenient, expeditious, or economical. CR 21; CR 42(b). LUPA does not apply to monetary claims and invites courts to separate them from LUPA's expedited schedule:

> If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition. The judge who hears the land use petition may, if appropriate, preside at a trial for damages or compensation.

RCW 36.70C.030(1)(c).

Bifurcating Plaintiff's monetary claims would make this process more convenient, expeditious, and economical for the parties and the Court. A City victory on the merits of Plaintiff's claims would moot the monetary claims, while a City loss on one or more claims could better enable the parties to discuss settling the monetary claims free of calculating the odds of success on the merits. Assessing the monetary claims in a second phase means Plaintiff would not need to field detailed discovery from the City about the nature, extent, and proof of Plaintiff's monetary claims until doing so is necessary.

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VI. CONCLUSION

This is a challenge to a decision to adopt a development regulation, not a decision on a project permit application. Because of that basic fact, this Court should dismiss Plaintiff's LUPA, takings, and appearance of fairness claims. This Court should also dismiss Plaintiff's baseless compelled speech claim. Having restored this case to its appropriate procedural footing and narrowed its scope, this Court should exercise its discretion to bifurcate Plaintiff's monetary claims and order this case placed on a civil case schedule to resolve Plaintiff's claims for declaratory relief.

I certify that MS Word 2016 calculates all portions of this memorandum required by the Local Civil Rules to be counted contain 3,761 words, which complies with the Local Civil Rules.

Respectfully submitted September 21, 2018.

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CERTIFICATE OF SERVICE

I certify that, on this date, I electronically filed a copy of this document, the Declarations of Lish Whitson, Sarah Sodt, and Lisa Rutzick, and a Notice of Hearing with the Clerk of the Court using the ECR system.

I also certify that, on this date, I sent a courtesy copy of those documents by email to:

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DATED this 21st day of September 2018.

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Appendix 1

CITY OF SEATTLE

ORDINANCE 125650

COUNCIL BILL 119330

AN ORDINANCE relating to the Pike Place Market Historical District; amending Chapter 25.24 of the Seattle Municipal Code to adopt an interim boundary expansion for the Pike Place Market Historical District.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council makes the following legislative findings of fact and declarations:

A. The Pike Place Market Historical District (District) was created in 1971 through a Citizens' Initiative.

B. The boundaries of the District have been amended twice since it was created: (1) in 1986 through Ordinance 113199 and (2) in 1989 through Ordinance 114863.

C. The City's Historic Resources Survey identifies multiple structures in the vicinity of the District that may be eligible as landmarks but are not currently designated as landmarks.

D. Recent development activity adjacent to the District has put potentially eligible landmarks at risk of demolition or alteration before the protections of the district may be applied, thus constituting an emergency pursuant to WAC 197-11-880.

E. The Showbox Theater is a significant cultural resource to Seattle and the region with a history connecting it to the adjacent Pike Place Market;

F. The loss of the Showbox Theater would erode the historical and cultural value of the Pike Place Market neighborhood;

G. Adopting a boundary expansion on an interim basis will allow the City to consider whether and to what extent to expand the boundaries of the District to include the Showbox Theater.

H. The Council finds that the Pike Place Market Historical District ordinance is a development regulation that is not subject to referenda and that the Council has the authority to provide for the immediate effectiveness of this amendment to that ordinance.

Section 2. Section 25.24.020 of the Seattle Municipal Code, last amended by Ordinance 114863, is amended as follows:

25.24.020 Historical District designated.

There is created a Pike Place Market Historical District (hereafter called "Historical District") whose physical boundaries are illustrated on a map attached as Exhibit "A" to Ordinance 100475 which is codified at the end of this chapter. <u>These boundaries include an interim expansion that encompasses a Study Area, which will be considered for a future permanent expansion.</u>

Section 3. Exhibit A of Ordinance 100475, last amended by Ordinance 114863, is amended and redrawn to expand the boundaries of the Pike Place Market Historical District to include an interim Study Area, as shown on Exhibit A to this ordinance.

Section 4. Under RCW 36.70A.390, the Council approves the following work plan for the development of regulations to address the issues in this ordinance and directs the Department of Neighborhoods to transmit proposed legislation to the Council by June 2019.

Review the historic significance of the Showbox theater, study the relationship between the Showbox theater and the Pike Place Market, consider amendments to the Pike Place Market Historical District Design Guidelines related to the	August 2018 - April 2019

Showbox theater, draft legislation, conduct outreach to stakeholders, and conduct State Environmental Policy Act (SEPA) Review on permanent expansion of the Historical District, as appropriate	
Publish SEPA threshold determination if necessary	March 2019
Mayor transmits legislation to Council	May 2019
Council deliberations on proposed expansion of the Historical District	June 2019
Permanent district expansion effective	July 2019

Section 5. Sunset provision. Sections 2 and 3 of this ordinance shall expire on the earlier of: (a) ten months from the effective date of this ordinance or (b) the date an ordinance establishing the boundaries of a permanent expansion becomes effective.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 13th day of August, 2018, and signed by me in open session in authentication of its passage this 13th day of August, 2018.

Bruce O Harrell

President _____ of the City Council

Approved by me this 24TH day of August, 2018.

Jenny A Durkan

Jenny A. Durkan, Mayor

Filed by me this 24th day of August, 2018.

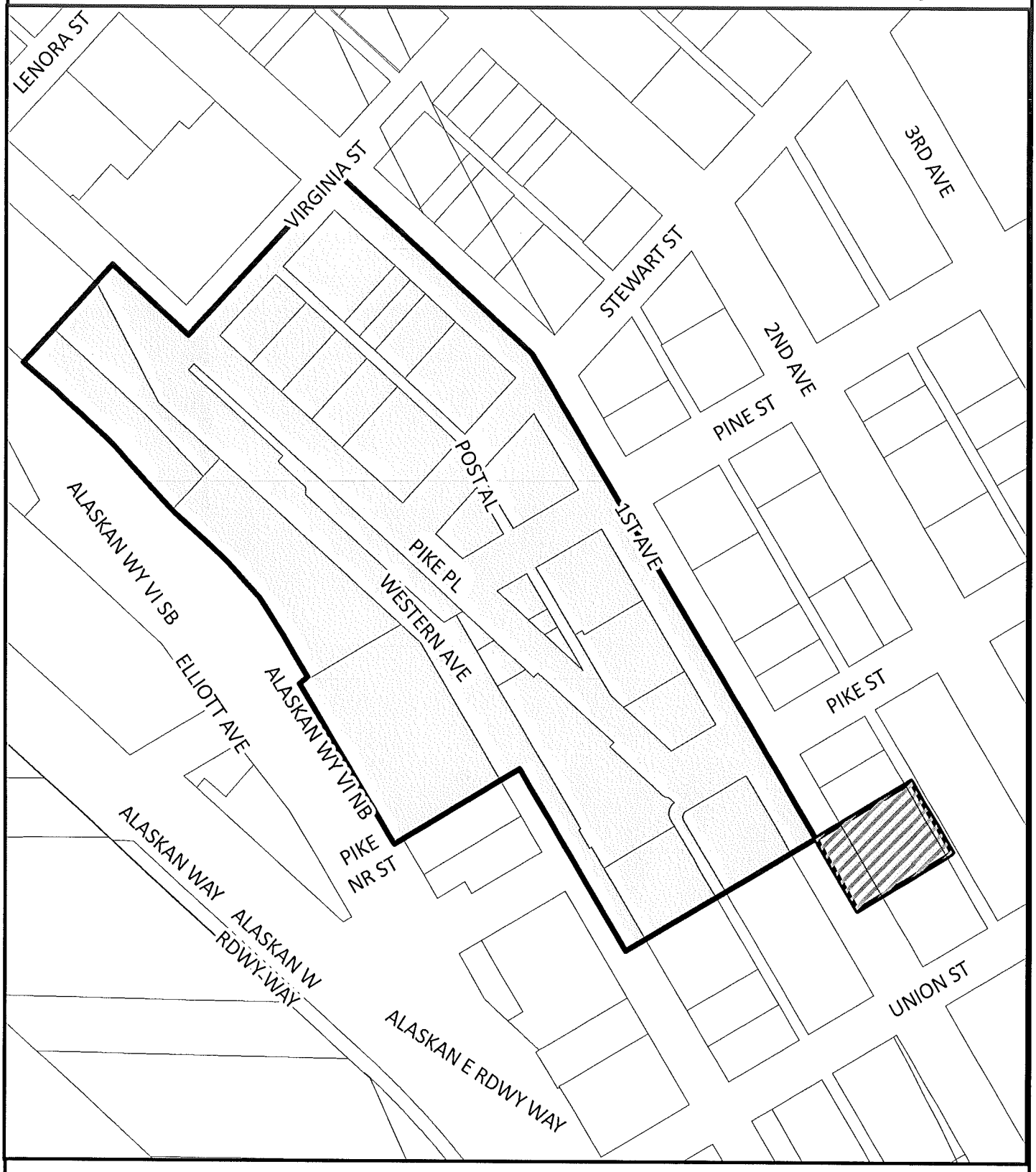
Monica M. Simmons

for Monica Martinez Simmons, City Clerk

(Seal)

Exhibits:
Exhibit A – Interim Pike Place Market Historical District Boundaries with Study Area

Exhibit A
Interim Pike Place Market Historical District Boundaries With Study Area



Study Area

Pike Place Market Historical District Boundary

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Version 2
August 7, 2018

Appendix 2

APPENDIX 2:
Text of Seattle Municipal Code Provisions Cited in this Brief.

SMC 23.40.002.A:

A. The establishment or change of use of any structures, buildings or premises, or any part thereof, requires approval according to the procedures set forth in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions, except:

1. establishment of an urban farm or community garden that does not include major marijuana activity as defined in Section 23.84A.025, that is permitted outright under the provisions of this Title 23 applicable to the lot;

2. as permitted in subsections 23.47A.004.E and 23.47A.004.F;

3. keeping of animals as permitted under Section 23.42.052;

4. reinstatement of a use interrupted by a temporary use authorized pursuant to Section 23.42.040; and

5. for uses located entirely within public rights-of-way.

SMC 23.76.040.A:

A. Applications for Type IV Council land use decisions.

1. Applications for all Type IV Council land use decisions except rezones shall be made by the holder of record of fee title, a City agency, or an authorized agent thereof.

2. Applications for rezones shall be made by the holder(s) of record of fee title for all of the property or properties in the area proposed to be rezoned, or the authorized agent for such holder(s) of record of fee title.

SMC 23.76.060.C:

C. Contract Rezones.

1. The provisions of this section 23.76.060.C.1 apply except as otherwise provided in the Council decision on a contract rezone.

a. A zoning designation established by a contract rezone shall expire three years after the date of the Council action approving the rezone, except as follows:

1) If, prior to the end of the three year period, a complete application is filed for a Master Use Permit to establish a use on the rezoned property, the zoning designation shall not expire pursuant to this Section 23.76.060 as to the lot or lots for which the application is made so long as that application remains pending. The zoning designation shall expire immediately upon any cancellation of the application that occurs after the end of the three year period, unless another such application filed before the end of that period is pending at the time of such cancellation;

2) If a Master Use Permit is issued based on an application that is sufficient to extend the three year period under subsection 23.76.060.C.1.a.1), then the zoning designation shall not expire pursuant to this Section 23.76.060 as to the lot or lots for which the permit is issued unless and until the Master Use Permit expires without a certificate of occupancy having been issued for any structure constructed or altered for a use authorized by any such Master Use Permit, and then shall immediately expire. If such a certificate of occupancy is issued, then the zoning designation shall not expire pursuant to this Section 23.76.060 for that lot or lots;

3) If only a portion of the rezoned property is the subject of a particular application or Master Use Permit, then the zoning designation shall expire as to the other portions of the rezoned property at the same time as if that application had not been made or that permit not issued, as the case may be.

2. When a contract rezone expires, the Official Land Use Map is automatically amended so the zoning designation in effect immediately prior to the contract rezone applies to the subject property, except to the extent otherwise expressly provided by ordinance. The Director shall file a notice of expiration with the City Clerk and with the King County Recorder and shall cause the reversion to the former designation to be shown on published land use maps, but the expiration shall be effective notwithstanding any failure to make such filing or to reflect such expiration in any published information. Unless expressly stated otherwise in any property use and development agreement (PUDA) recorded in connection with a rezone, if the zoning designation expires as to all property subject to the PUDA, then all restrictions and requirements in the PUDA shall terminate.

3. Regardless of whether the time period for expiration has elapsed or a certificate of occupancy has been issued as described in subsection 23.76.060.C.1.a.2), the zoning designation established by a contract rezone shall no longer be in effect upon the effective date of a subsequent rezoning by the Council of the subject property, either through a site-specific rezone or as part of an area-wide rezone. Effective on or after the effective date of such subsequent rezoning of all property subject to a PUDA recorded in connection with the prior rezone, some or all of that property may be released from some or all of the conditions of the PUDA if the release is authorized by ordinance. Such release may be authorized without following the PUDA amendment procedures in 23.76.058, except that notice and a comment period shall be provided pursuant to 23.76.058.C.3. In making the decision whether to release all or part of the PUDA, the Council shall consider factors such as:

    a. whether any of the property subject to the PUDA has been or may still be developed in a manner that was permitted under the designation established by the contract rezone and would not be permitted under the subsequent rezoning; and

    b. the extent to which any terms of the PUDA as applied to the subsequently rezoned property are relevant to the impacts of any development of that property occurring subsequent to the PUDA.

SMC 23.76.026.A - .C:

A. Master Use Permit components other than subdivisions and short subdivisions. Except as otherwise provided in this Section 23.76.026 or otherwise required by law, applications for Master Use Permit components other than subdivisions and short subdivisions shall be considered vested under the Land Use Code and other land use control ordinances in effect on the date:

1. That notice of the Director's decision on the application is published, if the decision is appealable to the Hearing Examiner;

2. Of the Director's decision, if the decision is not appealable to the Hearing Examiner; or

3. A valid and fully complete building permit application is filed, as determined under Section 106 of the Seattle Building Code or Section R105 of the Seattle Residential Code, if it is filed prior to the date established in subsections 23.76.026.A.1 or 23.76.026.A.2.

B. Subdivision and short subdivision components of Master Use Permits. An application for approval of a subdivision or short subdivision of land shall be considered under the Land Use Code and other land use control ordinances in effect when a fully complete application for such approval that satisfies the requirements of Section 23.22.020 (subdivision) or Sections 23.24.020 and 23.24.030 (short subdivision) is submitted to the Director.

C. Design review component of Master Use Permits

1. If a complete application for a Master Use Permit is filed prior to the date design review becomes required for that type of project, design review is not required.

2. Except as otherwise provided by law, a complete application for a Master Use Permit that includes a design review component other than an application described in subsection 23.76.026.C.3 shall be considered under the Land Use Code and other land use control ordinances in effect on:

a. The date a complete application for the early design guidance process or streamlined design review guidance process is submitted to the Director, provided that such Master Use Permit application is filed within 90 days of the date of the early design guidance public meeting if an early design guidance public meeting is required, or within 90 days of the date the Director provided guidance if no early design guidance public meeting is required. If more than one early design guidance public meeting is held, then a complete application for a Master Use Permit that includes a design review component shall be considered under the Land Use Code and other land use control ordinances in effect on the date a complete application for the early design guidance process is submitted to the Director, provided that such Master Use Permit application is filed within 150 days of the first meeting. If a complete application for a Master Use Permit that includes a design review component is filed more than 150 days after the first early design guidance public meeting, then such Master Use Permit application shall be considered under the Land Use Code and other land use control ordinances in effect at the time of the early design guidance public meeting that occurred most recently before the date on which a complete Master Use Permit application was filed, provided that such Master Use Permit application is filed within 90 days of the most recent meeting; or

b. A date elected by the applicant that is later than the date established in subsection 23.76.026.C.2.a and not later than the

dates established in subsections 23.76.026.A.1 through 23.76.026.A.3.

3. A complete application for a Master Use Permit that includes a Master Planned Community design review component, but that pursuant to subsection 23.41.020.C does not include an early design guidance process, shall be considered under the Land Use Code and other land use control ordinances in effect on the date the complete application is submitted.

SMC 25.24.030.C:

C. The Commission shall have for its purpose the preservation, restoration, and improvement of such buildings and continuance of uses in the Historical District, as in the opinion of the Commission shall be deemed to have architectural, cultural, economic, and historical value as described in Section 25.24.040, and which buildings should be preserved for the benefit of the people of Seattle. The Commission shall also make rules, regulations, and guidelines according to the criteria as contained in this Chapter 25.24 for the guidance of property owners within the Historical District. The Commission shall also develop plans for the acquisition and perpetuation of the Pike Place Market and of Market activities through either public ownership or other means and shall make recommendations to the City Council from time to time concerning their progress. Staff assistance and other services shall be provided by the Department of Neighborhoods to the Commission as requested.

SMC 25.24.060.A:

A. No structure or part thereof shall be erected, altered, extended, or reconstructed, and no structure, lot or public place as defined in Section 15.02.040 shall be altered, used or occupied except pursuant to a certificate of approval authorized by the Commission which shall not be transferable; and no building permit shall issue except in conformance with a valid certificate of approval. However, no regulation nor any amendment thereof shall apply to any existing building, structure, or use of land to the extent to which it is used at the time of the adoption of such regulation or amendment or any existing division of land, except that such regulation or amendment may regulate nonuse or a nonconforming use so as not to unduly prolong the life thereof. No new off-premises advertising signs shall be established within the boundaries of the Historical District including public places except where areas have been reserved for groups of signs or for signs which identify the Market District as a whole, as determined by the Commission. The fee for certificates of approval shall be according to the SMC Chapter 22.901T, Permit Fee Subtitle.

SMC 25.24.070:

A. The Commission shall consider and approve or disapprove or approve with conditions applications for a certificate of approval as contemplated in this Chapter 25.24 not later than 30 days after any such application is determined to be complete, and a public meeting shall be held on each such application. If after such meeting and upon review of the Commission it determines that the proposed changes are consistent with the criteria for historic preservation as set forth in Section 25.24.040, the Commission shall issue the certificate of approval within 45 days of the determination that the application is complete, and shall provide notice of its decision to the applicant, the Seattle Department of Construction and Inspections, and to any person who, prior to the rendering of the decision, made a written request to receive notice of the decision or commented in writing on the application. After such a decision, the Director of the Seattle Department of Construction and Inspections is then authorized to issue a permit.

B. A certificate of approval for a use shall be valid as long as the use is authorized by the applicable codes. Any other type of certificate of approval shall be valid for 18 months from the date of issuance of the decision granting it unless the Director of the Department of Neighborhoods grants an extension in writing; provided however, that certificates of approval for actions subject to permits issued by the Seattle Department of Construction and Inspections shall be valid for the life of the permit issued by the Seattle Department of Construction and Inspections, including any extensions granted by the Seattle Department of Construction and Inspections in writing.

SMC 25.24.080.D:

D. The Hearing Examiner may reverse or modify an action of the Commission only if the Hearing Examiner finds that:

1. Such action of the Commission violates the terms of this chapter or rules, regulations or guidelines adopted pursuant to the authority of this chapter; or

2. Such action of the Commission is based upon a recommendation made in violation of the procedures set forth in this chapter or procedures established by rules, regulations or guidelines adopted pursuant to the authority of this chapter and such procedural violation operates unfairly against the applicant.