

July 23, 2021

## MEMORANDUM

**To:** Land Use and Neighborhoods Committee  
**From:** Ketil Freeman, Analyst  
**Subject:** Council Bill 120121 – Downtown Street-level uses Interim Controls

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On July 28, 2021, the Land Use and Neighborhoods (LUN) Committee will have an initial briefing on [Council Bill \(CB\) 120121](#). CB 120121 would establish interim development controls for most downtown zones, which would temporarily relax some requirements for street-level uses.

This memorandum (1) provides background on downtown street-level use requirements and economic recovery, (2) briefly describes what the bill would do, (3) provides a preliminary issue identification, and (4) sets out next steps.

### Street-level Use Requirements

The Downtown Neighborhood Plan urban design policies call for street-level use regulations to generate pedestrian interest, encourage pedestrian activity, strengthen connections between areas of downtown with different functions, and reinforce existing areas with retail concentrations, such as the Downtown Retail Core.<sup>1</sup> Desirable street-level uses are retail, restaurants and bars, and entertainment businesses.

These policies are reflected in development standards in the Land Use Code that map block faces where street-level uses are required;<sup>2</sup> specify allowed uses; and establish minimum physical development standards for the frontage, location, and access to the required street-level use.<sup>3</sup> To mitigate street-level use regulatory requirements, the floor area in a street-level use is not counted towards floor area limits for new development and does not count for the purposes of determining requirements under the Mandatory Housing Affordability program or other public benefit programs.<sup>4</sup>

The Downtown Seattle Association (DSA) estimates that more than 160 downtown street-level business locations closed due to the pandemic.<sup>5</sup> Recent reporting by the DSA indicates that the 2020 retail vacancy rate was about 2.5 percent. That is below peak vacancy rates for the periods 2015-2020 and 2010-2015, which were approximately 3.0 percent and 4.0 percent, respectively. The DSA also indicates that approximately half a million square feet of retail is currently under construction and retail rents are forecast to increase over the next five years.<sup>6</sup>

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<sup>1</sup> [Seattle 2035](#), Downtown Neighborhood Plan, Urban Design Policies DT-UDP10 and DT-UDP11, p. 267-268.

<sup>2</sup> [Seattle Municipal Code \(SMC\) Section 23.49, Map 1G](#).

<sup>3</sup> [SMC Section 23.49.009](#).

<sup>4</sup> [SMC Section 23.49.011.B.1.b](#).

<sup>5</sup> [State of Downtown Economic Report 2021](#), Downtown Seattle Association, p.37

<sup>6</sup> Ibid, p.40.

According to the DSA's [economic recovery dashboard](#), average daily visitors, average daily foot traffic, and hotel occupancy rates are approaching or exceeding pre-pandemic, January 2020 levels.

### **Council Bill 120121**

Council bill 120121 would expand the uses authorized at street-level in most downtown neighborhoods where those uses are required, with the exception of the Chinatown / International Special Review District. The additional uses are intended to increase opportunities to occupy vacant downtown spaces and increase economic activity. The authorization to permit additional uses would expire after a year, unless extended.

Proposed uses include art installations; food processing and craft work; and accessory spaces, like lobbies and amenity areas, to residential and lodging uses. Those proposed uses are currently allowed in most pedestrian-designated areas outside of downtown. For a comparison of currently-allowed and proposed street-level uses, see the table on page six of the Seattle Department of Construction and Inspection's (SDCI) [Director's Report](#) for the bill.

The bill would also:

- Authorize the SDCI Director to permit, through an administrative decision not subject to public comment, notice, or appeal, any kind of use that could increase pedestrian activity or increase the range of goods and services available downtown;
- Reserve to the Pioneer Square Preservation Board and the Director of Neighborhoods decision-making authority for proposed new street-level uses in the Pioneer Square Special Review District;
- Allow uses established through the bill to be maintained as existing non-conforming uses in perpetuity;
- Exempt owners of building subject to the Mandatory Housing Affordability (MHA) Program or other regulatory bonus program from making additional payments or providing additional public benefit for space associated with a use that would otherwise be chargeable under those programs, for example conversion to lobby space in a new hotel of square footage that was originally permitted as a restaurant; and
- Establish a work program for Council consideration of permanent changes to downtown street-level use regulations.

## **Preliminary Issue identification**

This memorandum sets out some preliminary issues with discussion for Committee consideration.

### 1. Ripeness for Council Consideration.

The bill is intended to facilitate downtown recovery by filling vacant ground-floor spaces. While the pandemic contributed to downtown business closures, the DSA's economic reporting and monitoring indicates that retail vacancies are still below some pre-pandemic levels and overall economic activity is increasing. The proposed bill is proposed under authority local jurisdictions have to enact interim development controls that expire after one-year but may be extended for additional 6-month terms.

*Should the Council approve the bill now or defer action on the bill to see how the recovery progresses?*

### 2. Types of Proposed Additional Uses.

The additional proposed street-level uses are derived from allowable street-level uses in pedestrian-designated zones in commercial areas outside of downtown.<sup>7</sup> Allowable uses in those zones include some uses not proposed in the bill, like office uses; exclude others, like horticultural uses; and limit the extent of some through physical development standards, like frontage limitations for heavy retail sales and service.

*Should the Council amend the list of proposed uses to allow more or fewer uses and/or prescribe physical development standards to mitigate uses that might have longer-term negative impacts on the pedestrian environment?*

### 3. Delegation of Authority to SDCI.

The proposed bill provides discretion to the SDCI Director to decide administratively whether to authorize a use that is not listed in the Code. That decision would not be subject to appeal, nor would it require notice and an opportunity for public comment. The proposed delegation provides two independent factors for the SDCI Director to consider in exercising his discretion: (1) whether a proposed use would increase pedestrian activity; or (2) whether a use would increase the range of goods and services available. The delegation would last for the life of the bill.

*Should the Council limit the Director's discretion in deciding which street-level uses to authorize?*

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<sup>7</sup> [SMC Section 23.47A.005](#).

4. Geography for the Use Dispensation.

As proposed, the interim controls would apply to downtown zones where street-level uses are required, except zones located in the Chinatown / International Special Review District. Other zones, such as some Seattle Mixed zones in South Lake Union and the University District have street-level use limitations with restrictions similar to those that apply downtown.

*Should the Council extend the proposed interim controls to other areas with street-level use requirements?*

5. Applicability of MHA and other Bonus Programs.

The proposed bill allows conversion of floor area in a required street-level use to uses that could be charged towards a structure's maximum floor area limit. For buildings developed under the MHA program or other bonus programs, converted floor area would require the provision of a public benefit or an in-lieu payment. The proposed bill would allow floor area converted from a required street-level use to remain in that use in perpetuity.

*Should the Council require participation in public benefit programs, like MHA and the childcare bonus program, for development that converts to chargeable floor area and remains in that use?*

**Next Steps**

The LUN Committee is scheduled to hold a public hearing and may vote on the bill at its meeting on Wednesday, August 11, 2021.

cc: Dan Eder, Interim Director  
Aly Pennucci, Policy and Budget