

May 28, 2024

## MEMORANDUM

**To:** Land Use Committee  
**From:** Asha Venkataraman, Analyst  
**Subject:** CB 120761: Office to housing conversion

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On June 5, 2024, the Land Use Committee will hold a committee meeting and public hearing to discuss [Council Bill \(CB\) 120761](#), a bill that would amend the Land Use Code to allow the conversion of buildings from any nonresidential to a residential use in a commercial, Downtown, Seattle Mixed, Highrise, or Midrise zone under specific conditions. This memo will provide background, describe the legislation, and outline issues for the Committee's consideration.

### Background

In June 2023, Mayor Harrell released a Downtown Activation Plan (DAP), a strategy that includes increasing residential uses downtown. The decrease in demand and increase in vacancy for commercial office space, the need for more housing Citywide, and the passage of Engrossed Substitute House Bill ([ESHB](#)) 1042,<sup>1</sup> which removed state restrictions on adding residential units in existing buildings, are all factors the Executive considered in proposing this legislation. The Office of Planning and Community Development (OPCD) [solicited](#) ideas for converting office space downtown to residential use and received proposals with [ideas for changes in policy](#) to support such conversion, given the small scale of projects and balance of various factors in which conversion would be financially viable. CB 120761 responds to the findings of the call for ideas.

OPCD conducted a State Environmental Protection Act (SEPA) analysis and found no significant environmental impacts resulting from the proposal. OPCD issued a [determination of non-significance](#) (DNS) on January 8, 2024.

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<sup>1</sup> ESHB 1042 prohibits a city from imposing a range of restrictions on existing buildings zoned for commercial or mixed use. For example, a city may not place restrictions on housing unit density that prevent the addition of housing at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within an existing building envelope and generally applicable health and safety standards can be met.

## **CB 120761**

CB 120761 would waive land use code requirements for the conversion of an existing structure with a non-residential use to a residential use that meets the following criteria:

- The development does not expand a structure horizontally by more than five percent;
- The development does not expand the structure vertically except up to 15 feet for specific uses;
- The building has received a temporary or permanent certificate of occupancy before March 1, 2024; has been determined by the Director to have been legally occupied; or is approved for future development with an unexpired Master Use Permit prior to March 1, 2024;
- The conversion of floor area to residential use increases the number of dwelling units or congregate residence sleeping rooms in the structure;
- The conversion does not increase the square footage of nonresidential uses in the structure; and
- The building is located in a commercial zone, a Downtown zone, a Seattle Mixed (SM) zone, the Highrise (HR) zone, or the Midrise (MR) zone, anywhere in the city.

In general, existing structures must conform with the current land use regulations in the applicable zone when there is a change of use and are thus subject to the appropriate permits and approvals needed to achieve conformity, with limited exceptions. Often older buildings do not conform to current land use code provisions and can therefore be difficult to convert.

The legislation would exempt conversion from specific development standards and land use regulations, including:

- Chapter 23.45 (Multifamily);
- Chapter 23.47A (Commercial);
- Chapter 23.48 (Seattle Mixed);
- Chapter 23.49 (Downtown Zoning);
- Chapter 23.52 (Transportation Concurrency, and Transportation Impact Mitigation);
- Chapter 23.53 (Requirements for Streets, Alleys, and Easements);
- Chapter 23.54 (Quantity and Design Standards for Access, Off-Street Parking, and Solid Waste Storage);
- Chapter 23.58A (Incentive Provisions); and
- Title 23, Subtitle III, Division 3, (Overlay Districts).

The following land use code provisions would continue to apply:

- Permitted and prohibited use regulations pertaining to nonresidential uses;
- Administrative conditional use regulations;
- Light and glare standards;
- Noise standards;
- Institutions;
- Home occupations;
- Transitional encampment accessory uses;
- Landmark Districts and designated landmark structures; and
- Subsections 23.54.040.F, 23.54.040.G, 23.54.040.H, 23.54.040.I, and 23.54.040.J, solid waste and recyclable material storage and access.

Already constructed buildings converting to residential use would be exempt from Mandatory Housing Affordability (MHA) and design review. Permitted but not yet constructed buildings would still be subject to the MHA and design review requirements.

### **Issue Identification**

#### **1. MHA exemption for existing structure conversion**

The [MHA](#) program requires that new development or a change of use that adds residential units to a project include a percentage of affordable housing units on-site or provide a payment in-lieu of on-site affordable housing development. Generally, the program requires, for the on-site option, that a percentage of units are income- and rent-restricted to be affordable for households earning less than 40 percent of the average median income (AMI) for small rental units, 60 percent AMI for larger rental units, or less than 80 percent AMI for ownership units. For the payment in-lieu option, the program requires payment of funds comparable to the cost of providing those units on site. MHA does not apply to housing that meets these low-income levels. On the low end, MHA requires that a project include 5 percent of units at these income levels. On the high end, in high-cost areas which were upzoned as part of implementing the MHA program, it requires 11 percent of units to be affordable at these income levels.

CB 120761 would exempt conversion of existing structures from MHA. OPCD's Director's Report provides several reasons for this exemption. First, it explains that MHA is predicated on increasing development capacity in exchange for affordable housing, but in the case of converting existing buildings, the development capacity is not available because the structure is already built, and the provisions of CB 120761 do not allow for the expansion of the structure. Second, the Director's Report explains that new development has an impact on the need for affordable housing in the City and MHA mitigates those impacts. However,

for conversions, the existing structure already had a use that impacted affordable housing, and converting to a new residential use would replace the old use. Lastly, it appears that in many cases, converting from non-residential to residential use of already existing structures can be as expensive as building new construction from the ground up, as many viable buildings need changes to accommodate residential use and other updates, such as seismic retrofitting. Feedback from OPCD's 2023 call for proposals for potential conversion ideas indicated that direct financial support would make it more financially viable for developers to convert existing structures. The Director's Report explains that one form of financial support the City could provide to decrease costs is to waive MHA fees, as in-lieu payments can range from \$10-\$20 per square foot.

As a policy matter, the Committee may want to consider whether the City should be encouraging conversion of smaller buildings or the development of new bigger buildings that would be subject to MHA. The scale of impact on affordable housing from converting buildings to residential uses as compared to the previous use is unclear. Because many of the buildings that are good candidates for conversion are older, and were likely built before MHA applied, any impact on affordable housing would not have been mitigated by virtue of compliance with MHA. Those buildings have a range of uses, with a commensurate range of impacts on affordable housing. Converting those buildings from non-residential to residential use could have a smaller or bigger impact on affordable housing than their existing use, but such an assessment would likely need to occur on a building-by-building basis to determine whether applying MHA makes sense.

In addition, it is not clear whether exemption from the amount of MHA fees that could be collected would be the key financial factor in a developer's decision to convert, given the complexity of financing and other financial factors that impact the viability of conversion.<sup>2</sup> If so, the Committee may want to balance increasing housing overall through conversion without collecting MHA fees with the potential that no conversion from vacant office space and therefore no increase in housing units nor MHA fee collection will occur because MHA fees make conversion too expensive.

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<sup>2</sup> In addition, while outside the scope of this specific bill, the first two items in the Director's Report raise the question of why all conversions are not exempt from MHA, given that this reasoning applies to conversions of any existing structures that could be converted, not just those described in this legislation.

## 2. Street level use exemptions

CB 120761 would broadly exempt conversions from a number of existing land use regulations, including street level use requirements, which are intended to activate an area. Part of the Executive's rationale for this and other bills in the DAP package, particularly [CB 120771](#), which is intended to relax street level use requirements to incentivize more activation, is to support downtown recovery. However, an exemption from street level use regulations for conversion may result in residential uses at the street level, which are unlikely to encourage activity throughout the day compared to street level uses such as cafes or retail.

The Committee may want to consider whether such an exemption should be retained when weighing the appropriate balance between decreasing regulatory barriers to incentivize increased housing conversion and activating and neighborhood-serving street level uses, particularly in areas with an increase in residents. Living on the ground floor can implicate a resident's privacy concerns, and having a unit's window coverings closed at all times to maintain privacy does not provide much activation. It is not clear whether requiring street level uses is a key factor in a developer's decision to convert. One factor is whether converting a vacant building to housing without street level uses would outweigh no development in that vacant building at all. Another is that given the small number of projects in which conversion might be financially viable, it is possible that the benefits of converting units to housing may outweigh the impact of not having street level uses in those projects, particularly if there are areas nearby that already have active street level uses.

## 3. Other exemptions

CB 120761 would broadly exempt conversions from a number of existing land use regulations, including parking and landscaping requirements; review under the Shoreline Master Program; and special review district regulations. The Committee may want to consider whether conversions should be subject to any of these regulations. For example, exemption from off-site parking regulations might mean that when more residents move into the area, and some proportion of them use vehicles, they may use more on-street parking, which could create more parking congestion in the area.

In particular, the legislation exempts conversion from the regulations in Title 23, Subtitle III, Division 3, (Overlay Districts), which regulates overlay districts and [special review districts](#), including the Pioneer Square Preservation District and the International Special Review District. While CB 120761 retains the applicability of landmark district and historic district regulations, special review district regulations are not similarly retained. The exemption of conversion from Title 23, Subtitle III, Division 3, (Overlay Districts) would also include Section 23.60A Seattle Shoreline Master Program Regulations, which apply to the Shoreline District (all shorelines of the City within its jurisdiction) and superimpose shoreline specific regulations to the underlying zone regulations. Upon further analysis and consultation with

OPCD, Central Staff believes that on balance, exempting conversion from Title 23, Subtitle III, Division 3 will not confer many benefits and may cause more issues than such benefits are worth, such as the need for additional processes to amend the Shoreline Master Program.

Options:

- A. Amend CB 120761 to remove exemptions from:
  - 1. MHA;
  - 2. Street-level use regulations;
  - 3. Shoreline Master Program regulations;
  - 4. Special Review District regulations; or
  - 5. Any combination of the above.
- B. No change.

**Next Steps**

CB 120761 may be before the Committee for a potential vote at a special meeting on June 21, 2024. Please submit amendments to the legislation to Central Staff by Wednesday June 12.

cc: Ben Noble, Director  
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