City of Bellevue

MEMORANDUM

DATE: November 5, 2010

TO: Chair Ferris, Members of the Planning Commission

FROM: Carol Helland , Land Use Director
Liz Stead, Planning Manager
Ken Thiem, Senior Planner
Development Services Department

SUBJECT: Staff Report – Performing Arts Uses LUCA; File No. 10-113270 AD

This memorandum presents the report and recommendation of the Development Services Department (DSD) on proposed Land Use Code (LUC) amendments to modify the development standards applicable to Performing Arts Uses to implement Comprehensive Plan policy changes that were adopted as part of the Downtown Implementation Plan (DIP) work completed in 2004. Copies of the proposed ordinances are included with this memorandum as Attachments A.

Following the public hearing scheduled for December 1, 2010, and consideration of public comment, staff recommends that the Planning Commission make a recommendation to the City Council regarding adoption of the proposed code amendments as included in Attachment A.

Sample motion language (for reference): I move to recommend *to the City Council approval of the proposed Land Use Code Amendment related to Performing Arts Uses, file number 10-113270 AD, as proposed in the draft ordinance included in Attachment A.*

I. BACKGROUND

Development Services Department received an application for Design Review approval on August 25, 2009 from Tateuchi Center. The Tateuchi Center is a Performing Arts Center to be located on the southwest corner of NE 10th Street and 106th Ave NE. The Center is appropriately located abutting 106th Ave NE, which is designated by the Comprehensive Plan as "Entertainment Avenue." The internal building function for the project necessitates that the permitted FAR and floor plate size exceed the maximum allowed in the underlying Land Use District to accommodate performing arts uses and their unique functional needs.

On July 19,2010, the Director of the Development Services Department (DSD) initiated a code amendment work program for the balance of this year. The Land Use Code Amendment (LUCA) intended to provide flexibility to accommodate the unique

functional needs of a performing arts use was included on the work program list that was presented to the Planning Commission at its annual retreat. The recommended Land Use Code Amendment was first introduced to the Planning Commission at the regularly scheduled study session of September 15, 2010. At that time, the Commission had questions that needed further answers prior to recommendation. The Commissions 'concerns were about: **1)** Limiting the applicability of this LUCA to minimize potential impacts on lower intensity uses and the pedestrian environment envisioned for the Downtown; **2)** Controlling the impacts through narrowly tailored dimensional deviations necessary to accommodate the performing arts function; and, **3)** Activating the street through design requirements and uses that complement scheduled performances to provide interest at the sidewalk when performance events are not scheduled.

Staff again engaged with the Planning Commission at their study session on November 3, 2010 where the concerns that had been noted previously were answered and draft code language was proposed and accepted by the Commission. Staff was given direction to move forward to a public hearing scheduled for December 1, 2010.

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II. PROPOSAL

Based on considerable research and public discussions, Staff recommends approval of the following code amendments to modify the development standards applicable to performing arts uses located outside of the Civic Center Design District to implement Comprehensive Plan policy changes that were adopted as part of the Downtown Implementation Plan (DIP) work completed in 2004. Specifically, staff recommends the following code amendments:

Proposed amendments to the Land Use Code (Attachment A) – These proposed amendments to the Land Use Code emerged from previous Planning Commission discussions.

1. **Façade Stepback .** Modification to the current Land Use Code requirement for a 25 foot Side/Rear (façade) stepback for buildings that exceed 75 feet in height that is applicable to all floors above 40 feet. No stepback required for Performing Arts Uses for floors above 40 feet to the maximum permitted 100 feet.

2. **Building Floor Area per Floor.** Modification to the current Land Use Code requirement for The Maximum Building Floor Area per Floor above 40 feet, to unlimited floor area up to a maximum of 100 feet.

3. **Floor Area Ratio (FAR).** Permit Performing Arts uses to earn an addition 1.0 of FAR in the Dntn-MU district.

4. **Building Height.** Raise the maximum building height for a performing arts use to a maximum 100 foot threshold in every land use district where performing arts structures are permitted.

5. **Design and Use Requirements**. Performing arts structures that require dimensional deviations will be required to meet the existing design guidelines for Type A frontage, pursuant to the Design Guidelines Building/Sidewalk Relationships.

III. STATE ENVIRONMENTAL POLICY ACT

The Environmental Coordinator for the City of Bellevue has determined that the substantive changes included in this proposal will not result in any probable, significant, adverse environmental impacts. A final threshold determination of non-significance (DNS) was issued on November 10, 2010. The final DNS is attached to this memorandum as Attachment B.

IV. PUBLIC NOTICE, PARTICIPATION, COMMENT AND RESPONSE

This Land Use Code Amendment was introduced to the Planning Commission at a study session in September, 2010 and was considered during one additional meeting – November 3, 2010. The Planning Commission gave staff direction to set a public hearing for December 1, 2010. Notice of the Public Hearing before the Planning Commission, staff recommendation, and SEPA determination (DNS) was published in the Weekly Permit Bulletin on November 10, 2010. The public hearing is scheduled to be held on December 1, 2010.

Pursuant to the requirements of the Growth Management Act, state agencies must be given an opportunity to review and comment on proposed amendments to the LUC. Copies of the draft ordinances were provided to the state agencies for review on November 10, 2010.

V. APPLICABLE DECISION CRITERIA – LAND USE CODE PART 20.30J

The Planning Commission may recommend and the City Council may approve or approve with modifications an amendment to the text of the Land Use Code if:

A. The amendment is in accord with the Comprehensive Plan; and

The proposed amendments are consistent with the Comprehensive Plan. The proposed amendments are intended to enhance Downtown livability and promote the development of 106th Avenue NE as “Entertainment Avenue”.

Policy S-DT-1. Emphasis shall be placed on Downtown livability, with provisions made for the needs, activities, and interested of Downtown residents, employees, shopper and visitors.

Policy S-DT-5. Organize Downtown to provide complementary functional relationships between various land uses.

Policy S-DT-9. Provide bonus incentives (related or permitted intensity, height, etc.) for private developments to accomplish the public objectives outlines in this plan.

Policy S-DT-11. Encourage the development of major civic, convention, and cultural uses within Downtown.

Policy S-DT-14. Encourage visual and performing arts organization to locate Downtown.

B. The amendment bears a substantial relationship to the public health, safety or welfare; and

Implementation of the Comprehensive Plan through the City's development regulations is an appropriate use of City authority, and fulfills the GMA mandate for consistency between the City's Comprehensive Plan and Land Use Code. The proposed amendments serve the public health, safety, and welfare by addressing issues of height, bulk and scale associated with new development and redevelopment of Performing Arts uses by mitigating impacts to adjacent uses.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

The public interest is generally identified in the Comprehensive Plan and the development regulations that implement it. As described above, the proposed amendments serve to enhance the LUC and further the Comprehensive Plan. The public interest is advanced through this proposal.

VI. RECOMMENDATION

Staff requests the Planning Commission develop a recommendation to the City Council regarding adoption of the proposed code amendment referenced herein (Attachment A) and transmit the ordinance on to the City Council for final approval.

ATTACHMENTS

A. Draft Ordinance for Land Use Code Amendments
B. Determination of Non-significance

ATTACHMENT A

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE amending the Bellevue Land Use Code relating to façade stepbacks, building floor area per floor, maximum Floor Area Ratio, and maximum building height, specifically amending Land Use Code Section 20.25A.020 of the Bellevue Land Use Code; providing for severability and establishing an effective date.

WHEREAS, On July 19, 2010, the Director of the Development Services Department (DSD) initiated a code amendment work program for the balance of 2010 and 2011; and

WHEREAS, the City seeks to allow for the reasonable development of Performing Arts uses consistent with Comprehensive Plan policy changes that were adopted as part of the Downtown Implementation Plan (DIP) work completed in 2004; and

WHEREAS, the Environmental Coordinator for the City of Bellevue determined that this proposal will not result in any probable, significant, adverse impacts and as such a final threshold determination of non-significance (DNS) was issued on November 10, 2010; and

WHEREAS, the Planning Commission held a public hearing on December 1, 2010 with regard to the proposed Land Use Code amendment contained herein; and

WHEREAS, the Planning Commission recommends that the City Council approve such proposed amendments, now, therefore;

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 20.25.020B of the Bellevue Land Use Code is hereby amended as follows:

20.25.020B Exceptions to Dimensional Requirments.

1. Floor Plate Exceptions.

   a. For residential buildings, the "Maximum Floor Area per Floor above 40 Feet" may be increased by not more than 10 percent through Design Review, Part 20.30F LUC, if the applicant demonstrates that the increase is necessary for reasonable development of the building, and will not

ATTACHMENT A

have a significant adverse effect on other properties. Each square foot of floor area above the maximum requires a proportionate square footage of amenity in conformance with LUC 20.25A.030.C; however, the amenity area provided under this requirement may not be used to exceed the basic floor area ratio.

b. For buildings on streets designated "A" or "B" in LUC 20.25A.115, Design Guidelines – Building/Sidewalk Relationships, the limitation of "Maximum Building Floor Area per Floor Above 40 Feet" may be modified through Design Review to apply to floor area above 45 feet. In this case, the applicant must demonstrate that the modification is necessary for creating higher, more prominent and distinctive ground-level pedestrian-oriented frontage; and the minimum retail floor height shall be 16 feet.

c. For structures that do not exceed 70 feet in height (as defined by the International Building Code, as adopted and amended by the City of Bellevue), the Director may allow the connection of floor plates above 40 feet such that those floor plates exceed the "Maximum Building Floor Area per Floor Above 40 Feet"; provided, that:

i. The connection is to allow for safe and efficient building exiting patterns. The connecting floor area shall include required exiting corridor area and may include the floor area of units or other building uses;

ii. The connection occurs on no more than three floor levels above 40 feet; and

iii. The alternative design results in a building mass that features separate and distinct building elements.

d. Diminishing Floor Plate. A nonresidential building in the Downtown O-1, Downtown O-2, Downtown MU, and Downtown OLB Land Use Districts can exceed the "Maximum Building Floor Area per Floor Above 40 Feet," to a maximum of 30,000 square feet, if the building incorporates two floor plates which are each at least 20 percent smaller than the floor plate of the floor below it. If only one floor of a nonresidential building exceeds the "Maximum Building Floor Area per Floor Above 40 Feet," the building must incorporate one floor plate which is at least 20 percent smaller than the floor plate of the floor below it. Exposed roof area at the level of the diminished floor must have some amount of landscaping and be physically accessible for use; or, if not a flat surface, must provide a visually interesting roof form

e. Performing Arts Center uses may have unlimited floor area up to 100-feet in height, measured from average finished grade, provided that:

i. The proposal site abuts 106th Ave NE, between the south side of NE 10th Street and the north side of NE 2nd Street, and where feasible, an entrance is provided on 106th Avenue NE; and,

ATTACHMENT A

ii. The floor plate exception applies only to that portion of the building which contains the performing arts uses and subordinate uses do not exceed 25% of the total area; and,

iii. The ground floor design is consistent with the Building/Sidewalk Design Guidelines for "A" rights-of-way, excluding the arcade provision; and,

iv.The exception from the floor area limitation is the minimum necessary to accommodate the performing arts center use, or equipment functionality related to that use.

2. Setback/Stepback Exceptions

a. Marquees or awnings which comply with the requirements of LUC 20.25A.030.C are permitted to extend over the public right-of-way upon approval of the Director of the Transportation Department and the Director of the Department of Planning and Community Development notwithstanding the provisions of the Sign Code, Chapter 22B.10 BCC, or any other City Code.

b. The Director of the Department of Planning and Community Development may approve an intrusion into the 20-foot front yard setback from the east side of 112th Avenue NE in the Downtown-OLB District to permit the location of pedestrian-oriented frontage retail uses within a portion of the required setback area. The intrusion shall be limited to a maximum of 30 percent of the required front yard setback area. All building areas within the setback areas shall be devoted to pedestrian-oriented uses and meet the design criteria of LUC 20.25A.030 for pedestrian-oriented frontage. Amenity floor area earned may be used to exceed the permitted basic floor area ratio.

c. The Director may allow modifications to the minimum side and rear setback required above 40 feet for buildings with a building height in excess of 75 feet if:

i. The applicant can demonstrate that the resulting design will be more consistent with the Design Review criteria of LUC 20.25A.110; and

ii. The building design, with the modification, will create sufficient spacing between towers to encourage a feeling of an open and airy Downtown.

d. Minor building elements may intrude into any required setback of this section, subject to all the terms and conditions of LUC20.20.025.C.

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ATTACHMENT A

e. Setback requirements above 40 feet may be modified for Performing Arts Uses meeting the locational requirements of LUC 20.25A.020.B.1.e.i; and

ii. the applicant can demonstrate that the resulting design will be more consistent with the Design Review criteria of LUC 20.25A.110; and;

iii. interesting roof forms, significant floor plate modulation, significant façade modulation, or other such unique architectural features are provided to minimize impacts to abutting structures.

3. Floor Area Ratio Exceptions.

a. Up to a maximum of 1.0 FAR of the floor area in a project limit that is devoted to retail activities will not be counted for the purpose of calculating FAR in the proportions set forth in LUC 20.25A.115, so long as the retail activities are designed and located in compliance with:

i. LUC 20.25A.115;

ii. Guidelines 2 and 3 for "A" Rights-of-Way in Section IV.F of the Design Guidelines –Building/Sidewalk Relationships; and

iii. if applicable, Guidelines and Standards for Upper Level Retail in Section IV>F of the Design Guidelines-Building/Sidewalk Relationships.

b. In the area of the Downtown bounded on the west by Bellevue Way, on the east by 112th Avenue NE, on the south by NE 4th Street and on the north by NE 8th Street, the maximum Floor Area Ratio may be exceeded if the major pedestrian corridor is constructed as required by LUC 20.25A.100.E.1, or the major public open space is constructed as required by LUC 20.25A.100.E.4. The maximum Floor Area Ratio may only be exceeded by the amount provided for under the major pedestrian corridor amenity bonus, LUC 20.25A.030.C.16 or by the amount provided for under the major public open space amenity bonus, LUC 20.25A.100.E.4.d.vi, or by a combination thereof.

c. In the Downtown-MU land use district, Performing Arts Uses meeting the locational requirements of LUC 20.25A.020.B.1.e.i, may earn an increase in the maximum Floor Area Ratio from 3.0 to 4.0. The Floor Area Ratio bonus must be earned through participation in the FAR Amenity Incentive System to provide public benefits. Incentives may be earned by providing any of the following: pedestrian oriented frontage, plaza, enclosed plaza, sculpture, water feature, and landscape features.

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ATTACHMENT A

Section 2. Section 20.50.040 of the Bellevue Land Use Code is hereby amended as follows:

20.50.040 P definitions.

….

Performing Arts Center. Any facility intended and designed for the presentation of live performances of dance, drama, and music.

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Section 3. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section 4. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this _____ day of _____, 2010 and signed in authentication of its passage this _____ day of _____, 2010.

(SEAL)

_____

Don Davidson, DDS
Mayor

Approved as to form:

Lori M. Riordan, City Attorney

_____

Lacey Madche, Assistant City Attorney

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ATTACHMENT A

Attest:

_____

Myrna L. Basich, City Clerk

Published _____

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DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL COORDINATOR
450 110th Ave NE., P.O. BOX 90012
BELLEVUE, WA 98009-9012

DETERMINATION OF NON-SIGNIFICANCE

PROPONENT: City of Bellevue Development Services Department

LOCATION OF PROPOSAL: Downtown

DESCRIPTION OF PROPOSAL: The proposal amends Land Use Code section 20.25A.020 so that the façade stepbacks, maximum building floor area per floor, maximum Floor Area Ratio, and maximum building height restrictions on lots on or abutting 106th Ave NE, between NE 10th Street and NE 2nd Streets for Performing Arts uses may be modified through the Design Review process.

FILE NUMBER: 10-113270 AD, Performing Arts Uses LUCA

The Environmental Coordinator of the City of Bellevue has determined that this proposal does not have a probable significant adverse impact upon the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(C). This decision was made after the Bellevue Environmental Coordinator reviewed the completed environmental checklist and information filed with Land Use Division. This information is available to the public on request.

☑ This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

☐ This DNS is issued under WAC 197-11-340(2) and is subject to a 14-day comment period from the date below. Comments must be submitted by 5 p.m. on _____.

This DNS may be withdrawn at any time if the proposal is modified so that it is likely to have significant adverse environmental impacts; if there is significant new information indicating, or on, a proposals probable significant adverse environmental impacts (unless a non-exempt license has been issued if the proposal is a private project), or if the DNS was procured by misrepresentation or lack of material disclosure.

This DNS is only appealable as part of the City's action on the amendment to the Land Use Code. In order to comply with requirements of SEPA and the State of Washington Growth Management Act for coordination of hearings, any appeal of the SEPA threshold determination herein will be considered by the Growth Management Hearings Board along with an appeal of the City Council's action. *See* LUC 20.35.250C.

Carol V Helland
Environmental Coordinator

November 10, 2010
Date

OTHERS TO RECEIVE THIS DOCUMENT:
State Department of Fish and Wildlife
U.S. Army Corps of Engineers
Attorney General
King County
Muckleshoot Indian Tribe