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5 SUPERIOR COURT OF THE STATE OF WASHINGTON
6 KING COUNTY

7 PORT OF SEATTLE, a special purpose district

8 Petitioner,

No.

9 v.

LAND USE PETITION

10 CITY OF SEATTLE, a municipal corporation

11 Respondent,

12 and

13
14 WSA PROPERTIES X11 LLC; WSA
15 PROPERTIES XII, LLC; WSA PROPERTIES X
16 LLC; WSA PROPERTIES VII LLC; WSA
17 PROPERTIES V LLC; WSA PROPERTIES
18 LLC; WSA PROPERTIES IV LLC; WSA
19 PROPERTIES II LLC; WASHINGTON STATE
20 PUBLIC; WASHINGTON STATE
21 BASEBALL; WASHINGTON ST MAJOR
22 LEAGUE; WASH STATE MAJOR LEAGUE;
23 WASH ST MAJOR LEAGUE; WASH ST
24 BASEBALL STADIUM; WA ST MAJOR
25 LEAGUE BASEBALL; THE WASHINGTON
26 STATE MAJOR LEAGUE BASEBALL
27 STADIUM PUBLIC FACILITIES DISTRICT;
FIRST & GOAL INC; BNSF RAILWAY
COMPANY; BNSF; BASEBALL CLUB OF
SEATTLE; THE BASEBALL CLUB OF
SEATTLE, LLLP; 1700 LLC; WSA
PROPERTIES VI, LLC; and 1530 FIRST
AVENUE SOUTH LLC

Additional Parties.

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I. INTRODUCTION

The Port of Seattle, under the authority of the Land Use Petition Act (“LUPA,” codified at Chapter 36.70C, RCW) hereby files this Petition to overturn the Seattle City Council’s decision to permit a major residential development in the heart of the industrial area supporting Seattle’s deep-water port. The Council took this action with little or no regard for the environmental impacts of the proposal, not to mention the City’s legal obligations under state and local laws and policies governing rezone actions. In its haste to advance the proposal, the Council summarily disposed of longstanding protections the City has afforded to industrial uses, all in order to open the door for a single housing project. This project could be sited in virtually any other part of the City and is an exceedingly poor fit for the City’s industrial and maritime core.

Up until the City Council’s recent adoption of Ordinance 127191 (referred to here as the “Ordinance,” comprising the decision challenged in this LUPA Petition), the City recognized and took seriously the existential threat posed to Port operations and the regional economy by the encroachment of non-industrial uses in this area. The City has expressly protected the industrial nature of land around the Port in its comprehensive planning efforts and flatly rejected proposals to allow inconsistent and incompatible uses in the Port’s vicinity, including a 2016 proposal to build a sports arena. Now, apparently at the behest of the same individual who proposed a new arena adjacent to the Port, the City decided to spot-zone a small, three-block area of industrial land for a project that promises to add up to 990 residential units and potentially thousands of new residents right next to some of the City’s busiest industrial arterial streets. These thousands of residents, and their vehicles, would add significant traffic to City-designated Major Truck Streets, and impair the functioning of a street system that was planned and improved with extensive federal, state, City, and Port investments to serve the Port’s cargo terminals. Not only does the Ordinance permit residential construction where it was once prohibited, it allows housing on the affected properties to be located within 200 feet of these Major Truck Streets—a benefit that is not extended to any other Urban Industrial-zoned lot in the City.

1 The Ordinance purports to permit residential development on 29 tax parcels in the City's
2 "Stadium District." Many of these parcels, and a significant majority of the land subject to the
3 Ordinance, are not available for housing development because they are fully developed for railroad
4 or professional sports stadium uses or are otherwise owned by sports teams. The remaining 14
5 parcels—the clear target of the Ordinance—are located in a three-block area, and all but one appear
6 to be controlled by a single owner. Perhaps more troubling than the obvious nature of this spot
7 zone is the City Council's decision to forego all normal land use and environmental review
8 processes for the Ordinance. The proposal (Council Bill 120933) was advanced through the
9 Council's Governance, Accountability, and Economic Development (GAED) Committee, with no
10 review by the Council's standing Land Use Committee. While the Ordinance essentially rezones
11 a small area within the Stadium District for residential uses, there was no apparent attempt to
12 follow the administrative processes established by the Seattle Municipal Code (the "SMC," or
13 "Code") for site-specific zoning changes, nor to be consistent with Growth Management Act
14 planning requirements or comply with the State Environmental Policy Act ("SEPA") or its
15 implementing regulations in the Code.

16 The Port understands the need for housing in the City and supports legislation to allow
17 more housing to be built where it makes sense and after full consideration of the probable
18 environmental impacts consistent with state and local laws. However, certain Councilmembers'
19 zeal for a single project in this specific area should not override pressing concerns about
20 compatibility of uses and the functioning of the City's one-and-only deep-water port, which is
21 critical to the economy of the region as a whole. Nor should it be allowed to unwind decades of
22 careful planning to protect and preserve the City's industrial lands. The City's hasty enactment of
23 the Ordinance was not just a poor policy decision; it was unlawful and it cannot be allowed to
24 stand. The City should be preliminarily and permanently enjoined from allowing development
25 under the Ordinance considering the irreparable harm it would cause the Port and the maritime and
26 industrial businesses, unions, and workers who depend on the Port.

1 **II. PARTIES AND PROPERTY AFFECTED**

2 2.1 *Name and Mailing Address of Petitioner:* Petitioner is the Port of Seattle (the
3 “Port”) a special purpose district. Petitioner’s mailing address is P.O. Box 1209, Seattle,
4 Washington, 98111.

5 2.2 *Name and Mailing Address of Petitioner’s Attorney:* The Attorneys for Petitioner
6 are Clayton P. Graham, Margaret A. Burnham, Brent E. Droze, and Megan C. Raymond. Their
7 mailing address is c/o Davis Wright Tremaine LLP, 920 Fifth Avenue, Suite 3300 Seattle,
8 Washington 98104-1610.

9 2.3 *Name and Mailing Address of the Respondent Local Jurisdiction Whose Land Use*
10 *Decision Is at Issue:* The local jurisdiction whose land use decision is at issue is the City of Seattle,
11 a municipal corporation of the State of Washington (the “City”), Respondent under this Land Use
12 Petition. The City’s mailing address is P.O. Box 94749, Seattle, WA, 98124-4749.

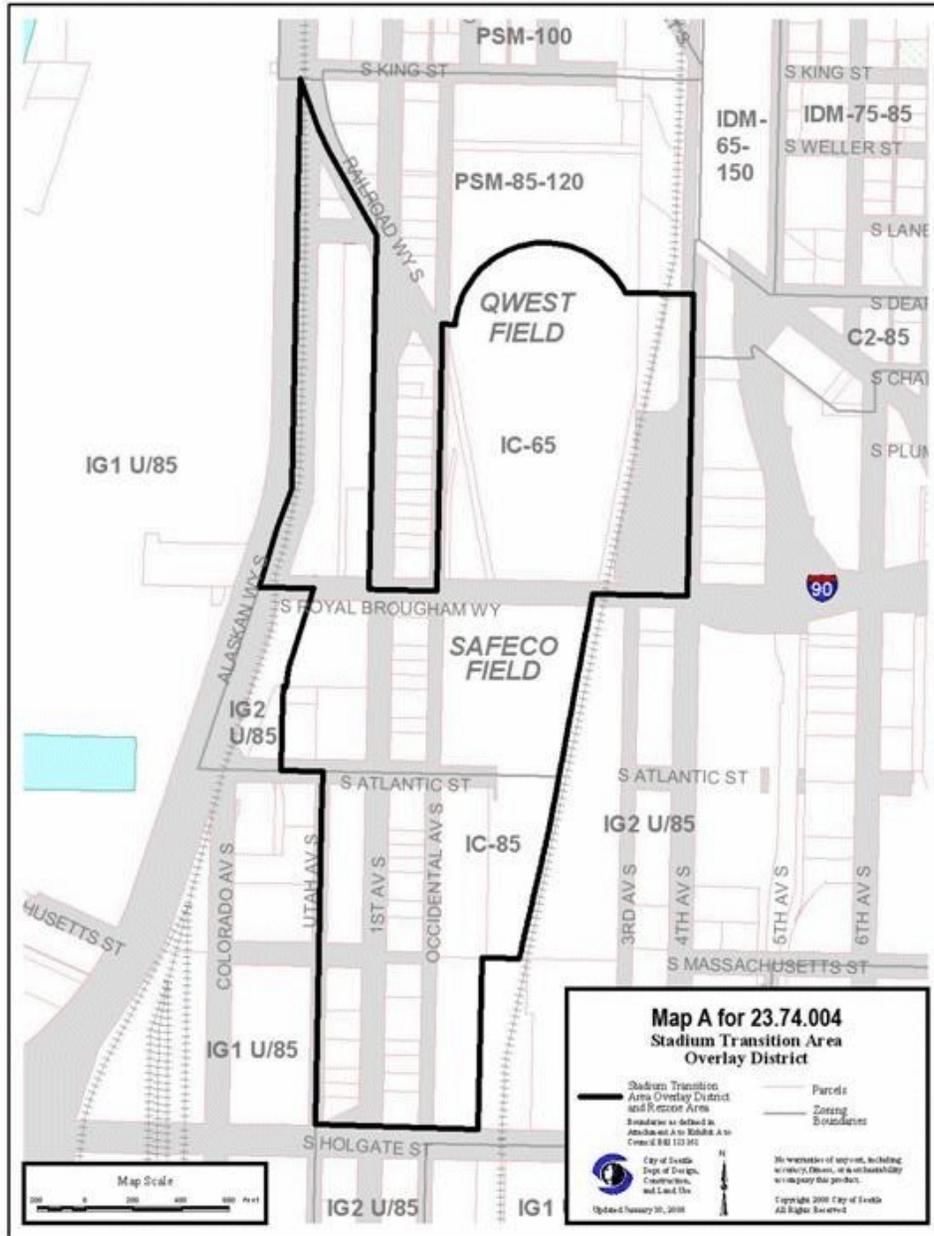
13 2.4 *Decision-making Body; Copy of Decision at Issue:* The decision-making body in
14 this matter is the Seattle City Council (referred to herein as the “Council” or the “City Council”)
15 pursuant to its decision to pass the Ordinance. A duplicate copy of the Ordinance, which is the
16 decision being challenged in this Land Use Petition is attached to this Petition as Exhibit A.

17 2.5 *Identification of Additional Parties:* Because the Ordinance does not identify any
18 appellant below, nor any owner or applicant by name and address, the only additional parties
19 required by LUPA are those identified by name and address as taxpayers for the property at issue
20 in the records of the King County Assessor (referred to here as the “Tax Rolls”) based on the
21 description of the property in the Ordinance. *See* RCW 36.70C.040(2)(c).

22 2.6 *Rezoned Property:* The Ordinance, by its terms, affects property within the Stadium
23 Transition Area Overlay District (the “Stadium District”), but only those tax parcels located to the
24 east of 1st Avenue South. For reference, the first graphic below (Figure A) depicts the Stadium
25 District as it appears in the Code. *See* SMC 23.74.004 (Map A). The second graphic (Figure B)
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1 was created using images from the King County’s publicly available GIS system,¹ and data from
2 the County’s on-line Tax Rolls. Figure B highlights the tax parcels in the Stadium District that are
3 generally located east of 1st Avenue South (the “Rezoned Property”) as well as the owners of each
4 parcel.

5 **Figure A — Stadium District**



27 ¹ King County Parcel View, KCGIS Center, available at <https://gismaps.kingcounty.gov/parcelviewer2/?xmin=-13619057.636479698&ymin=6038180.670735817&xmax=-13613781.09287075&ymax=6040433.174413156>.

Figure B — Rezoned Property²



² The parcels shaded yellow in Figure B are owned by BNSF. The parcels shaded blue are either improved with professional sports facilities (*i.e.*, Lumen Field or T-Mobile Park), associated uses (e.g., Lumen Field Events Center or sports facilities parking garages) or are otherwise owned and controlled by professional sports teams. The parcels shaded orange appear to be owned and controlled Mr. Hansen. A single parcel within the Rezoned Property (shaded magenta) is devoted to non-sports related entertainment uses.

1 2.7 *Additional Parties under LUPA*: The following Additional Parties were identified
2 in the Tax Rolls pursuant to RCW 36.70C.040(2)(c):

3 **a.** WSA Properties X11 LLC is identified in the Tax Rolls by name as
4 the taxpayer for King County Assessor’s Tax Parcel Nos
5 7666206440 and 7666206445, with a site address of 1518 1st
6 Avenue South, Seattle, Washington, 98134 being listed for the
7 former parcel, and a taxpayer address of 300 Deschutes Way SW,
8 Ste. 304, Tumwater, Washington 98501 for each parcel.

9 **b.** WSA Properties X LLC is identified in the Tax Rolls by name as
10 the taxpayer for King County Assessor’s Tax Parcel Nos
11 7666206417, 7666206420, and 7666206425, with respective site
12 addresses of 1740 1st Avenue South, 1746 1st Avenue South, and
13 1760 1st Avenue South, each in Seattle, Washington, 98134, and a
14 taxpayer address of 1 Market St # 2625, San Francisco, California,
15 94105.

16 **c.** WSA Properties VII LLC is identified in the Tax Rolls by name as
17 the taxpayer for King County Assessor’s Tax Parcel No
18 7666206415, with a site address of 1730 1st Avenue South, Seattle,
19 Washington, 98134, and a taxpayer address of One Market St
20 #2625, San Francisco, California, 94111.

21 **d.** WSA Properties V LLC is identified in the Tax Rolls by name as
22 the taxpayer for King County Assessor’s Tax Parcel Nos
23 7666206405 and 7666206410, with respective site addresses of
24 1714 1st Avenue South, and 17XX [*sic*] 1st Avenue South, each in
25 Seattle, Washington, 98134, and a taxpayer address of 1 Market St
26 # 2625, San Francisco, California 94111.

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e. WSA Properties LLC is identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel No 7666206285, with a site address of 1750 Occidental Avenue South, Seattle, Washington, 98134, and a taxpayer address of 90 NW Dogwood St #101, Issaquah, Washington 98027.

f. WSA Properties IV LLC is identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel Nos 7666206460 and 7666206465, with respective site addresses of 1548 1st Avenue South and 1556 1st Avenue South, each in Seattle, Washington, 98134, and a taxpayer address of 1 Market St # 2625, San Francisco, California, 94111.

g. WSA Properties II LLC is identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel No 7666206455, with a site address of 1534 1st Avenue South, Seattle, Washington, 98134, and a taxpayer address of 1 Market St, Stuart TWR # 2625, San Francisco, California, 94111.

h. “Washington State Public” is identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel Nos 7666206580 and 7666206585, with site address of 1200 1st Avenue South, Seattle, Washington, 98134, being listed for the former parcel, and a taxpayer address of “Facility District.” 1250 1st St. Ave. S, Seattle, Washington 98134.

i. “Washington State Baseball” is identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel No 7666206595, with a taxpayer address of “Public Facilities District,” 1250 1st Ave. S. Seattle, Washington, 98134.

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j. “Washington St Major League” is identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel No 7666206483, with a taxpayer address of 1250 1st Ave. S, Seattle, Washington 98134.

k. “Wash State Major League” is identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel No 7666206590, with a taxpayer address of “Baseball Public Facility,” 1250 1st Ave. S, Seattle, Washington 98134.

l. “Wash State Major League” is also identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel No 7666206600, with a taxpayer address of “Baseball Stadium P/F,” 1250 1st Ave. S, Seattle, Washington 98134.

m. “Wash State Major League” is also identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel No 7666206615, with a taxpayer address of “Baseball Stadium Pub Fac Dis,” 1250 1st Ave. S, Seattle, Washington 98134.

n. “Wash St Major League” is identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel No 7666206605, with a taxpayer address of “Baseball Stadium,” 1250 1st Ave. S, Seattle, Washington 98134.

o. “Wash St Baseball Stadium” is identified by name in the Tax Rolls as the taxpayer for King County Assessor’s Tax Parcel No 7666206525, with a taxpayer address of 1250 1st St. Ave. S, Seattle, Washington 98134.

p. “WA St Major League Baseball” is identified in the Tax Rolls by name as the taxpayer for King County Assessor’s Tax Parcel No

1 7666206620, with a taxpayer address of “Stadium - Public
2 Facilities,” PO Box 94445, Seattle, Washington, 98124.

3 **q.** First & Goal Inc is identified in the Tax Rolls by name as the
4 taxpayer for King County Assessor’s Tax Parcel No 7666204876,
5 with a site address of 800 Occidental Ave S, Seattle, Washington,
6 98104, and a taxpayer address of “Attn Heather Pak,” 800
7 Occidental Ave S #200, Seattle, Washington 98134.

8 **r.** BNSF Railway Company is identified in the Tax Rolls by name as
9 the taxpayer for King County Assessor’s Tax Parcel Nos
10 7666204856, with a taxpayer address of “Property Tax Dept,” PO
11 Box 961089, Fort Worth, Texas, 76161.

12 **s.** “BNSF” is identified in the Tax Rolls by name as the taxpayer for
13 King County Assessor’s Tax Parcel No 7666204855, with a
14 taxpayer address of PO Box 961089, Fort Worth, Texas, 76161.

15 **t.** “BNSF” is identified in the Tax Rolls by name as the taxpayer for
16 King County Assessor’s Tax Parcel No 7666204875, with a site
17 address of 3rd Ave. S, Seattle, Washington, 98104, and a taxpayer
18 address of PO Box 961089, Fort Worth, Texas, 76161.

19 **u.** “Baseball Club of Seattle” is identified in the Tax Rolls by name as
20 the taxpayer for King County Assessor’s Tax Parcel No
21 7666206430, with a taxpayer address of PO Box 4100, Seattle,
22 Washington, 98104.

23 **v.** 1700 LLC is identified in the Tax Rolls by name as the taxpayer for
24 King County Assessor’s Tax Parcel No 7666206400, with a site
25 address of 1700 1st Avenue S, Seattle, Washington, 98134, and a
26 taxpayer address of 9625 SE 71st St., Mercer Island, Washington,
27 98040.

1 w. 1530 First Avenue South LLC is identified in the Tax Rolls by name
2 as the taxpayer for King County Assessor’s Tax Parcel No
3 7666206450, with a site address of 1530 1st Avenue S, Seattle,
4 Washington, 98134, and a taxpayer address of PO Box 2602,
5 Seattle, Washington, 98111.

6 2.8 *Other parties:* The following parties were identified, named as Additional Parties
7 herein, and will be served with process based on the facts and circumstances described in the
8 following paragraphs:

9 a. While Petitioner was unable to locate data on “WSA Properties
10 X11” in the publicly-available records of the Washington Secretary
11 of State, similarly-named “WSA Properties XII, LLC” is identified
12 in such records with an address of 394 Pacific Ave, Floor 4, San
13 Francisco, CA 94111-1719 and a registered agent address of 300
14 Deschutes Way SW, STE 208, MC-CSC1, Tumwater, WA 98501.

15 b. WSA Properties X, LLC is also identified in the publicly-available
16 records of the Washington Secretary of State with an address of 394
17 Pacific Avenue, Floor 4, San Francisco, CA 94111-1719, and a
18 registered agent address of 300 Deschutes Way SW, STE 208, MC-
19 CSC1, Tumwater, WA 98501.

20 c. WSA Properties VII, LLC is also identified in the publicly-available
21 records of the Washington Secretary of State with an address of 394
22 Pacific Avenue, Floor 4, San Francisco, CA 94111-1719 and a
23 registered agent address of 300 Deschutes Way SW, STE 208, MC-
24 CSC1, Tumwater, WA 98501.

25 d. WSA Properties V, LLC is also identified in the publicly-available
26 records of the Washington Secretary of State with an address of 394
27 Pacific Avenue, Floor 4, San Francisco, CA 94111-1719, and a

1 registered agent address of 300 Deschutes Way SW, STE 208, MC-
2 CSC1, Tumwater, WA 98501.

3 e. WSA Properties, LLC is also identified in the publicly-available
4 records of the Washington Secretary of State with an address of 394
5 Pacific Avenue, Floor 4, San Francisco, CA 94111-1719, and a
6 registered agent address of 300 Deschutes Way SW, STE 304,
7 Tumwater, WA 98501.

8 f. WSA Properties IV, LLC is also identified in the publicly-available
9 records of the Washington Secretary of State with an address of 394
10 Pacific Avenue, Floor 4, San Francisco, CA 94111-1719, and a
11 registered agent address of 300 Deschutes Way SW, STE 208, MC-
12 CSC1, Tumwater, WA 98501.

13 g. WSA Properties II, LLC is also identified in the publicly-available
14 records of the Washington Secretary of State with an address of 394
15 Pacific Avenue, Floor 4, San Francisco, CA 94111-1719, and a
16 registered agent address of 300 Deschutes Way SW, STE 208, MC-
17 CSC1, Tumwater, WA 98501.

18 h. First & Goal Inc. is also identified in the publicly-available records
19 of the Washington Secretary of State with an address of 800
20 Occidental Avenue South, #100, Seattle, WA 98134, and a
21 registered agent address of 12 Seahawks Way, Renton, WA 98056-
22 0000.

23 i. On information and belief, the party referred to as "BNSF" in the
24 Tax Rolls is BNSF Railway Company, an entity which is also
25 identified in the publicly-available records of the Washington of
26 Secretary of State with an address of 2650 Lou Menk Dr, Fort
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1 Worth, TX 76131-2830, and a registered agent address of 711
2 Capitol Way South, STE 204, Olympia, WA, 98501-1267.

3 **j.** On information and belief, the party referred to as “Baseball Club of
4 Seattle” in the Tax Rolls is The Baseball Club of Seattle, LLLP, an
5 entity which is also identified in the publicly-available records of
6 the Washington Secretary of State as with an address of 1250 First
7 Avenue South, Seattle, WA, 98134, a mailing address of PO Box
8 1368, Olympia, WA, 98507-1368, and a registered agent address of
9 3400 Capitol Blvd SE, Suite 101, Tumwater, WA 98501-3351.

10 **k.** 1700 LLC is also identified in the publicly-available records of the
11 Washington Secretary of State with a primary and registered agent
12 address of 3318 203rd St SW, Lynnwood, WA, 98036-6980.

13 **l.** On information and belief, WSA PROPERTIES VI, LLC is the
14 current fee owner of King County Assessor’s Tax Parcel No
15 7666206400, although 1700 LLC is shown as the taxpayer for that
16 parcel in the Tax Rolls. WSA PROPERTIES VI, LLC is identified
17 in the publicly-available records of the Washington Secretary of
18 State with an address of 394 Pacific Avenue, Floor 4, San
19 Francisco, CA 94111-1719 and a registered agent address of 300
20 Deschutes Way SW, STE 208, MC-CSC1, Tumwater, WA 98501.

21 **m.** 1530 First Avenue South, LLC is also identified in the publicly-
22 available records of the Washington Secretary of State with the
23 address of 1530 1st Ave South, STE A, Seattle, WA 98134-1402,
24 and a registered agent address of Taro Kusunose, at 601 Union
25 Street, STE 2600, Seattle, WA 98101-2302.

26 **n.** On information and belief, all remaining parties referenced in
27 Paragraph 2.7, above, are in fact The Washington State Major

1 League Baseball Stadium Public Facilities District, a Washington
2 municipal corporation, an entity that was established by King
3 County, a political subdivision of the State of Washington, pursuant
4 to County Ordinance 12000 (currently codified at Section 2.38.010
5 of the King County Code).

6 III. FACTS DEMONSTRATING STANDING

7 3.1 The Port incorporates and re-alleges the facts set forth above. The following
8 Paragraphs contain a concise summary of additional facts supporting Petitioner's standing to
9 prosecute this Land Use Petition and the legal claims herein, including claims arising under SEPA.

10 3.2 The Port is a special purpose district founded in 1911 and currently authorized and
11 organized under Chapter 53.04, RCW. The Port promotes economic opportunities and quality of
12 life in the Puget Sound region by advancing trade, travel, commerce and job creation in an
13 equitable, accountable and environmentally responsible manner. The Port operates one of the
14 largest airports on the west coast of the United States and, together with the Port of Tacoma (as
15 the Northwest Seaport Alliance, or "NWSA"), the fourth largest cargo container port (by business)
16 in the entire country.

17 3.3 The Port has standing to seek judicial review of the Ordinance because the Port is
18 aggrieved and adversely affected by the Ordinance pursuant to the controlling standards of LUPA
19 and SEPA. *See* RCW 36.70C.060(2); RCW 43.21C.075.

20 3.4 The Port is the owner of land at Terminal 46 (comprising King County Tax Parcel
21 Numbers 7666207695, 7667800005, 7666207785, 7666207810, and 7666207800, referred to here
22 as "T46"), Terminal 25 (King County Tax Parcel Numbers 7666207905, 766207900, and
23 7666207900, referred to here as "T25"), and Terminal 30 (King County Tax Parcel Numbers
24 766207800, 766207810, and 7666207830, referred to here as "T30"), among other nearby
25 properties (collectively, the "Port Properties").

26 3.5 The parcels comprising Terminal 46 are located less than a quarter mile west of the
27 Rezoned Property and rely upon Major Truck Streets to provide a connection between T46 and

1 nearby rail, transloading facilities, and vehicular transportation networks. The parcels comprising
2 Terminals 25 and 30 are located to the southwest of the Rezoned Property and rely upon Major
3 Truck Streets to provide a connection between T25, T30, and nearby rail, warehousing and
4 transloading facilities, and vehicular transportation networks. As designated by the City, the
5 “Major Truck Streets” in the vicinity of the Port Properties include S. Royal Brougham Way, 1st
6 Avenue South, Edgar Martinez Drive South/South Atlantic Street, South Massachusetts Street, 4th
7 Avenue South, East Marginal Way, Colorado Avenue South, and South Holgate Street.³

8 3.6 The Port Properties and the key freight transportation corridors serving the Port
9 facilities thereon are considered essential public facilities under state law. RCW 36.70A.200(1)(a)
10 (citing RCW 47.060.140 in identifying “marine port facilities and services that are related solely
11 to marine activities affecting international and interstate trade, key freight transportation corridors
12 serving these marine port facilities” as essential public facilities). Key transportation corridors
13 serving the Port Properties include 1st Avenue South, Edgar Martinez Drive South, and South
14 Holgate Street, which are within or adjacent to the boundaries of the Rezoned Property, and all of
15 which are also designated as Major Truck Streets by the City in its Comprehensive Plan.

16 3.7 The Port is responsible for the ownership and management (through the NWSA) of
17 the above-described Port Properties and its associated essential public facilities and was created
18 specifically to carry out these functions. *See, e.g.*, Ch. 53.08, RCW.

19 3.8 In furtherance of this legal authority, the Port has invested several hundred million
20 dollars over the past decades on specific transportation improvement projects in the vicinity of the
21 Port Properties to ensure safe, orderly traffic flow to and from the Port Properties and the Port’s
22 associated essential public facilities. For example, the Port invested over \$281 million in the
23 Alaskan Way Viaduct Replacement Program to help build the Atlantic Street Overpass of SR99,
24 which is located less than a quarter-mile to from the Rezoned Property. Additionally, the Port and
25 the City are investing cooperatively in the enhancement of the City’s road network to ensure that

26 ³ See City Comprehensive Plan, Transportation Element Fig. 8 (depicting major routes within the City’s Freight
27 Network); see also Seattle Dept. of Transportation, Major Truck Street Map, [https://www.seattle.gov/documents/
Departments/SDOT/FreightProgram/MajorTruckStreets.pdf](https://www.seattle.gov/documents/Departments/SDOT/FreightProgram/MajorTruckStreets.pdf).

1 certain Major Truck Streets are built to standards supporting heavy truck movements. This
2 includes portions of 1st Avenue South and South Holgate Street, both of which provide connection
3 to the Port Properties through the Stadium District. These projects are just part of the regional
4 freight-specific investments by the Port, the City, and state and federal government over the last
5 three decades; and the Port's contributions alone exceed \$400 million.

6 3.9 Although the City failed to take any steps to comply with SEPA in connection with
7 its adoption of the Ordinance, the Port took every available opportunity to provide comments on
8 the City's related actions pursuant to the requirements or SEPA and its implementing regulations,
9 including the submission of comment letters on February 26, 2025 and March 18, 2025, and several
10 comments on the December 2021 Industrial and Maritime Strategy Draft Environmental Impact
11 Statement (EIS), a non-project SEPA document which is further discussed below. The Port's full
12 participation in the City's public review of the EIS, subsequent Code amendments, and the
13 Ordinance further provides the Port with participation standing to prosecute this appeal, and the
14 Port's interests are among those that the City was required to consider when it enacted the
15 Ordinance. Each of these factors provides the Port with legal standing to lodge this appeal pursuant
16 to both SEPA and LUPA. *See* RCW 43.21C.075; RCW 36.70C.060(2)(b).

17 3.10 If the Ordinance is allowed to stand, the likely future development of the residential
18 project will irreparably harm the Port, its property, and the facilities that it owns and manages in
19 and near the Rezoned Property, as well as the maritime and industrial businesses, unions and
20 workers who depend on the Port. The Ordinance will thus prejudice the Port, and a judgment in
21 favor of the Port in this appeal would substantially eliminate said prejudice. Further, because the
22 City failed to take any action to comply with SEPA in connection with its adoption of the
23 Ordinance, there was no determination or decision that the Port could have appealed. In other
24 words, there were no administrative remedies to exhaust due to the City's decision to side-step any
25 SEPA review of the Ordinance. Each of the above factors further provides the Port with standing
26 to lodge this appeal pursuant to RCW 36.70C.060(2)(a) through (d).

1 **IV. SUBJECT MATTER JURISDICTION AND VENUE**

2 4.1 The Port incorporates and re-alleges the facts set forth above.

3 4.2 This Court has subject matter jurisdiction over Petitioner’s claims herein because
4 the Ordinance is in effect a site-specific rezone. *See also* RCW 2.08.010; RCW 36.70C.030. LUPA
5 provides the exclusive means for judicial review of land decisions with some exceptions including
6 “applications for legislative approvals such as area-wide rezones and annexations[,]” which are
7 appealable to the Growth Management Hearings Board (GMHB). RCW 37.70C.020, .030.
8 Washington’s Supreme Court has held that “GMHBs *do not* have jurisdiction over ‘challenges to
9 site-specific land use decisions[.]’” *Schnitzer West, LLC v. City of Puyallup*, 190 Wn.2d 568, 575
10 (2018) (en banc) (quoting *Woods v. Kittitas County*, 162 Wash.2d at 610 (2007) (en banc)
11 (emphasis in original)). Instead, “a challenge to a site-specific land use decision can be brought
12 only under LUPA.” *Schnitzer West*, 190 Wn.2d at 576. Even if an action is not denominated “site
13 specific” or a “rezone” by the local government, actions having the “legal effect” of a site-specific
14 rezone will be reviewed as such pursuant to LUPA. *See, e.g., Citizens for Mount Vernon v. City of*
15 *Mount Vernon*, 133 Wn.2d 861, 874 (1997) (en banc).

16 4.3 The City’s approval of the Ordinance constitutes such a site-specific rezone. While
17 the Ordinance ostensibly applies to 29 tax parcels within the Stadium District, most of these parcels
18 are already used for stadiums, stadium-adjacent, or railroad purposes, and are therefore highly
19 unlikely to host any residential development authorized in the Ordinance.

20 4.4 Remarkably, 13 of the 14 remaining parcels (all with “WSA Properties” in the
21 owner entity names) appear to be owned or controlled by Chris Hansen through an entity called
22 Horton Street Management, LLC, an entity which is designated in the Washington Secretary of
23 State’s publicly-available records as the Governor of each of the commonly-owned “WSA
24 Properties” entities.

25 4.5 “A site-specific rezone occurs ‘when there are specific parties requesting a
26 classification change for a specific tract.’” *Woods*, 162 Wn.2d 597, 611 n.7 (quoting *Cathcart-*
27 *Maltby-Clearview Cmty. Council v. Snohomish Cnty.*, 96 Wash.2d 201, 212 (1981) (en banc)). An

1 owner or the City Council can be that requesting party. *See Schnitzer West*, 190 Wn.2d at 577
2 (“[A] government can approve its own actions, can apply for or initiate a request for its own
3 approval, and can be a specific party for the purpose of a site-specific rezone classification.”).

4 4.6 On information and belief, Mr. Hansen and companies he controls would derive a
5 particular and specific benefit from the Ordinance, because he owns or controls most if not all of
6 the land that could be developed for the residential uses permitted in the Ordinance in the near
7 future.

8 4.7 On information and belief, Mr. Hansen or his representatives engaged in *ex parte*
9 contact with one or more City Councilmembers prior to and during the Council’s consideration
10 and passage of the Ordinance so as to authorize the residential uses permitted on Mr. Hansen’s
11 land, thus enhancing development opportunities on, and the value of, said land.

12 4.8 Pursuant to its jurisdiction over the site-specific spot-zoning claims outlined above,
13 this court has subject matter jurisdiction under LUPA to determine whether the Ordinance is
14 unlawful due to its inconsistency with the City’s Code, Comprehensive Plan, subarea plans, and
15 related land use and planning policy documents. *See, e.g., Woods*, 162 Wn.2d at 616.

16 4.9 In addition to its jurisdiction over the above-referenced matters, this Court has
17 jurisdiction to determine whether a violation of the appearance of fairness doctrine occurred in the
18 City Council’s consideration and passage of the Ordinance pursuant to state common law, Chapter
19 42.36, RCW or the City’s implementing regulations, including the City’s standing rules on quasi-
20 judicial review of land use proposals, most recently enacted in City Council Resolution No. 31602.

21 4.10 Section 130(1) of LUPA further provides several legal bases upon which this Court
22 may provide relief from a local land use decision like the Ordinance.

23 4.11 Based on the foregoing authorities, this Court has jurisdiction over the claims
24 asserted by Petitioner herein.

25 4.12 Venue is proper in King County pursuant to Chapter 4.12, RCW, as well as the
26 Land Use Petition Act, because all land at issue in this Petition is located in King County,
27 Washington.

1 **V. FACTS SUPPORTING STATEMENT OF ERRORS**

2 5.1 The Port incorporates and re-alleges the facts set forth above.

3 5.2 The following Paragraphs contain a concise summary of additional key facts
4 supporting Petitioner’s assignments of error in this Land Use Petition.

5 5.3 On June 16, 2000, the Stadium District was established as an overlay zone under
6 Chapter 23.74, SMC. The Stadium District comprises approximately 93 acres of land in the
7 neighborhood commonly referred to as SODO. Approximately 40 acres of the Stadium District is
8 comprised of Lumen Field and T-Mobile Park.

9 5.4 In 2019, the City began a years-long effort to develop a comprehensive Industrial
10 and Maritime Strategy to ensure a sustainable future for Seattle’s regionally-designated Maritime
11 and Industrial Centers (MICs): the Greater Duwamish MIC and the Ballard Interbay Northend
12 MIC. The majority of the Stadium District, except for the Lumen Field property, is located within
13 the Greater Duwamish MIC and within the study subarea identified as the SODO/Stadium
14 Subarea.

15 5.5 The City convened a year-and-a-half long Industrial and Maritime Strategy
16 advisory council process along with numerous stakeholder and public meetings to develop guiding
17 strategies that informed corresponding amendments to the City’s Comprehensive Plan and Code.

18 5.6 In 2021, as required under SEPA, the City initiated an environmental impact study
19 (EIS) process to study the potential impacts of land use changes for implementation of the
20 Industrial and Maritime Strategy. A Draft EIS was published in December 2021 (the “DEIS”) and
21 a final EIS was published in September 2022 (the “FEIS”), which considered and incorporated
22 many public comments on the DEIS, including formal written comments submitted by the Port
23 and many other stakeholders.

24 5.7 The DEIS analyzed four alternatives, including a no action alternative. The FEIS
25 addressed the same alternatives studied in the DEIS as well as a “Preferred Alternative,” which
26 “incorporate[d] features of multiple Draft EIS alternatives [including] modifications to address
27 comments on the Draft EIS and reduce impacts identified for Draft EIS alternatives.” FEIS at V.

1 Alternative 4 considered the addition of 990 “industry-supportive housing”⁴ units across the
2 entirety of the SODO/Stadium Subarea, an area much larger than the Rezoned Property. *See* FEIS
3 at p. 1-6. The Preferred Alternative considered the addition of 644 industry-supportive housing
4 units to the same area. The other alternatives studied the addition of between zero and 200
5 additional housing units.

6 5.8 On July 18, 2023, the City Council passed a suite of legislation implementing the
7 Industrial and Maritime Strategy through amendments to the Code and Comprehensive Plan. The
8 legislation was signed into law on July 25, 2023. *See* Council Bill (“CB”) CB 120567; CB 120568;
9 CB 120569; CB 120570; and CB 120571 (collectively, the “Industrial/Maritime Legislation”).

10 5.9 The Industrial/Maritime Legislation amended the Code to create a new Urban
11 Industrial (UI) zone, which encompasses the Rezoned Property as well as other land. The
12 Industrial/Maritime Legislation generally permits residential uses in the UI zone as administrative
13 conditional uses, though subject to a number of restrictions. However, residential uses were
14 specifically prohibited in the Stadium District. *See* SMC 23.50A.062.C (administrative conditional
15 use requirements for residential uses in the UI zone); SMC 23.74.008 (prohibiting residential uses
16 in the Stadium District).

17 5.10 This prohibition on residential uses was intentionally included based on specific
18 concerns raised by the Port and other industrial stakeholders. As noted in the associated City Staff
19

20 ⁴ The FEIS’s definition of “industry-supportive housing” apparently varied depending on the alternative analyzed.
21 *See* FEIS, Sec. 4.2.3 (“In Draft EIS alternatives the concept of industry supportive housing is included in alternatives
22 3 and 4 in the Urban Industrial (UI) zone. Under Alternative 3 it would mean allowances for a.) up to two
23 caretakers’ quarters in which an owner or employee of an on-site business could reside, and b.) workspace studios in
24 which a person who operates a making-use or arts business could live in a combined quarters with their workspace.
25 Under Alternative 3 the maximum density of the total number of caretakers quarters and workspace studios is 25 per
26 acre. Under Alternative 4 [which analyzed up to 990 units] the same concept would apply with slightly more liberal
27 allowances of up to three caretakers’ quarters per business and a maximum density of 50 per acre. Note that in the
Preferred Alternative housing would be allowed in the UI zone as a conditional use in criteria-limited locations and
would not be occupancy limited to the industry supportive housing concept. Under the Preferred Alternative [which
analyzed up to 644 units] the limited industry supportive housing standard could be met when a developer either a.)
conforms to the same occupancy limitations as in Alternative 4, or b.) provides a minimum of 50% of the housing
units at a level that is affordable to households with incomes at 90% of the Area Median Income (AMI) or below.
The intent to make housing available to workers close to jobs is carried through all the alternatives, but the
alternatives evaluate different variations of the development standards, which would result in slightly different
quantities or types of homes.”)

1 Report, “[a] specific provision in the overlay regulations would prohibit any new housing in the
2 [Stadium District],” and went on to note that “[c]onsiderable deference to labor and institutional
3 stakeholders with direct experience with the intricacies involved in the operation of marine
4 terminals is warranted.” *See* Seattle Industrial & Maritime Strategy Director’s Report and
5 Recommendation, dated March 2023, at 46.

6 5.11 These residential use restrictions were not new to the Industrial/Maritime
7 Legislation, as the City has historically prohibited most residential uses—including those allowed
8 by the Ordinance—under the previous zoning of the Stadium District in the interest of protecting
9 its industrial lands from inconsistent and incompatible uses.

10 5.12 Less than a year and a half after the Industrial/Maritime Legislation was passed,
11 Council President Sara Nelson proposed the first iteration of the Ordinance, proposing a reversal
12 of the City’s longtime policy of protecting industrial lands in and around the deep-water seaport.

13 5.13 While the only effect of the Ordinance is to revise the City’s land use rules, the
14 Ordinance was referred not to the Council’s Land Use Committee but to the Governance,
15 Accountability & Economic Development (“GAED”) Committee. Council President Nelson is not
16 a member of the Land Use Committee and is the Chair of the GAED Committee; a standing
17 committee of the City Council which is generally intended to provide “policy direction and
18 oversight and to deliberate and make recommendations on legislative matters” related to economic
19 development, government oversight and City labor management.

20 5.14 On February 24, 2025, representatives of the Port, NWSA, the Washington Public
21 Ports Association, and the International Longshore and Warehouse Union testified before the
22 GAED Committee explaining in great detail the incompatibility of the Proposal with port-related
23 operations (including movement of Port freight) in the Stadium District. *See* 2/24/25 GAED
24 Committee Meeting at 1:30-2:51.

25 5.15 On February 26, 2025, the Port and the NWSA submitted a comment letter to the
26 GAED Committee regarding legal infirmities with the then-current draft of the Proposal.

1 5.16 None of the Port’s or NWSA’s concerns were resolved, addressed, or even
2 acknowledged prior to the GAED Committee’s 3-2 vote to forward the Proposal to City Council
3 for final consideration—a vote which passed on February 27, 2025. *See 2/27/25 GAED Committee*
4 *Meeting at 1:53-1:55.*

5 5.17 On March 18, 2025, the Port submitted a comment letter to the City Council,
6 through its legal counsel, elaborating the legal concerns regarding the Ordinance, including its
7 inconsistency with the City’s Comprehensive Plan, the Growth Management Act, and SEPA.

8 5.18 At some time on March 18, 2025, the City Council’s website was updated with nine
9 separate amendments styled as “technical” amendments that were discussed publicly for the first
10 time during the Council’s March 18th meeting. These amendments included altering the Proposal
11 to cap the number of residential units in the Stadium District to 990; to add recitals related to the
12 Proposal related to its conformance with the Comprehensive Plan; to require those living within
13 residential units in the Stadium District to sign waivers and covenants related to acknowledgment
14 of the surrounding industrial uses; to require soundproofing of windows to mitigate noise from
15 surrounding industrial uses; to require those living within residential units in the Stadium District
16 to sign waivers and covenants related to the risks associated with future projects constructed on
17 liquefaction zones; and to prohibit the development of residential uses west of 1st Avenue South.
18 *See Ordinance Amendments A-I, inclusive.*

19 5.19 On March 18, 2025, after an approximately five-hour meeting during which more
20 than fifty public comments were offered, and each of the proposed amendments were discussed at
21 length, the City Council passed the Ordinance. The final, adopted version of the Ordinance
22 incorporated eight of the nine amendments that were offered on the eve of the public meeting.

23 5.20 As indicated above, several of the amendments focused on how to address the
24 potential environmental impacts of the City’s action, including amendments that would require
25 signage in residential projects constructed in the Rezoned Property to warn occupants of the risks
26 of living in an industrial area and in the liquefaction zone that covers all of the Rezoned Property;
27 and a requirement that indoor noise levels in housing projects in the Stadium District be limited to

1 45 dBa. The Council considered, but did not ultimately adopt, another amendment that would have
2 restricted residential parking on Major Truck Streets.

3 5.21 In its work to hastily craft this set of “mitigation” measures for the Ordinance, the
4 City Council did not formally adopt, nor apparently rely on, the FEIS nor any other study or
5 analysis of any of these potential impacts of the Ordinance.

6 5.22 In fact, the City conducted no specific environmental review for the Ordinance.
7 More specifically, the City failed to (a) issue a threshold determination under RCW 43.21C.033
8 and SMC 25.05.310, (b) adopt the FEIS under RCW 43.21C.034 and SMC 25.05.630,
9 (c) incorporate by reference any part of the FEIS under RCW 43.21C.034 and SMC 25.05.635, or
10 (d) issue a supplemental EIS or addendum under RCW 43.2C.034, SMC 25.05.620 and .625.

11 5.23 The Ordinance modifies SMC 23.74.008 to permit up to 990 residential units in a
12 portion of the Stadium District as administrative conditional uses subject to similar criteria to those
13 contained in SMC 23.50A.062.C, with a notable exemption from the otherwise applicable
14 requirement that residential uses in the UI zone be at least 200 feet away from a designated Major
15 Truck Street. Under the Ordinance, there is no 200-foot buffer requirement between authorized
16 residential development and Major Truck Streets in the Stadium District.

17 5.24 The 990-unit limitation was not created from whole cloth. Rather, that is the total
18 number of residential units that was studied in Alternative 4 of the EIS *for the entire*
19 *SODO/Stadium Subarea*. Remarkably, the Ordinance would allow every one of these units to be
20 concentrated and established within the Rezoned Property, which when you remove the already
21 developed stadium and railroad properties, leaves approximately 15 acres (comprised of 14 tax
22 parcels) across three blocks which are available for development of residential uses under the
23 Ordinance. Thirteen out of those 14 parcels are owned by Mr. Hansen. Given the nature of the
24 spot-zone for residential development in this small portion of the Stadium District, it would not be
25 surprising if Mr. Hansen were pursuing the purchase of the remaining lot.

26 5.25 On March 27, 2025, Mayor Bruce Harrell returned the Ordinance to the City
27 Council unsigned. The Ordinance is scheduled to take effect June 30, 2025.

1 **VI. LEGAL BASIS FOR REQUESTED RELIEF AND STATEMENT OF ERRORS**

2 6.1 Under LUPA, a party is entitled to relief if any one of the following standards in
3 RCW 36.70C.130(1) has been met:

4 (a) The body or officer that made the land use decision engaged in
5 unlawful procedure or failed to follow a prescribed process, unless
6 the error was harmless;

7 (b) The land use decision is an erroneous interpretation of the law,
8 after allowing for such deference as is due the construction of a law
9 by a local jurisdiction with expertise;

10 (c) The land use decision is not supported by evidence that is
11 substantial when viewed in light of the whole record before the court;

12 (d) The land use decision is a clearly erroneous application of the law
13 to the facts;

14 (e) The land use decision is outside the authority or jurisdiction of the
15 body or officer making the decision; or

16 (f) The land use decision violates the constitutional rights of the party
17 seeking relief.

18 In this case, Petitioner is entitled to relief under subsections (a) through (e), inclusive, of RCW
19 36.70C.130(1), because the City committed several reversible errors in approving the Ordinance,
20 as generally described in the following Paragraphs.

21 6.2 The City erred in approving a *de facto* illegal spot zone of the Rezoned Property.
22 Generally, “zoning ordinances are constitutional in principle as a valid exercise of the police
23 power, and will be upheld if there is a substantial relation to the public health, safety, morals, or
24 general welfare.” *Lutz v. City of Longview*, 83 Wn.2d 566, 574 (1974) (en banc), *abrogated in part*
25 *on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682 (2019) (en banc). However, spot
26 zoning—that is, a zoning action “by which a smaller area is singled out of a larger area or district
27 and specially zoned for a use classification totally different from, and inconsistent with, the
classification of surrounding land and not in accordance with the comprehensive plan” is illegal,
and has been found to constitute a violation of due process. *See, e.g., Save a Neighborhood Env’t*
(SANE) v. City of Seattle, 101 Wn.2d 280, 286 (1984) (en banc); *see also Smith v. Skagit Cnty.*, 75
Wn.2d 715, 743–44 (1969) (en banc) (“Zoning merely for the benefit of one or a few . . . with no

1 substantial relationship to the public health, safety, general welfare or morals, in conflict with
2 either the comprehensive zoning plan or ordinance is arbitrary and capricious, and unlawful.”).

3 6.3 While presented as a textual Code amendment, the legal effect of the Ordinance is
4 a rezone, so it will be considered as such. *Accord Citizens of Mount Vernon*, 133 Wn.2d at 874
5 (finding that “[t]he legal effect of approving a planned unit development is an act of rezoning”).
6 The Ordinance singles out a specific tract of land—15 acres of which is affected by the proposed
7 changes, with almost all of that land held by a single owner—which is to be governed by different
8 regulations than surrounding property. Unlike the rest of the Stadium District, residential uses are
9 now permitted as an administrative conditional use of the Rezoned Property; and unlike the rest of
10 the UI zone, a 200-foot buffer between Major Truck Streets and residential uses is no longer
11 required. Based on information and belief, Mr. Hansen or his representatives have been active
12 proponents of the Ordinance, while the Port and other industrial groups have repeatedly raised
13 concerns that allowing residential uses in the Stadium District will significantly harm nearby
14 current and future industrial and maritime uses, to the detriment not just of industrial workers but
15 the local and regional economy.

16 6.4 While described as an effort to add more market and affordable housing in the City,
17 a closer review of the facts demonstrates the Ordinance is nothing more than an illegal spot zone
18 which primarily benefits a single owner and allows development in conflict with the City’s
19 Comprehensive Plan requirements. Moreover, the apparent assumption that the resulting project
20 will be primarily affordable housing is unsupported by the applicable requirements. The project’s
21 residential component could consist of live-work units *or* a 50/50 mix of affordable and market-
22 rate housing, at the developer’s election. *See* SMC 23.50A.062.C.9.

23 6.5 Relatedly, the City erred in approving a *de facto* site-specific rezone of the Rezoned
24 Property, which fails to comply with the Code’s criteria for site-specific rezones. The Code sets
25 out numerous criteria by which rezones should be evaluated, an analysis which was not conducted
26 for the Ordinance. *See* Ch. 23.34, SMC. For example, a rezone should minimize “[t]he impacts of
27 more intensive zones, or industrial and commercial zones on other zones[.]” SMC 23.34.008.E.1.

1 The Ordinance does the opposite, inviting wholly incompatible uses into a heavily industrial area,
2 surrounded by other industrially-zoned property. The City is also required to consider evidence of
3 changed circumstances warranting the rezone. SMC 23.34.008.G. Here, the City did not even
4 claim any changed circumstances in the approximately 18 months since adoption of the
5 Industrial/Maritime Legislation that would justify the Ordinance, let alone provide any evidence
6 supporting such a claim. Additionally, any rezone in the Stadium District must be compatible with
7 the area’s purpose and intent. *See* SMC 23.34.007.H; 23.74.002.C. The Code states that within the
8 Stadium District, “use provisions and development standards are designed to . . . discourage
9 encroachment on nearby industrial uses to the south[.]” SMC 23.74.002.A. The Port and other
10 industrial groups have provided ample evidence that rezoning the Rezoned Property to allow
11 residential uses encroaches on established and future industrial uses, including by hampering
12 Major Truck Streets and freight routes running through the Stadium District. The City has provided
13 no indication it reviewed the Ordinance against the required rezone criteria under SMC 23.34,
14 perhaps because it is evident the Ordinance would not comply.

15 6.6 In reviewing and passing the Ordinance, the City also erred in failing to comply
16 with procedural requirements for site-specific rezones. Requests for site-specific rezones (besides
17 area-wide amendments and corrections of errors) are processed as Type IV quasi-judicial decisions
18 under the Code. *See, e.g.,* SMC 23.76.036A. A site-specific rezone requires an application by each
19 affected property owner, SEPA review, a Director’s report, and a hearing before the City Hearing
20 Examiner prior to the Council’s decision. *See generally* SMC 23.76.040-.056. None of these
21 procedures were followed in the Council’s consideration and adoption of the Ordinance.

22 6.7 The City may assert that this rezone might have been considered through a Type V
23 legislative review process. However, even if such a Type V process were appropriate for review
24 and approval of this rezone, the City erred in failing to follow that prescribed process. Any request
25 by an interested person for an amendment to the text of the City Zoning Code, Title 23, must be
26 noticed to the City Clerk promptly after the request is submitted. *See* SMC 23.76.040.G. Likewise,
27 a Director’s report is required for Type V decisions, as is review under SEPA and a public hearing.

1 See SMC 23.76.040, .050, 062. None of these steps appear to have been taken prior to the Council's
2 passage of the Ordinance.

3 6.8 The City's handling of other similar proposals demonstrates that the City typically
4 employs its Code-required process to consider and adopt Code changes intended to allow specific
5 projects, including coordinated SEPA review. For example, when the Council chose to amend the
6 Code to accommodate a larger building for the Seattle Storm's practice facility in Interbay, a SEPA
7 Determination of Non-Significance was issued and made available for public comment,⁵ City staff
8 analyzed and issued reports on the proposal, including said SEPA review, and a decision was
9 reached after the Council considered extensive information specific the code changes that had been
10 proposed.⁶ None of these procedures were followed in the Council's consideration and adoption
11 of the Ordinance.

12 6.9 The Ordinance enacts spot zoning regulations that are arbitrarily different from
13 those that apply in all surrounding land and which are inconsistent with the City's land use
14 planning and policy documents, including the Countywide Planning Policies⁷, Greater Duwamish
15 MIC Neighborhood Plan, and the following elements of the City's current Comprehensive Plan:
16 Land Use,⁸ Transportation,⁹ Container Port,¹⁰ Open Space,¹¹ and Community Well-Being.¹²
17

18 ⁵ City of Seattle, SEPA Threshold Determination for Code Amendment for Indoor Sports and Recreation Uses, July
19 11, 2021, available at [https://www.seattle.gov/Documents/Departments/OPCD/OngoingInitiatives/Industrial
20 MaritimeStrategy/IndustrialMaritimeStrategySportsSEPADetermination.pdf](https://www.seattle.gov/Documents/Departments/OPCD/OngoingInitiatives/IndustrialMaritimeStrategy/IndustrialMaritimeStrategySportsSEPADetermination.pdf).

21 ⁶ See [https://seattle.legistar.com/LegislationDetail.aspx?ID=5074377&GUID=ABE5259C-3C3B-4CE8-A6E2-
22 CB9EA3D9EA4C](https://seattle.legistar.com/LegislationDetail.aspx?ID=5074377&GUID=ABE5259C-3C3B-4CE8-A6E2-CB9EA3D9EA4C) (link to legislative history of Ordinance 120149, linking to extensive analysis and SEPA review
23 documents).

24 ⁷ See, e.g., Countywide Planning Policy EC-23, which directs jurisdictions to “[s]upport manufacturing/industrial
25 centers with land use policies that protect industrial land, retain and expand industrial employment, support a diverse
26 regional economy, and provide for the evolution of these Centers to reflect industrial business trends [and] [p]rohibit
27 or limit non-supporting or incompatible activities that may interfere with the retention and operation of industrial
businesses while recognizing that a wider mix of uses, in targeted areas and circumstances, may be appropriate when
designed to be supportive of and compatible with industrial employment.” The City rightly determined less than two
years ago that residential uses in the Stadium District would be incompatible with existing industrial uses. See City
Council Ord. 126862 § 17 (adding subsection SMC 23.74.008.B.14 to expressly prohibit residential uses otherwise
allowed in UI zones).

⁸ See Land Use Element Goals LU G10 and Policies LU 10.26, LU 10.2, LU 10.6, LU 10.10.

⁹ See Transportation Element Goal TG5, TG 8 and Policies T 5.2, T 5.3, T 5.6, T 7.5, T 8.2.

¹⁰ See Container Port Element Goal CP G1 and Policies CP 1.1-1.19, inclusive.

¹¹ See Open Space Element Goal P G1 and Policies 1.2 and 1.10.

¹² See Community Well-Being Element Policies CW 2.3 and 2.5.

1 6.10 For example, Land Use Policy 10.8 directs the City to “[p]rohibit new residential
2 development in industrial zones except for certain types of dwellings, such as *caretaker units* or,
3 *potentially* in urban industrial zones, *dwellings for workers that are related to the industrial area*
4 *and that would not restrict or disrupt industrial activity.*” (emphasis added). The Ordinance fails
5 to comply with this clear requirement by permitting residential development in the Stadium
6 District beyond caretaker units and dwellings for industrial workers. Container Port Policy 1.3
7 directs the City to “[d]iscourage nonindustrial land uses, such as retail and residential, in
8 industrially-zoned areas to minimize conflicts between uses and to prevent conversion of industrial
9 land in the vicinity of cargo-container terminals or their support facilities.” The Ordinance does
10 the opposite, allowing residential development in the industrial area adjacent to the only deep-
11 water port in the City where no residential housing is currently allowed. Greater Duwamish Policy
12 5 directs the City to “[l]imit the location or expansion of nonindustrial uses, including publicly
13 sponsored nonindustrial uses, in the Duwamish Manufacturing/Industrial Center.” Instead, the
14 Ordinance expands nonindustrial uses in this area.¹³ The Comprehensive Plan explicitly directs the
15 City to protect industrial areas from regulations that allow residential uses in and near the deep-
16 water seaport. However, the Ordinance ignores this clear directive. These and other inconsistencies
17 between the Ordinance and the City’s Comprehensive Plan constitute reversible error under
18 LUPA, as well as constituting arbitrary, unlawful spot zoning of land in the City.

19 6.11 The City Council further erred in violating the Appearance of Fairness Doctrine
20 when City Councilmembers participated in the decision to adopt the Ordinance despite their bias,
21 prejudice and/or *ex parte* communications with a proponent of the Ordinance. *See* Ch. 42.36,
22 RCW; City Res. 31602 (City Council’s Rules for Quasi-Judicial Proceedings). The Appearance of
23 Fairness Doctrine applies to quasi-judicial actions, which include actions of local legislative bodies
24 “which determine the legal rights, duties, or privileges of specific parties in a hearing or other
25 contested case proceeding.” RCW 42.36.010. While the City unlawfully circumvented the required

26 ¹³ The Ordinance itself contains seven recitals that similarly show direct incongruence between City policies and the
27 Ordinance in regard to protection of industrial lands. The cited policies seem to be pulled from a combination of the
current Comprehensive Plan and draft Comprehensive Plan amendments currently under consideration.

1 rezone process through the use of legislative action, the adoption of the Ordinance still amounted
2 to a quasi-judicial action because it is effectively a site-specific rezone involving “specific parties
3 requesting a classification change for a specific tract.” *See Cathcart–Maltby–Clearview*, 96 Wn.2d
4 at 212. In addition, such a decision is classified as quasi-judicial under the City’s own laws. *See*
5 City Res. 31602, 1(B)(2) (land use map amendment), 1(C)(6) (other matters). As such, City
6 Councilmembers were required to publicly disclose all *ex parte* communications with proponents
7 of the Ordinance, including Mr. Hansen or his representatives, during each hearing where action
8 on the Ordinance was considered. RCW Chapter 42.36; Res. 31602. If such communication
9 occurred, the failure to disclose it violated the Appearance of Fairness Doctrine. Washington
10 Courts have also invoked the Doctrine to void actions of a legislative body taken under
11 circumstances in which “a disinterested person [would] be reasonably justified in thinking that
12 partiality may exist . . .” *Save a Valuable Env’t (SAVE) v. City of Bothell*, 89 Wn.2d at 873 (1978)
13 (en banc). Such is the case here. These Appearance of Fairness violations under Ch. 42.36, RCW,
14 Res. 31602, and state common law amount to constitutional due process violations.

15 6.12 The above-described procedural failures alone justify reversal under the standard
16 set forth in LUPA’s Subsection 130(1)(a); and demonstrate that the Council exceeded its authority
17 and jurisdiction in adopting the Ordinance, which is reversible error pursuant to LUPA’s
18 Subsection 130(1)(e). Unlawful spot-zones and appearance of fairness violations implicate parties’
19 due process rights as well as the City’s general zoning authority; and are thus reversible under
20 virtually every standard of review stated in said Subsection 130(1), including for constitutional
21 violations pursuant to Subsection 130(1)(f). The inconsistency of the Ordinance with controlling
22 Comprehensive Plan, Code, and other City requirements (including without limitation Resolution
23 31602) means that the City committed legal error, engaged in a clearly erroneous application of
24 the law to the facts, and failed to support their action with substantial evidence when the City
25 approved the Ordinance, which further justify reversal under the standards set forth in Section
26 130(1)(b), (c), and (d).

1 6.13 The City also violated its obligations under SEPA in adopting the Ordinance. For
2 example, the City failed to issue a threshold determination to guide its consideration of the
3 Ordinance. Per the City Code, “[a] threshold determination is required for any proposal which
4 meets the definition of action and is not categorically exempt, subject to the limitations in
5 subsection 25.05.600.C concerning proposals for which a threshold determination has already been
6 issued.” SMC 25.05.310.A. Petitioner is unaware of any categorical exemption that would justify
7 the City’s enactment of the Ordinance without first taking some action under SEPA. An agency
8 acting on the *same* proposal for which a threshold determination was already issued is not required
9 to issue a new threshold determination if the probable significant adverse environmental impacts
10 were analyzed in the existing environmental documents. SMC 25.05.600.C.2. But the Ordinance
11 is clearly distinct from the 2023 Industrial and Maritime legislation for which the FEIS was issued,
12 as evidenced in part by the need for an amendment to the earlier enacted ordinances, not to mention
13 the inconsistencies between the Ordinance and the requirements of the City’s Code and
14 Comprehensive Plan.

15 6.14 The City further violated SEPA by failing to incorporate by reference or adopt the
16 FEIS. Unless an agency is acting on the same proposal for which an environmental document was
17 adopted—which is not the case here, as discussed above—it may only rely on prior environmental
18 documents to meet its SEPA responsibilities if it adopts or incorporates those underlying
19 documents. *See* SMC 25.05.600.D. Adoption and incorporation each require compliance with a
20 formal procedure, neither of which was apparently followed here. *See* SMC 25.05.630
21 (Adoption—Procedures); 25.05.635 (Incorporation by reference—Procedures).

22 6.15 The City further violated SEPA’s requirements by failing to disclose or study—
23 through a supplement, addendum, or otherwise—the probable adverse environmental impacts
24 associated with the Ordinance. The Ordinance permits the construction of up to 990 residential
25 units in the portion of the Stadium District located east of 1st Avenue South. However, with the
26 existing entertainment and rail facilities, the land available for residential uses is approximately 15
27 acres. The FEIS Preferred alternative contemplated the addition of 644 units in the much larger

1 SODO/Stadium Subarea, while Alternative 4 contemplated 990 residential unit across the same
2 area. *See* FEIS at §§1.7.9 and 3.9.2. However, allowing up to 990 residential units on the Rezoned
3 Property assumes there will be *no* residential development within the remainder of the
4 SODO/Stadium Subarea. This is an unrealistic assumption, because the City Code currently
5 permits residential development in some of these areas. This alone demonstrates the inadequacy
6 of the FEIS as the sole environmental document on which the Ordinance is based.

7 6.16 The City also failed to disclose or study the probable adverse environmental
8 impacts of allowing all 990 units studied in the FEIS for the entire SODO/Stadium Subarea to be
9 shoehorned into a 15-acre portion of the Subarea, all near Major Truck Streets and (now that the
10 Council also removed the 200-foot buffer in the Ordinance) with no meaningful separation
11 between the residential units and the Major Truck Streets serving neighboring industrial uses. The
12 potential impacts of such a concentrated residential development in the heart of an active industrial
13 district bear little or no relationship to the diffuse residential development across the entire
14 SODO/Stadium Subarea that was studied in the FEIS.

15 6.17 Relatedly, the scope of the City’s environmental review was insufficient given how
16 much is known regarding the proposed use of the Rezoned Property. In passing the Ordinance, the
17 City apparently relied on its broad non-project environmental review in 2021/2022 as part of the
18 Citywide Maritime and Industrial Strategy, a strategy which impacts thousands of acres of land.
19 However, this level of review is insufficient where evidence suggests the Ordinance is closely tied
20 to, and even motivated by, likely future development of a specific tract of property by a specific
21 developer. “[A] proposed land-use related action is not insulated from full environmental review
22 simply because there are no existing specific proposals to develop the land in question or because
23 there are no immediate land-use changes which will flow from the proposed action. Instead, *an*
24 *EIS should be prepared where the responsible agency determines that significant adverse*
25 *environmental impacts are probable following the government action” King Cnty. v. Wash.*
26 *State Boundary Review Bd. for King County*, 122 Wn.2d 648, 664 (1993) (en banc) (emphasis
27 provided). The Code clearly requires the City’s “threshold determination [to] be made as close as

1 possible to the time an agency has developed or is presented with a proposal.” See SMC
2 25.05.310(B). In this respect, the City failed to adhere to its obligation to study the potential
3 impacts of this project early in the process, and as soon as the details of the residential development
4 were known to the City Councilmembers.

5 6.18 Mr. Hansen was mentioned at least five times during the Council meeting at which
6 the Ordinance was approved and also at committee meetings prior to the meeting of the full City
7 Council. At the March 18 meeting, Councilmembers discussed a potential street vacation of one
8 of the streets bordering Mr. Hansen’s properties to create a potential pedestrian pathway alongside
9 proposed housing. Council President Sara Nelson stated on the record “that the building trades has
10 signed a letter of intent from the Hansen group committing to project labor agreements,” and
11 referenced other signed agreements relating to the proposed residential development, none of
12 which were entered into the public record for further consideration. On information and belief,
13 members of the City Council have been in continued contact with Mr. Hansen or his
14 representatives regarding a specific residential project within the Rezoned Property, and the
15 Ordinance was intended to allow that specific development to occur. The decision to ostensibly
16 advance the proposal as a Council-sponsored amendment (as opposed to a site-specific rezone) is
17 not a sufficient reason to avoid full environmental review of all that is known about the likely use
18 of the Rezoned Property. As our Supreme Court has cautioned, “[d]ecision-making based on
19 complete disclosure would be thwarted if full environmental review could be evaded simply
20 because no land-use changes would occur as a direct result of a proposed government action.”
21 *King County*, 122 Wn.2d at 664. This is precisely what the Ordinance did, in violation of SEPA’s
22 requirements, when the Council apparently decided to delay SEPA review of the proposal for the
23 project stage.

24 6.19 The Council committed further error in its apparent attempt to exercise its
25 substantive SEPA authority to mitigate one or more of the impacts of the Ordinance by attaching
26 conditions to the allowance of residential uses on the Rezoned Property; and in its failure to add
27 conditions that would adequately address the probable adverse environmental impacts of the

1 Ordinance. Pursuant to RCW 43.21C.060, conditions based on the City’s substantive SEPA
2 authority must be “based upon policies identified by the appropriate governmental authority and
3 incorporated into regulations, plans, or codes which are formally designated by the agency (or
4 appropriate legislative body, in the case of local government) as possible bases for the exercise of
5 authority pursuant to [SEPA].” Further, “[s]uch action may be conditioned only to mitigate *specific*
6 *adverse environmental impacts which are identified in the environmental documents prepared*
7 *under this chapter.*” RCW 43.21C.060 (emphasis provided). The Council’s hasty, and largely
8 arbitrary, attempts to condition the proposal to mitigate its supposed impacts violated these
9 requirements, and resulted in mitigation measures that lacked any basis in the City’s SEPA policies
10 or any properly-adopted or incorporated SEPA document.

11 6.20 The Council’s procedural violations of SEPA alone justify reversal under the
12 standard set forth in LUPA’s Subsection 130(1)(a); and demonstrate that the Council exceeded its
13 authority and jurisdiction in adopting the Ordinance, which is reversible error pursuant to LUPA’s
14 Subsection 130(1)(e). The Council, in adopting the Ordinance without complying with SEPA, as
15 described above, committed legal error, engaged in a clearly erroneous application of the law to
16 the facts, and failed to support their action with substantial evidence when the City approved the
17 Ordinance, which further justify reversal under the standards set forth in Section 130(1)(b), (c),
18 and (d).

19 VII. PRAYER FOR RELIEF

20 In light of the facts and assignments of errors outlined above, Petitioner asks the Court for
21 the following relief:

22 (a) That the Court issue an order to stay the effect of the Ordinance during the
23 pendency of the Court’s review of this Petition, as authorized pursuant to RCW 36.70C.100;

24 (b) That the Court permit the Petitioner to supplement the record on appeal,
25 including through discovery, as provided under RCW 36.70C.120(3);

26 (c) For a determination that the Ordinance was approved based on legal errors,
27 was unsupported by substantial evidence, was based on a clearly erroneous application of law to

1 the facts, was the result of an unlawful procedure and the City's failure to follow a prescribed
2 process, and that it was outside the City's authority and jurisdiction, and otherwise unconstitutional
3 and illegal pursuant to the standards of review set forth in RCW 36.70C.130(1)(a) through (f),
4 inclusive;

5 (d) For reversal and invalidation of the Ordinance;

6 (e) For preliminary and permanent injunctions, and a stay of action pending
7 review pursuant to RCW 36.70C.100, prohibiting the City from allowing development or
8 applications to be submitted pursuant to the Ordinance, or otherwise enforcing the terms of the
9 Ordinance until the foregoing Land Use Petition is decided on the merits;

10 (f) For award of Petitioner's reasonable attorneys' fees and costs, to the extent
11 permitted by statute;

12 (g) For permission to amend this Land Use Petition to conform to the proof,
13 including the City's record relating to the Project, once provided by the City pursuant to its
14 obligations under LUPA and once further supplemented by ongoing discovery; and

15 (h) For such other further relief as the Court deems just and equitable.

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DATED this 7th day of April, 2025.

Davis Wright Tremaine LLP
Attorneys for Petitioner

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EXHIBIT A

Decision Appealed

[attached]

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CITY OF SEATTLE
ORDINANCE 127191
COUNCIL BILL 120933

AN ORDINANCE relating to land use and zoning; amending Sections 23.74.002 and 23.74.008 of the Seattle Municipal Code to allow residential uses in the Stadium Transition Area Overlay District.

WHEREAS, Seattle’s Comprehensive Plan includes policy LU 10.2, which states that the City will “Preserve industrial land for industrial uses, especially where industrial land is near rail- or water-transportation facilities to allow marine- and rail-related industries that rely on that transportation infrastructure to continue to function in the city.” and

WHEREAS, Seattle’s Comprehensive Plan includes policy LU 10.3, which states that the City will “Ensure predictability and permanence for industrial activities in industrial areas by limiting changes in industrial land use designation. There should be no reclassification of industrial land to a non-industrial land use category except as part of a City-initiated comprehensive study and review of industrial land use policies or as part of a major update to the Comprehensive Plan.” and

WHEREAS, Seattle’s Comprehensive Plan includes policy LU 10.8, which states that the City will “Prohibit new residential development in industrial zones except for certain types of dwellings, such as caretaker units and, in urban industrial zones, dwellings for workers, that are related to the industrial area and that would not restrict or disrupt industrial activity.” and

WHEREAS, additional new housing in industrial areas outside of the limited industrial-related housing currently allowed could have significant impacts on the City’s industrial areas; and

1 WHEREAS, the Council intends to further strengthen the City’s policies and regulations to
2 further limit changes to the boundaries of industrial areas, and further limit rezones to
3 non-industrial uses in the Urban Industrial zone within Manufacturing/Industrial Centers;

4 NOW, THEREFORE,

5 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

6 Section 1. Section 23.74.002 of the Seattle Municipal Code, last amended by Ordinance
7 126862, is amended as follows:

8 **23.74.002 Purpose, intent, and description of the overlay district—Rezone requirement—**

9 **Rezone criteria**

10 A. Purpose and intent. The purpose of this Chapter 23.74 is to implement the City’s
11 Comprehensive Plan, including the neighborhood plan for the Greater Duwamish
12 Manufacturing/Industrial Center, by establishing a Stadium Transition Area Overlay District for
13 the area shown on Map A for 23.74.004. The Stadium Transition Area centers on large sports
14 facilities and allows uses complementary to them. It is intended to contribute to a safer
15 pedestrian environment for those attending events and permits a mix of uses, supporting the
16 pedestrian-oriented character of the area as well as the surrounding industrial zone, while
17 minimizing conflicts with industrial uses. Within the overlay district, use provisions and
18 development standards are designed to: create a pedestrian connection with downtown;
19 discourage encroachment on nearby industrial uses to the south; and create a pedestrian-friendly
20 streetscape. Allowing a mix of uses, including office development, restaurants, lodging,
21 residential uses, and maker uses and arts, is intended to encourage redevelopment and to
22 maintain the health and vibrancy of the area during times when the sports facilities are not in
23 operation.

* * *

Section 2. Section 23.74.008 of the Seattle Municipal Code, last amended by Ordinance 126862, is amended as follows:

23.74.008 Uses.

Notwithstanding the use provisions of the underlying zone, the following use provisions apply:

A. The following uses are permitted in buildings existing on June 1, 2023:

1. Artist's studio/dwellings;
2. Major institutions.

B. The following uses are prohibited:

1. Heavy manufacturing uses;
2. High-impact uses;
3. Solid waste management;
4. Recycling uses;
5. Animal shelters and kennels;
6. Veterinary offices;
7. Pet grooming;
8. Airports, land and water based;
9. Hospitals;
10. Elementary and secondary schools;
11. Drive-in businesses, including gas stations;
12. Bus bases;
13. Flexible-use parking¹; and

1 14. Residential uses, except for those allowed under SMC 23.74.008.C.

2 ~~((otherwise allowed as an administrative conditional use in the Urban Industrial zone pursuant to~~
3 ~~subsection 23.50A.062.C)).~~

4 ¹ Parking required for a spectator sports facility or exhibition hall is allowed and shall be
5 permitted to be used for flexible-use parking or shared with another such facility to meet its
6 required parking. A spectator sports facility or exhibition hall within the Stadium Transition
7 Overlay Area District may reserve non-required parking only outside the overlay district and
8 only if:

9 (a) The parking is owned and operated by the owner of the spectator sports facility or
10 exhibition hall; and

11 (b) The parking is reserved for events in the spectator sports facility or exhibition hall;
12 and

13 (c) The reserved parking is south of South Royal Brougham Way, west of 6th Avenue
14 South and north of South Atlantic Street. Parking that is provided to meet required parking will
15 not be considered reserved parking.

16 C. In areas zoned Urban Industrial, residential uses are permitted as a conditional use east
17 of 1st Avenue S pursuant to the criteria contained in subsection 23.50A.062.C:

18 1. Except that criterion 23.50A.062.C.3 does not apply within the Stadium
19 Transition Area Overlay District (STAOD):

20 2. Only where the following occur, the total number of residential units permitted
21 in the Stadium Transition Area Overlay District may not exceed 990 units:

22 3. Except that, if any site is determined to be a geologic hazard area by the
23 Director, a covenant shall be required and recorded to run with the land in perpetuity:

1 4. Except that criterion 23.50A.062.C.4 does not apply within the STAOD, and
2 instead the following criteria must be met: All dwelling units shall have sound-insulating
3 windows sufficient to maintain interior sound levels at 45 decibels or below in consideration of
4 existing environmental noise levels at the site. The applicant shall submit an analysis of existing
5 noise levels and documentation of the sound insulating capabilities of windows as part of the
6 conditional use permit application;

7 5. only where the following occur: The building containing residential uses shall
8 have at least three signs in conspicuous locations, such as in the residential lobby, the leasing
9 office, and on the exterior of the building visible from the residential entry, that use clear
10 language to convey the following information:

11 a. That the project is located in an industrial area, and that residents, by
12 choosing to live in the area, accept the industrial character of the neighborhood and agree that
13 existing or permitted industrial uses do not constitute a nuisance or other inappropriate or
14 unlawful use of land, and

15 b. If the project has been determined to be in a liquefaction zone, that the
16 building is in a liquefaction zone and that residents understand that there may be heightened risk
17 during earthquakes; and

18 6. Except that a Master Use Permit application for a development containing
19 residential uses in the Stadium Transition Area Overlay District pursuant to the criteria contained
20 in subsection 23.50A.062.C must contain an executed and recorded agreement stating that the
21 development has not used City funding, will not use City funding and will not seek City funding
22 for the construction of the project, maintenance of the project, or any environmental remediation

1 of the site on which the development is located. The agreement shall be recorded on the title of
2 the property on which that development is located; and

3 Residential uses otherwise allowed as an administrative conditional use in the Urban
4 Industrial zone pursuant to subsection 23.50A.062.C are prohibited west of 1st Avenue S.

5 Section 3. This ordinance shall take effect on June 30, 2025.

6 Passed by the City Council the 18th day of March, 2025
7 and signed by me in open session in authentication of its passage this 18th day of
8 March, 2025.

9 
10 _____
President _____ of the City Council

Approved / returned unsigned / vetoed this 27th day of March, 2025.

11 **Returned Unsigned by Mayor**

12 _____
Bruce A. Harrell, Mayor

13 Filed by me this 27th day of March, 2025.

14 
15 _____
Scheereen Dedman, City Clerk

16 (Seal)