

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of October 5, 2016

SUBJECT: Amendment to Chapter 55 (Zoning Ordinance), Sections 5:10.19, 5:10.20, 5:64, 5:65, 5:68, 5:70 related to Downtown Zoning Districts, Premium Floor Area and Planned Project Modifications, and Chapter 59 (Off-Street Parking), Section 5:169 related to Special Parking Districts.

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the amendments to Chapter 55 (Zoning Ordinance), Sections 5:10.19 D1 and D2 Downtown Districts, 5:10.20 Downtown Character Overlay Zoning Districts, 5:64 Premium Intent, 5:65 Floor Area Premium Options, 5:68 Planned Projects Statement of Intent, 5:70 Planned Project Standards for Approval, and Chapter 59 (Off-Street Parking Ordinance), Section 5:169 Special Parking Districts.

STAFF RECOMMENDATION

Staff recommends that the proposed amendments to Chapter 55 (Zoning Ordinance) and Chapter 59 (Off-Street Parking Ordinance) of the City Code be **approved** because the amendments are consistent with the Council Resolutions R-13-078 and R-14-025 and will further goals of the Downtown Plan, the Master Plan Land Use Element, the Master Plan Sustainability Element, and the City's affordable housing goals.

STAFF REPORT

Following a public hearing held on April 19, 2016, the Planning Commission postponed proposed amendments to the Zoning Ordinance (Chapter 55) and Off-Street Parking Ordinance (Chapter 59) related to the floor area premium options, planned project modifications, and special parking district to allow additional time to discuss and revise the amendments.

Since April 19, the downtown premium amendments were discussed on [June 13](#) at a joint working session of the City Council and Planning Commission, and by the Planning Commission at a regular meeting on [July 14](#) and a working session on [August 9](#).

BACKGROUND

In March and April 2013, City Council passed resolutions directing the Planning Commission to review certain aspects of the downtown zoning ordinance and provide recommendations for any necessary amendments. In July 2013, ENP & Associates was hired to assist in that evaluation of the existing downtown zoning regulations. ENP's report was completed in October 2013.

The Planning Commission reviewed the report and received additional comments from the public at six meetings. After evaluating the information it received, on December 13, 2013 the Planning Commission endorsed eight recommendations for changes to the zoning map, the zoning ordinance and the development review process. Two of the recommendations were to reduce the residential premium with the goal of encouraging the use of other existing or proposed premiums to compensate for this reduction, such as increased energy efficiency certification, open space with landscape, active ground floor use, balconies and workforce housing, and to eliminate the affordable housing “super premium”.

On January 21, 2014, City Council [directed](#) the Planning Commission to begin the process of implementing the eight recommended changes along with two additional charges, and asked for a report back to City Council by October, 2014. Several recommendations have been completed since then, including two rezonings and two code amendments. The Premium Evaluation is one of the last remaining tasks to be addressed.

ENP was asked to continue working with the Planning Commission and staff specifically to revisit the premium section of the Zoning Ordinance and facilitate public input. The goal of the community engagement process was to determine what, if any, amendments should be made to align the downtown premiums with community goals. The Planning Commission asked for three focal points to be explored with the public: quality design, energy efficiency, and housing affordability.

Work on the Premium Evaluation began in the spring of 2015 and included the following [public engagement](#) highlights:

- Working session discussions with the Environmental Commission, the Mayor’s Downtown Marketing Task Force, the Downtown Citizens Advisory Council, the Housing & Human Services Advisory Board, the Historic District Commission, the Energy Commission, the Design Review Board, and the Ann Arbor Preservation Association.
- Focus groups were offered for affordable housing residents, young families and young professionals
- Five community coffee hour and happy hour drop-in sessions
- Interviews with an architect and a developer (separately) who have designed or developed a downtown building using a premium incentive, Washtenaw County Office of Economic and Community Development staff, Chamber of Commerce staff, and real estate brokers marking a downtown site for the City
- A community-wide survey through Ann Arbor Open City Hall
- A community meeting

The Planning Commission discussed various aspects of the Premium Evaluation at their working sessions on [March 3, 2015](#), [June 9, 2015](#), [January 8, 2016](#), [February 9, 2016](#), and [July 19, 2016](#) and [August 9, 2016](#) as well as a joint session with City Council on [June 13, 2016](#). The Ordinance Revisions Committee did the same at their meetings of [March 20, 2015](#), [October 6, 2015](#), and [September 18, 2015](#). A public hearing was held on [April 19, 2016](#).

DESCRIPTION OF PROJECT

The Zoning Ordinance currently offers premium floor area, or additional square footage beyond the normal maximum allowed for each zoning district, when certain uses or features are provided. Premiums for residential use, affordable housing, green building, historic preservation, pedestrian amenity, and public parking premiums are currently offered.

Premiums are used by many communities as an incentive to encourage uses and features that the real estate market is not generally providing. Since both the real estate market and a community's goals and priorities change over time, it is appropriate to periodically review the premium options offered. Sometimes demand for a use (e.g. residential units) becomes strong enough that incentives are no longer needed. Other times, a community decides its priorities have changed so new features should be encouraged (example, quality design).

The Downtown Zoning Premium Evaluation sought to determine whether the current menu of premium options is achieving their intended purposes and whether other types of premiums should be offered. The Premium Evaluation questioned if the incentives were aligned with the current development market and were consistent with goals for downtown Ann Arbor, especially with regarding to housing affordability, energy efficiency and quality design.

From the beginning, engaging citizens and downtown stakeholders was a priority. ENP prepared an [educational packet](#), outlining the evaluation process and providing background on how the premiums work in Ann Arbor. The materials also included brief case studies of other community's who offer premiums.

The suggested zoning ordinance amendments build upon the [prioritization feedback](#) and survey results from the public engagement process and a Planning Commission [policy choice exercise](#). Based on the input from all stakeholders – City Council's directive, Planning Commission, other Boards and Commissions, staff and citizens – the proposed amendment approach balances the stated city goals of a sustainable downtown and increased density in areas with existing utilities and transportation networks with the community desire to strengthen the premium requirements to incentivize unmet needs of environmentally sustainability, energy efficiency and workforce housing.

The proposed amendments include:

- Building design requirements on primary and secondary streets (applicable to both normal FAR and premium FAR developments).
- Allowing certain planned project modifications in the downtown zoning districts.
- Requiring energy efficiency standards as a condition to acquire premium floor area.
- Creating a two-tiered premium program. Tier 1 may acquire a 150% FAR bonus in the D1 district and 100% FAR bonus in the D2 district. Tier 2 may acquire a 300% bonus in the D1 district and 200% FAR bonus in the D2 district.
- Tier 1 options include residential use premium and energy efficiency premium.
- Tier 2 options include a workforce housing premium, LEED certification premium and 2030 [Carbon Neutrality] Challenge premium.
- Eliminating the option to contract for parking permits within the city's public parking system to meet off-street parking requirements for premium floor area in the downtown special parking district.

PROPOSED AMENDMENTS

A complete draft of the proposed amendments is attached. Below are brief descriptions of the proposed changes.

Building Design Requirements – A new section has been added to **Section 5:10.20 Downtown Character Overlay Zoning Districts** that require basic design requirements on primary and secondary streets. The building design requirements are focused on the first floor and address story height; transparency; openings; sill height; and building materials.

Planned Project Modifications – Because building design requirements that are applicable to all new development on a primary- or secondary-designated street are proposed, a method for relief in certain circumstances is proposed as well. Amendments to **Section 5:68 Intent** and **Section 5:70 Standards for Approval** will enable the Planning Commission to make a recommendation and the City Council to approve planned project modifications when strict conformance to the building design requirements would not meet the Historic District Standards and Guidelines (for properties in a historic district) or to propose an iconic design that furthers the intent and spirit of the Downtown Design Guidelines (for properties not in a historic district). Unlike the established acceptable justifications for planned project modifications which do not require support or a recommendation from another body, the newly proposed justification specifically for flexibility from the building design requirements requires support from the Historic District Commission or the Design Review Board as appropriate in order to be considered for approval.

Prerequisites – **Section 5:65(1) General Regulations** has been changed to clearly indicate that premiums are divided into two tiers and only one option may be applied to a development. The current general regulations simply require proposed developments using a premium option to achieve at least 2 points under the LEED energy and atmosphere credit category. This single prerequisite is proposed to be replaced with a performance standard requirement of 50% less fossil fuel, greenhouse gas-emitting, energy consumption performance than our regional average or a 25% improvement in performance over heating, cooling and ventilation code.

Tier 1 Premium – Amendments to **Section 5:65(2) Premium Options** establish a two-tiered system for premiums. Two options are offered in Tier 1 to achieve the half of the total maximum bonus floor area. A development in the D1 district may exceed the 400% normal FAR allowance by up to 150% for a total FAR of 550%, and a development in the D2 district may exceed the 200% normal FAR by up to 100% for a total FAR of 300%, by using one of the two Tier 1 options.

The two Tier 1 options are residential use premium and energy efficiency. No substantive changes are proposed to the residential use premium formula, however it has been simplified. One square foot of premium floor area is awarded for each square foot of residential use proposed. As a Tier 1 option, the total award is now capped at 550% total FAR in the D1 district and 300% total FAR in the D2 district.

An energy efficiency track is offered as a second option in Tier 1. As proposed, the bonus FAR will be awarded when the development achieves a 30% of higher improvement over the state approved energy code (excluding renewable energy credits). This option may be especially attractive for a development that wishes to be entirely nonresidential.

Tier 2 Premiums – Also in **Section 5:65(2) Premium Options**, three options are now offered in Tier 2 to achieve the full maximum bonus floor area allowed in D1 or D2: workforce housing, LEED certification, or 2030 Challenge by the American Institute of Architects.

Bonus floor area is awarded for developments with at least 25% residential use, of which at least 10% is designated as affordable to workforce households earning between 30 and 60% of area median income. Developers may either provide the workforce housing units within the development or may contribute to the Affordable Housing Fund consistent with the in-lieu fee formula established by City Council. The in-lieu fee option may not be used to replace the residential units themselves, only to replace the affordability condition.

Bonus floor area is also awarded for developments achieving the US Green Building Council's Leadership in Energy and Environmental Design (LEED) current version Gold or Platinum Certification for Building Design + Construction or Homes. Currently, bonus floor area is awarded for developments achieving LEED version 3 Silver, Gold or Platinum Certification for new construction or existing buildings.

Finally, bonus floor area can be awarded for developments that achieve the performance standard for new buildings per the 2030 Challenge by the American Institute of Architects of 70% less fossil fuel, greenhouse gas-emitting, energy consumption performance than regional average/median for that building type baseline.

As currently, a monetary penalty will be due for failure to demonstrate full compliance for either the LEED certification or 2030 Challenge premium options.

Off-Street Parking – **Section 5:169(1)** has been revised to eliminate the option to contract for parking permits within the city's public parking system to meet off-street parking in the downtown special parking district. Remaining options for meet off-street parking requirements are providing the spaces on site or a payment in lieu.

STAFF COMMENTS

The following changes have been made to the proposed amendments since the April 19, 2016 public hearing for the 3/30/16 draft:

- The building design requirements in Section 5:10.20(5) have been revised to more clearly articulate the required and prohibited materials.
- The prerequisite to provide pedestrian amenities as part of any premium option in Section 5:65(1) has been removed.
- The Tier 1 energy efficiency required improvement percentage in Section 5:65(2)(b) has been lowered from 40% to 30%. To be awarded energy efficiency premium floor area, the building must achieve a 30% or higher improvement over the state approved energy code.
- The proposal to introduce a "soft" maximum parking limit and require shared parking if more than the maximum parking is proposed has been dropped. The only change to the off-street parking requirements has been eliminating the option to contract for parking permits within the public system.

- Wherever a brand name or trademarked measuring tool is mentioned, such as EQUEST or Target Finder, additional language has been introduced to make clear that an equivalent tool can be used as approved by the Building Official.
- Several paragraphs have been order formatted for consistent organization, edited for clarity without substantive changes, and outdated terms have been changed to current language, such as “usable open space” to “open space”.

Project consultant ENP, as requested, interviewed development companies that have recently either constructed or had buildings with premiums approved in downtown. They were asked about their concerns overall and specific questions about the energy efficiency options, the workforce housing option, and versions of LEED certification. Overall, the interview subjects expressed fair concerns and offered constructive criticism but none identified any insurmountable issues and none suggested they would stop considering new development projects in the downtown if the proposed changes were adopted. A full summary is attached.

Staff continues to support and recommend approval of the proposed premium amendments package. Staff believes it will balance strengthening the premium thresholds, prioritize uses and needs that the development market is not currently providing, and work toward ensuring a sustainable, efficient, and desirable downtown. In the proposed two-tiered approach, half of the maximum premium FAR allowance is designed to be relatively easily attained. Downtown developers will have ample flexibility to plan mixed use buildings, buildings with sufficient density to support mass transit, and buildings with the critical mass of occupants to support a 24-hour downtown. The relative ease of incorporating the Tier 1 premiums serves to further the goals of a wide variety of all of the City’s adopted plans and policies. Most developments using Tier 1 premiums will likely be considered mid-rise buildings, likely between six and ten stories tall.

Tier 2 options, however, will require significant investment by a developer and, as a reward, offer the greatest bonus floor area. In exchange for the possibility of a large-scale, high-rise development in the downtown, the City will gain one of two unmet and desired needs of our community – affordable workforce housing or an exceptionally low impact development.

Prepared by Alexis DiLeo, City Planner
Reviewed by Brett Lenart, Planning Manager
9/30/16

Attachment: 9/27/2016 Proposed Ordinance Amendments [Final Draft](#) and [Tracked Draft](#)
Developer Input Summary

c: City Attorney
Systems Planning
File

ORDINANCE NO. ORD-12-xx

First Reading :
Public Hearing :

Approved:
Published:
Effective:

AN ORDINANCE TO AMEND SECTIONS

The City of Ann Arbor ordains:

Section 1. That Section 5:10.19 of Chapter 55 of Title V of the Code of the City of Ann Arbor is amended as follows:

[D1 and D2 Downtown Districts]

- (3) Area, height and coverage requirements.
- (a) Except as otherwise provided in this chapter, regulations governing area, height, coverage and open space in the D1 and D2 downtown districts shall comply with the requirements in Table 5:10.19B.

Table 5:10.19B. Schedule of Area, Height, Open Space and Coverage Requirements:
D1 and D2 Downtown Districts

Zoning District	Maximum Usable Floor Area in Percentage of Lot Area (FAR)		Minimum Height [1][2]		Max. Building Height	Max. Building Coverage	Min. Open Space	Min. Gross Lot Size
	Normal (without Premiums)	With Premiums (Sections 5:64-5:65)	In Feet	In Stories				
D1	400%	900% of lot area with affordable housing premiums <u>550% with Tier 1 Premiums;</u> <u>700% with Tier 2 Premiums</u>	24	2		None	None	None
D2	200%	400% of lot area <u>300% with Tier 1 Premiums;</u> <u>400% with Tier</u>	24	2	See Character Overlay Zoning District	80% of lot area	10% of lot area	None

		<u>2 Premiums</u>			Massing Standards (Table 5:10.20A)			
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[1] The minimum height requirement shall apply only to new principal use buildings constructed after the effective date of this ordinance (December 26, 2009); otherwise none.
[2] The ~~usable~~ floor area of the second story must be a minimum of 75% of the first story ~~usable~~ floor area.

- (b) Relationship to downtown character overlay zoning districts. The D1 and D2 downtown zoning districts shall be further regulated by the downtown character overlay zoning districts. Unless otherwise specified in this chapter, regulations identified for both the downtown district and the applicable downtown character overlay zoning district shall apply.
- (4) Parking structures.
 - (a) In the D1 district, an off-street parking structure is not permitted at the level of the adjacent street unless separated from the street by a portion of the building that is occupied by a permitted use or uses, with the exception of the portion of a parking structure that provides vehicular or pedestrian access to the street. The permitted use(s) shall be located within the building and have a minimum depth of 25 feet from the exterior of the front wall.
 - 1. On corner lots, this requirement shall apply to lot frontages on primary streets, as defined in section 5:10.20(4). If none of the street frontages is a primary street, an off-street parking structure must be separated from at least 1 street frontage by a portion of the building that is occupied by a permitted use, with the exception of the portion of a parking structure that provides access to the street.
 - (b) In the D2 district, an off-street parking structure shall be located a minimum of 10 feet from the front lot line at the level of the adjacent street and provide a landscape buffer or screening wall between the building and the front property line.
 - (c) In the D1 and D2 districts, any wall of an off-street parking structure that abuts a residential zoning district shall contain no openings or be separated from the lot line by a building occupied by a permitted use or uses.

Section 2. That Section 5:10.20 of Chapter 55 of Title V of the Code of the City of Ann Arbor is amended as follows:

[Downtown Character Overlay Zoning Districts]

- (4) Building frontage standards.
 - (a) Intent. These building frontage designations, in coordination with the downtown character overlay zoning districts, are designed to support the pedestrian-scale character of downtown streets.
 - 1. Primary Street: Lot frontage where placement of buildings at the front property line is desired.
 - 2. Secondary Street: Lot frontage where a range of building setbacks from the front property line is acceptable.
 - 3. Front Yard Street: Lot frontage where a setback from the front property line is desired.
 - (b) Buildings and additions constructed after the effective date of this section (December 26, 2009) on lots zoned D1 or D2 in the downtown character overlay zoning districts shall comply with the building frontage standards in Table 5:10.20B, as applicable.

Table 5:10.20B – Downtown Character Overlay Zoning Districts Building Frontage Standards (Additional Regulations for the D1 and D2 Districts)			
Designation at Right-of-Way Line	Required Front Setback		Additional Requirements and Exceptions
	Minimum	Maximum	
Primary Street	0 feet	1 foot 5 feet at the streetwall	(1) Up to 20% of the building frontage may exceed the maximum front setback requirement for entry court or plaza area, except in the Main Street Overlay Zoning District. (2) The maximum front setback may be exceeded up to a maximum of 16 feet from the back of curb to allow for pedestrian circulation. (3) Vehicle access shall be provided from a public alley, if accessible. (4) Recesses and alcoves on the level of the adjacent street to accommodate entry ways, display

			windows, planters, or similar features shall not be considered as setbacks, provided the streetwall of upper stories complies with the maximum required front setback.
Secondary street	0 feet	10 feet at the streetwall	(1) Up to 20% of the building frontage may exceed the maximum front setback requirement for entry court or plaza area.
Front yard street	15 feet	None	(1) The average of the established front setbacks of buildings within 100 feet may be used, if less than 15 feet. (2) Unenclosed porches may encroach 8 feet into the required front open space.

(5) Building Design Requirements on Primary and Secondary Streets.

Buildings and additions constructed after the effective date of this sub-section ([adoption date]) on lots in the downtown character overlay zoning districts with primary and secondary street frontages shall comply with the following building design requirements:

- (a) The height of the street level floor, from its floor to the next floor above, must be no less than 15 feet but not exceed 20 feet.
- (b) A minimum of 60% of the street floor level façade must be windows or transparent glazing.
- (c) The bottom of all windows on the ground floor level of the adjacent street may not be more than 2.5 feet from the adjacent sidewalk level.
- (d) The following materials are restricted or prohibited on facades visible from primary and secondary streets: aluminum or vinyl siding, or an exterior insulation finishing system, except for accents eight feet from street level or higher.
- (e) The following materials are required: glass, brick; cut stone; cast stone; or high-quality finished metal. Other materials may be permitted if recommended by the Design Review Board and approved by the Planning Commission as part of a site plan.

Section 3. That Section 5:64 and Section 5:65 of Chapter 55 of Title V of the Code of the City of Ann Arbor is amended as follows:

[Premiums]

5:64. Premiums; Intent.

A premium is an increase in allowable floor area to exceed the normal maximum ~~usable~~ floor area in percentage of lot area established by this chapter for structures in the ~~C1A, C1A/R,~~ D1 and D2 Zoning Districts.

- (1) Intent. The intent of incorporating premiums into the Zoning Ordinance is:
 - (a) To provide an incentive for residential development in and in close proximity to the City's central business core and to encourage affordable housing opportunities in situations where such opportunities might not otherwise be provided.
 - (b) To encourage development ~~which reinforces pedestrian activity along streets~~ within the central business core and to achieve a greater mixture of land uses and intensities than might occur in the absence of such premiums in order to strengthen the economic vitality and diversity which is essential to a healthy and vibrant ~~street life.~~ central business core.
 - ~~(c) — To provide an incentive for the development of public spaces and pedestrian amenities and to encourage excellence in urban design through the provision of open space and landscaped approaches to buildings at appropriate corners.~~
 - ~~(d)~~(c) To provide incentives for the development of energy-efficient and environmentally sustainable buildings— to bolster efforts to reach the 2030 Challenge by the American Institute of Architects for all new buildings, developments and major renovations be carbon-neutral by 2030.
 - ~~(e) — To encourage the inclusion of public parking in the development of new private parking structures.~~
 - ~~(f) — To encourage the preservation of historic buildings not currently located in an historic district.~~
- (2) Premiums are not intended to be used as a basis for the demolition of existing historic buildings in order to increase density.

(3) Application. A premium is not available unless a building and its surrounding site incorporates and maintains certain architectural features or land uses, or both, as designated by this Chapter.

5:65. Floor Area Premium Options.

In the ~~C1A, C1A/R,~~ D1 and D2 zoning districts, the normal maximum floor area in percentage of lot area set forth in Sections 5:43 and 5:10.19 may be exceeded on lots located entirely outside of an historic district and/or floodplain when amenities as described in this section are provided, subject to the premium limits designated in Sections 5:43 and 5:10.19B.

- (1) General regulations.
 - (a) Premium options may be applied only to lots that are located entirely outside of an historic district, as designated by Chapter 103, and/or properties that contain no part of an 100-year floodplain, as designated by the city's adopted floodplain map.
 - (b) Premium options apply only to any structure located on the same lot as the amenities or land uses, or both, which give rise to the premium.
 - (c) Premium options are divided into two tiers, Tier 1 and Tier 2. Premium floor area may be acquired by selecting and demonstrating compliance with one of the five options offered. The use of multiple options to acquire premiums is not permitted.
 - (d) All amenities or land uses used to acquire a floor area premium shall remain for the life of the structure. The feature(s) shall only be diminished or discontinued if the additional ~~gross~~ floor area is permanently removed or if another premium option(s) of at least equivalent floor area value, as described in this section, is approved as part of a site plan.
 - (e) Any property that received additional floor area through a premium option(s) which was lawfully established prior to, and lawfully continuing in existence on the effective date of this section (~~December 26, 2009~~), ([adoption date]), shall be deemed a conforming use and/or structure. When modifications to any such property are requested, compliance with the current premium options is required.
 - (f) As a condition of receiving the additional floor area through a premium option, the building must comply with the following ~~energy efficiency~~ standards for the construction of all new floor area:

1. ~~A minimum of two points must be achieved under the U.S. Green Building Council Leadership in Energy and Environmental Design~~

~~(LEED) Energy & Atmosphere Credit No. 1. The most recent version in effect at the time of site plan approval shall be applied.~~

~~2~~

~~1. Energy Efficiency Standards~~

~~a. The building must meet the performance standard of 50% less fossil fuel, greenhouse gas-emitting, energy consumption performance than regional average/median for that building type per the baseline set by the Environmental Protection Agency's on-line tool, Target Finder. If the project's building type is not in Target Finder, a 25% improvement in building performance over ASHRAE 90.1-2007 may be substituted. Equivalent measuring tools may be used as determined by the Building Official.~~

~~b. Compliance with this requirement shall be verified and documented by the property owner using an industry standard software ~~energy modeling tool (EQUEST or equivalent)~~ carbon calculator (Target Finder or equivalent measuring tool as determined by the Building Official). Documentation must be submitted with building permit application and verified by the City of Ann Arbor prior to the issuance of building permits.~~

(g) Provisions implementing the premium options, and ensuring future compliance with the premium options, where applicable, shall be included as a condition to the approval of a site plan, and in a development agreement, or both, as determined by the City Attorney.

(2) Premium Options.

~~(a) (a) Tier 1. The following premium options may be used to achieve the maximum floor area with Tier 1 premiums provided in Section 5:10.19B:~~

~~1. Residential Use Premium. ~~In D1 and D2 districts, 0.75~~One square foot of floor area in excess of the normal maximum ~~usable~~ floor area in percentage of lot area shall be allowed for each square foot of floor area, ~~regardless proposed for residential use.~~~~

~~a. Premium floor area may be used for any permitted principle use of ~~location~~the district in which the lot is located. The residential uses may be provided anywhere within the building, ~~that is used for multiple-family dwellings.~~~~

~~b. Each dwelling unit shall have a minimum square footage of 400 square feet of floor area. Every sleeping room in the~~

buildingdwelling unit shall have at least 1 window, sliding glass door, skylight, or other acceptable light transmitting media facing directly to the outdoors. The minimum total glazed area for every sleeping room shall be not less than 8% of the habitable floor area of such room.

c. If dwelling units constitute a portion of a mixed use building, dwelling units must be completed and receive a certificate of occupancy in advance or at the same time as the certificate of occupancy for nonresidential use, or the property owner shall provide a performance bond for the residential use at the time the certificate of occupancy is requested, subject to the requirements of Chapter 57.

~~(b) Affordable Housing Premium. In D1 and D2 districts, 3,000 square feet of floor area². Energy Efficiency: Floor area in excess of the normal maximum usable floor area in percentage of lot area, 150% in the D1 district and 100% in the D2 district, shall be allowed for each on-site dwelling unit and/or buildings achieving a 30% or higher improvement over the state approved energy code, excluding renewable energy credits.~~

a. Compliance with this requirement shall be verified and documented by the property owner using an industry standard software energy modeling tool (EQUEST or equivalent modeling tool as determined by the Building Official). Documentation must be submitted with building permit application and verified by the City of Ann Arbor prior to the issuance of building permits.

b. Failure to submit documentation shall be a violation of this ordinance. The penalty for such violation shall be \$500 per day from the date when the report was due to the date it is submitted.

c. Failure to demonstrate full compliance with the applicant's commitment to achieve the requested energy performance shall be a violation of this ordinance. The penalty for each violation is an amount determined by the following formula:

$$P = [(EP - EA) / EP] \times CV \times (EFAR / TFAR)$$

Where:

P is the penalty;

EP is the proposed percentage of performance over the state approved energy code standards;

EA is the actual percentage of performance over the state approved energy code standards;

CV is the construction value, as set forth on the building permit for the new structure;

EFAR is the amount of floor area proposed that is attributable to the Energy Efficiency Premium;

TFAR is the total floor area proposed.

d. Failure of the applicant to comply with the applicant's commitment to achieve the requested energy efficiency premium shall not affect the right to occupy any of the premium floor area if a penalty is paid to the City in the amount determined in this section. No additional penalty shall be imposed for failure to comply with the commitment.

e. If, within 90 days, or such longer period as the planning and development services manager may allow for good cause, the application shall demonstrate, through a supplemental report that it has made sufficient alternations to improvements to achieve the energy efficiency premium, then the penalty owing shall be eliminated or recalculated accordingly. The amount of the penalty as so re-determined shall be final.

(b) Tier 2. The following premium options may be used to achieve the maximum floor area with Tier 2 premiums provided in Section 5:10.19B:

1. Workforce Housing Premium. Floor area in excess of the normal maximum floor area in percentage of lot area, 300% in the D1 district and 200% in the D2 district, shall be allowed for site and/or buildings with at least 25% residential use, of which at least 10% is designated as affordable to lower dwelling units for workforce households making between 50 to 80 percent of the area median income households. In the D1 district, the normal maximum usable floor area in percentage of lot area with premiums (700%) may be exceeded, up to a maximum of 900%, to provide of the City of Ann Arbor.

a. Workforce dwelling units designated as affordable to lower income households. Designated units may be provided in the building or may be replaced with market rate residential

uses upon a payment in lieu consistent with the formula adopted by annual resolution of City Council as long as the site and/or building maintains 25% residential use.

b. All dwelling units shall have a minimum of 600 square feet of floor area and 400 square feet of floor area. Every sleeping room in the building shall have at least 1 window, sliding glass door, skylight, or other acceptable light transmitting media facing directly to the outdoors. The minimum total glazed area for every sleeping room shall be not less than 8% of the habitable floor area of such room.

c. All designated units shall remain affordable for workforce households for the life of the building-, per deed restrictions, a development agreement or other conveyance approved by City Council. Designated units must use the same common facilities in the building (entrances, parking, gathering and recreation areas, stairways, elevators, storage, laundry, trash and recycling) as all other units. Provisions to implement the affordable housing premium option shall meet requirements for affordable units, as determined by the Washtenaw County Office of Community Development.

~~(e) Green Building Premium. In D1 and D2 districts, floor 2. LEED Certification: Floor area in excess of the normal maximum usable floor area in percentage of lot area, 300% in the D1 district and 200% in the D2 district, shall be allowed in the following increments for site and/or buildings achieving the following levels of LEED Silver, Gold or Platinum Certification for Building Design + Construction (BD+C) or Homes, the U.S. Green Building Council Leadership in Energy and Environmental Development (LEED) certification for new construction (NC) or existing buildings (EB). The most recent version in effect current at the time of site plan approval shall be applied application. The following restrictions apply:~~

~~LEED Silver certification, with a minimum of 4 points in Energy & Atmosphere Credits No. 1 and 2: 50% of lot area~~

~~LEED Gold certification, with a minimum of 6 points in Energy & Atmosphere Credits No. 1 and 2: 150% of lot area~~

~~LEED Platinum certification, with a minimum of 8 points in Energy & Atmosphere Credits No. 1 and 2: 250% of lot area.~~

1.a. Prior to issuance of any building permits, the applicant shall submit proof of LEED registration and a letter in a form

satisfactory to the City Attorney stating his/her commitment to achieving the requested LEED certification and to demonstrating compliance with that commitment.

~~2~~.b. Within 6 months of receiving the final Certificate of Occupancy, the applicant shall submit to the planning and development services manager documentation of the credits earned from the U.S. Green Building Council and achievement of the requested certification. This time period may be extended by the planning and development services manager at his or her discretion for a period not to exceed 3 months if additional time is needed to complete the LEED certification process.

~~3~~.c. Failure to submit documentation from the U.S. Green Building Council within the required time period demonstrating the applicant's achievement of the requested LEED certification premium shall be a violation of this ordinance. The penalty for such violation shall be \$500 per day from the date when the report was due to the date it is submitted.

~~4~~.d. Failure to demonstrate full compliance with the applicant's commitment to achieve the requested LEED certification premium shall be a violation of this ordinance. The penalty for each violation is an amount determined by the following formula:

$$P = [(LC - CE) / LC] \times CV \times GPUP$$

Where:

P is the penalty;

LC is the minimum number of credits to earn the requested LEED certification;

CE is the number of credits earned as documented by the U.S. Green Building Council report;

CV is the construction value, as set forth on the building permit for the new structure;

GPUP, the Green Premium Utilization Percentage, is the greater of (i) 0.075; or (ii) a fraction, the numerator of which is LEED FAR, the denominator of which is TFAR.

LEED FAR is the minimum amount of floor area proposed that is attributable to the Green Building Premium;

TFAR is the total floor area proposed.

~~5.~~ e. Failure of the applicant to comply with the applicant's commitment to achieve the requested LEED certification premium shall not affect the right to occupy any of the premium floor area if a penalty is paid to the City in the amount determined in this section. No additional penalty shall be imposed for failure to comply with the commitment.

~~6.~~ f. If, within 90 days, or such longer period as the planning and development services manager may allow for good cause, the application shall demonstrate, through a supplemental report from the U.S. Green Building Council that it has made sufficient alternations to improvements to earn the requested LEED certification, or to earn more credits toward such a certification, then the penalty owing shall be eliminated or recalculated accordingly. The amount of the penalty as so re-determined shall be final.

~~(d)~~ Historic Preservation Premium. In D1 and D2 districts, additional floor area of up to 50% of the lot area shall be allowed. g. There is no penalty if the applicant fails to maintain its LEED certification beyond three years after receiving the certification.

~~3.~~ 2030 Challenge by the American Institute of Architects: Floor area in excess of the normal maximum usable floor area in percentage of lot area for a development that preserves a historic resource, as defined, 300% in Chapter 103, that is currently listed on or eligible for the National Register of Historic Places and/or the State Register of Historic Sites. For purposes of calculating the maximum floor area in percentage of lot area for the lot, D1 district and 200% in the D2 district, shall be allowed for site and/or buildings achieving the floor area of performance standard for new buildings per the historic resource shall not be counted in 2030 Challenge by the total.

~~(e)~~ Pedestrian Amenity Premium. In G1A, G1A/R and D1 districts, 10 square feet American Institute of floor area in excess Architects of the normal maximum usable floor area in percentage of lot area shall be allowed for each square foot of pedestrian amenity improvements, up to a maximum of 8,000 square feet of additional floor area. Any space in which a pedestrian amenity is used to acquire a premium shall not be used for the

~~off-street parking of any vehicle, including, but not limited to, automobiles, bicycles, motor bikes, and scooters; nor shall such area be used for access drives, loading, or trash collection stations, except as noted in paragraph 3d. Interconnections of pedestrian amenities between two or more lots are required to the extent feasible. A public open space used to acquire a premium shall be designed to avoid creation of isolated areas, to maintain lines of sight into the space from streets and major pedestrian walkways, and to provide a secure environment. Lighting shall be provided for public open space premiums which are open at night.~~

~~Pedestrian amenities may include:~~

- ~~1. Inner Arcade. A non-publicly owned, continuous, covered space which runs through or along a non-street side of a building and connects public streets, arcades, open space, or sidewalks and is readily accessible and identifiable from the public street, arcade, or sidewalk. An arcade shall meet the following requirements:
 - ~~a. Connect and be accessible from at least two public streets, or a public street and a public or non-public arcade fronting on another public street, or a public street and a public or non-public plaza fronting on another public street, or a public or non-public arcade and another public or non-public arcade fronting on another public street; or a public parking garage and a public street; and~~
 - ~~b. Measure not 70% less fossil fuel, greenhouse gas-emitting, energy consumption performance than 12 feet wide; and~~
 - ~~c. Have an open and unobstructed headroom of at least 12 feet in height; and~~
 - ~~d. Remain open for use by the general public during all business hours common in the area.~~~~

~~Art works may occupy up to 5 percent of the total arcade area if a minimum clearance of 6 feet for circulation is provided.~~

- ~~2. Plaza. A non-publicly owned continuous space, open to the sky for its entire width and length which fronts on a public street or public sidewalk, which is directly and conveniently accessible to the public at all times for passive recreational activities. Up to two-thirds of the surface area of the plaza may be occupied by features such as seating, permanent planting areas, water features or works of art. When landscaping is provided for a plaza amenity premium, a variety of living trees, shrubs, ground covers, and seasonal plantings shall be used and shall be located in permanently~~

~~installed beds or planters serviced regional average/median for that building type per the baseline set by automatic irrigation systems or in large containers, provided they cannot be readily removed. A plaza shall meet the following requirements:~~

- ~~a. Have a minimum dimension of 10 feet; and occupy not less than 500 square feet; and~~
 - ~~b. Be at the same grade as the adjacent public sidewalk or not more than 24 inches above or below the grade of adjoining public sidewalk for no more than 50 percent of either length of the sides adjoining and measured at the property the Environmental Protection Agency's on-line; and tool, Target Finder.~~
 - ~~c. Be readily identifiable from the public sidewalk; and~~
 - ~~d. A portion of a plaza may be used for the parking of bicycles, provided the square footage of the plaza is increased beyond the minimum requirement at the rate of 96 square feet for each 2 bicycles parked, and permanently installed bicycle facilities are provided.~~
 - ~~e. When seating and/or tables are provided, they shall be available for use by the general public at all times the space is open.~~
- ~~(f) Public Parking. In D1 districts, the usable floor area of above-grade parking structures reserved for vehicular parking spaces in excess of the minimum requirement shall not be counted toward the maximum usable floor area in percentage of lot area, up to a maximum of 200% of the lot area, if the following conditions are met:~~
- ~~1. The parking spaces are made available to the general public.~~
 - ~~2. The number, location, size, access, layout and design of the parking spaces meet standards for public parking, as determined by the ~~the Downtown Development Authority.~~~~
 - ~~3. The property owner signs and records a development agreement or other document approved by the city attorney outlining the operating conditions for this parking.~~
 - ~~a. Compliance with this requirement shall be verified and documented by the property owner using an industry standard software carbon calculator (Target Finder or equivalent modeling tool as determined by the Building Official). Documentation must be submitted with building~~

permit application and verified by the City of Ann Arbor prior to the issuance of building permits.

- b. Failure to submit documentation shall be a violation of this ordinance. The penalty for such violation shall be \$500 per day from the date when the report was due to the date it is submitted.
- c. Failure to demonstrate full compliance with the applicant's commitment to achieve the requested performance standard shall be a violation of this ordinance. The penalty for each violation is an amount determined by the following formula:

$$P = [(ED-EA) / EP] \times CV \times (EFAR/TFAR)$$

Where:

P is the penalty;

ED is the proposed decrease in fossil fuel, greenhouse gas-emitting, energy consumption performance than regional average/median for that building type;

EA is the actual decrease in less fossil fuel, greenhouse gas-emitting, energy consumption performance than regional average/median for that building type;

CV is the construction value, as set forth on the building permit for the new structure;

EFAR is the amount of floor area proposed that is attributable to the Energy Efficiency Premium;

TFAR is the total floor area proposed.

- d. Failure of the applicant to comply with the applicant's commitment to achieve the requested energy efficiency premium shall not affect the right to occupy any of the premium floor area if a penalty is paid to the City in the amount determined in this section. No additional penalty shall be imposed for failure to comply with the commitment.
- e. If, within 90 days, or such longer period as the planning and development services manager may allow for good cause, the application shall demonstrate, through a supplemental

report that is has made sufficient alternations to improvements to achieve the energy efficiency premium, then the penalty owing shall be eliminated or recalculated accordingly. The amount of the penalty as so re-determined shall be final.

Section 4. That Article V of Chapter 55 of Title V of the Code of the City of Ann Arbor is amended as follows:

[Planned Projects]

5:68. - Statement of intent.

The intent of this section is to provide an added degree of flexibility in the placement, design and interrelationship of the buildings within the planned project and to provide for permanent open space preservation within planned projects. Modifications of the area, height, placement and design requirements, and lot sizes, where used for permanent open space preservation, of this chapter may be permitted if the planned project would result in the preservation of natural features, additional open space, greater building or parking setback, energy conserving design, preservation of historic or architectural features, higher quality design, expansion of the supply of affordable housing for lower income households or a beneficial arrangement of buildings. A planned project shall maintain the permitted uses and requirements for maximum density, maximum floor area and minimum ~~usable~~ open space specified in this chapter for the zoning district(s) in which the proposed planned project is located.

5:70. - Standards for approval.

(1) Based upon compliance with the following standards, the Planning Commission may recommend approval, and City Council may approve modifications of the area, height and placement regulations of the zoning chapter in the form of a planned project site plan:

(a) The lot or lots included in the planned project must meet the minimum ~~gross~~ lot size requirement of the zoning district in which they are located. In residential zoning districts, the minimum ~~gross~~ lot size shall be the combined total of the minimum ~~gross~~ lot sizes for each dwelling on a parcel. However, the following exceptions may apply.

1. For purposes of this section, zero lot line duplex or townhouse development shall mean a development containing attached single-family units on individual lots. If a planned project for a zero lot line duplex or townhouse development provides affordable housing for lower income households, the minimum ~~gross~~ lot size and width requirements may be reduced. The number of dwelling units

permitted shall not exceed the maximum permitted density in the zoning district in which the proposed development is located.

2. In any residential zoning district allowing 3 or fewer dwelling units per acre, when 20% or more of the total area of a development is set aside for permanent open space preservation, the ~~gross~~-lot size may be reduced below the minimum lot area per dwelling unit and width requirements for the zoning district in which it is located, as provided in this section.
- (b) The proposed modifications of zoning requirements must provide 1 or more of the following:
1. ~~Usable open~~Open space in excess of the minimum requirement for the zoning district. Where no minimum ~~usable~~-open space standard is required by the zoning district, a minimum-~~usable~~ open space standard shall be established by the approval of the planned project.
 2. Building or parking setback(s) in excess of the minimum requirement for the zoning district. Where no minimum building or parking setback is required by the zoning district, a minimum setback standard shall be established by approval of the planned project.
 3. Preservation of natural features that exceeds ordinance requirements, especially for those existing features prioritized in the land development regulations as being of highest and mid-level concern.
 4. Preservation of historical or architectural features.
 5. Solar orientation or energy conserving design.
 6. An arrangement of buildings which provides a public benefit, such as transit access, pedestrian orientation, or a reduced need for infrastructure or impervious surface.
 7. Affordable housing for lower income households.
 8. A recorded conservation easement or similar binding instrument providing for permanent open space of 20% or more of the planned project, in any residential zoning district allowing 3 or fewer dwelling units per acre.

9. In the downtown zoning districts: When strict conformance would not meet Historic District Standards and Guidelines, and the modifications are recommended by the Historic District Commission; or, when the design will result in an iconic development that furthers the intent and spirit of the Downtown Design Guidelines for excellence in the degree to which new development fits comfortably within the existing fabric of the city, and the modifications are recommended by the Design Review Board.

Section 5: That Section 5:169 of Chapter 59 of Title V of the Code of the City of Ann Arbor is amended as follows:

[Off-Street Parking]

5:169. Special parking districts

Lots located in the D1 or D2 downtown zoning districts are considered a special parking district and are subject to the following standards:

- (1) No off-street motor vehicle parking is required in the special parking district for structures which do not exceed the normal maximum permitted ~~usable~~ floor area or for structures zoned PUD with ~~usable~~ floor area which does not exceed 300% of the lot area. Structures which exceed the normal maximum ~~usable~~ floor area by providing floor area premiums, or PUD-zoned structures that exceed 300% of lot area, shall ~~be provided at the rate of 1 off-street parking space for each 1,000 square feet of usable floor area.~~
- (2) Off-street bicycle parking is required for residential uses in the special parking district at a rate of 1 off-street bicycle space for each 2,500 square feet of usable floor area shall be provided in compliance with the requirements of section 5:168.1 for Class A spaces. Off-street bicycle parking is required for non-residential uses in the special parking district at a rate of 1 off-street bicycle parking space for each 10,000 square feet of usable floor area and shall be provided in compliance with the requirements of section 5:168.1 for Class C spaces.
- (3) The required bicycle or motor vehicle parking shall be provided on-site, off-site as described in this chapter, or ~~through the execution of a contract for parking permits within the City's public parking system or~~ payment of a contribution in lieu of required parking consistent with the requirements adopted by City Council, or any combination thereof. Approval of a contribution in lieu of required motor vehicle or-bicycle parking, ~~or a contract for parking permits within the city's public parking system~~ shall be conditioned upon the execution of a

development agreement. Payment of the contribution in lieu for required parking shall be made prior to the issuance of a certificate of occupancy.

(4) The applicant may request, as part of a site plan, to meet all or a portion of the bicycle parking requirements by installing bicycle parking spaces in the public right-of-way and/or a public parking structure. City Council may approve this request if there is sufficient space in the right-of-way and/or parking structure and the location is convenient to bicycle users.

(5) Parking structures that are available solely to residents or employees of the building are not subject to the stall and aisle standards of section 5:168.

Section 6. That this ordinance shall take effect on the 30th day following legal publication.



MEMORANDUM

To: Alexis DiLeo
CC: Ben Carlisle
From: Megan A. Masson-Minock, AICP, Principal
Subject: Downtown Premium Zoning Ordinance Amendments Developer Input
Date: August 8, 2016

Per your request, we spoke with three development companies that have recently either constructed or had buildings with premiums approved in downtown Ann Arbor. In the three interviews, we spoke with five staff of development companies and an architect. We asked the following questions:

- What are your concerns about the premiums as drafted?
- Would the numbers work for your company to use a premium for 150 FAR in the D1/100 FAR in D2 when energy efficiency required is 30% better than the state energy code (ASHRAE 90.1)? If not, what percentage of efficiency would be an incentive?
- For the workforce housing premium, what in-lieu payment amount per square foot would be used? For instance, would 50% of the average cost per square foot of residential floor area in the downtown work?
- What level of LEED v4 would be an incentive?

The paragraphs below summarize the input gathered in these interviews.

Concerns Overall

Representatives from two development companies stated that the more the market determines the use the better, rather than trying to force a certain type of use or building. One of the interviewees asked that it be understood that a mixed use building is very challenging since each use requires different types of space, utility systems, and entrances while having differing disposition options. Each use also has a critical mass for economies of scale within a building – approximately 100,000 square feet of office while residential needs a minimum of 100 to 200 for rental units. Two groups shared that the current market rates for office will not cover the cost of construction and premium FAR will not create an economy of scale to make up the difference. One group estimated that gap to be around \$20 per square foot. Also, downtown parking space being at capacity was a limiting factor for office.

One group interviewed was concerned about the energy efficiency prerequisite, specifically the use of Target Finder. They were worried that it could become a political issue, since it is an EPA program that may not be continued or changed under a new presidential administration. They also would like the moment in time specified for the benchmark in Target Finder. Is it at time of application or the

submission for building permits?

Recommendations based on interviews: -Specify Target Finder benchmarks are included in development agreement with the City and will not change once signed, even if the models used in Target Finder change between time of signing and building occupancy.

Energy Efficiency Incentive of 30% Better than State Energy Code

In all three interviews, representatives agreed that energy efficiency incentives would not likely not be used for residential or hotel buildings. The energy consumption of individual residents or guests affect the degree of energy efficiency that can be achieved, likely limiting the ability to achieve the premiums levels in both Tier 1 and Tier 2. Again, participants in all three interviews agreed that the type of development most likely to use this incentive would be an office building. In two the interviews, participants expressed concern about the language of “approved state energy code”, which can be changed by the State of Michigan and is rumored to be upgraded from ASHRAE 90.1 in the near future. They suggested that a specific code be cited by name. One participant suggested the change to bring more concrete details to the situation while another felt that an upgrade code to a more recent version of ASHRAE might put the incentive out of reach for many developers.

Recommendations based on interviews: -Specify ASHRAE 90.1 in the amendments

Workforce Housing Tier 2 Premium

In all three interviews, participants agreed that developers would use this incentive for rental residential and/or the in-lieu fee. Those interviewed said they needed to know the in-lieu fee amount before they could say the feasibility of the premium. One interviewee understood the number was \$100,000 per unit, which he felt was too high. He stated that the fee and the unit cost would need to be even in order to not push developers toward one option or another. He also felt the requirement of 10% of the square footage was too high and should be bumped down. He noted that when the PUD mechanism had been used to bring affordable housing to downtown, the results were not what had been expected or desired.

The two other groups interviewed were concerned about the 50%-80% AMI. One group shared that, in reality, almost of all of the workforce units built under this premium would be rented or sold to households as close to the 80% AMI as possible. That company said that they might consider a scenario where they could sell the workforce units to the City to manage. The other group asked that the window of AMI be 60%-100%.

LEED v4 Incentive

Two groups interviewed felt the Tier 2 premium should be LEED v4 Silver, not Gold. One of those groups asked that certification from the US Green Building Council not be required, but instead documentation from a LEED professional be provided that the building would meet that standard, due to the thousands of dollars in fees and costs for certification. One of these groups pointed out that some City requirements, such as automatic irrigation, are mutually exclusive with LEED Platinum certification. The third group interviewed felt this incentive would only be used by an office building development where the owner is the end user and would see the long-term savings from the environmental and energy measures. LEED was seen as a known entity, where the greenhouse gas reductions were not.

Other Comments, Concerns, Suggestions

- All three groups interviewed would use the Tier 1 residential premium proposed.
- One group stated that premiums on D2 sites are often hard to use all the FAR available due to height constraints.
- One group had the following suggestions for the proposed building design requirements:
 - First floor building height minimum and maximum too restrictive. Allow for high ceilings.
 - The 2.5 maximum height for window sills requires tempered glass and adds cost. These design requirements combined with building code will likely add to the expense of building.
 - Aluminum siding should be removed as a restricted material. It has been used in building downtown in a quality design.
 - Dryvit or EIFS should be allowed, especially on upper levels.
- One group felt the references to different codes and standards in the draft amendments could be confusing.
- One group interviewed controls a site where the City has indicated it would like a pedestrian crossing through any development, such as an arcade. They would like the pedestrian amenity premium retained, since they are more likely to provide that pedestrian access if rewarded with FAR. They also suggested the current language be reworked to include access to a public park, plaza or property.
- One group suggested that documentation and fees be required when a certificate of occupancy is issued, not at time of building permits.
- One group offered that the 400 square feet of residential usable floor area for a minimum size of a residential unit be changed to 450 square feet of gross floor area. They shared that at the time of site plan application, they know gross floor area but residential usable floor area may change during the permitting and construction process.
- One group asked that no more requirements or fees be added to building permits. A second group echoed this sentiment, saying that tap fees, drain footer disconnect fees, etc. were driving up the cost of construction in Ann Arbor.
- One group was concerned about the changes to the PDD. They felt “iconic” and “existing fabric” was too vague. They suggested that when relief was needed from the proposed design requirements, the PUD option should be used.