

No. 94232-3

COURT OF APPEALS NO. 75204-9-I

SUPREME COURT OF THE STATE OF WASHINGTON

UNIVERSITY OF WASHINGTON,

Respondent,

v.

CITY OF SEATTLE, DOCOMOMO US – WEWA, HISTORIC
SEATTLE, and WASHINGTON TRUST FOR HISTORIC
PRESERVATION,

Appellants.

RESPONDENT'S SUPPLEMENTAL BRIEF REGARDING
SUFFICIENCY OF CITY ORDINANCES

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I. INTRODUCTION

This Supplemental Brief responds to this Court's request, by letter dated April 20, 2017, that the parties file supplemental briefs "regarding the sufficiency of Ordinances 117221 and 117430 as they relate to issue IV.C.2 in the Brief of Respondent."

Ordinance 117221 was passed by the City Council on July 25, 1994, to adopt the City of Seattle's first Comprehensive Plan after the advent of the Growth Management Act (GMA) in 1990. The subject of this Ordinance is stated in its title:

AN ORDINANCE adopting the City of Seattle
Comprehensive Plan.

The text of Ordinance 117221 does not adopt the City's Landmarks Preservation Ordinance (LPO) or even refer to it, and, appropriately, nothing in the title indicates that it was intended to do so.

The second ordinance referred to in the Court's letter, Ordinance No. 117430, was passed by the City Council on December 12, 1994, and states its subject in its title:

AN ORDINANCE relating to land use and zoning and the building code; implementing The City of Seattle Comprehensive Plan; complying with RCW 36.70A.040; amending Title 23 of the Seattle Municipal Code and Section 303 of the Seattle Building Code.

Again, nothing in either the text or the title of Ordinance 117430 gives any indication that it was intended to adopt the LPO pursuant to the GMA.

The City's position that Ordinance 117430 adopted the LPO as a development regulation pursuant to the GMA (as RCW 36.70A.103 requires for pre-GMA regulations that the City wants to apply to state agencies) does not withstand scrutiny because:

- the title of the Ordinance refers to Title 23 of the City's code, and the LPO is codified in Title 25, which is not identified as a subject of the Ordinance;
- the body of the Ordinance does not adopt or amend any provision of Title 25; and
- the City offered no legislative history to demonstrate that anyone in the City in 1994 considered whether the LPO, which was originally adopted in 1977 (well before enactment of the GMA in 1990), should be adopted as a "development regulation" pursuant to the GMA.

Section IV.C.2 of Respondent University of Washington's brief, referred to in this Court's letter, made multiple arguments about why Ordinance 117430 did not adopt the LPO pursuant to the GMA. The City's Reply, at pages 7-8, only addressed one of these arguments,

asserting that the LPO is a development regulation. By not responding to the University's other arguments, the City effectively conceded that the adoption of Ordinance 117430, if it is interpreted as the City asserts, would have violated the City Charter and also have violated the requirement of the GMA that cities engage in an enhanced public process before adopting GMA regulations. *See State v. Ward*, 125 Wn. App. 138, 143-44, 104 P.3d 61 (2005) (State conceded double jeopardy argument before the appellate court by failing to respond to it); *State v. E.A.J.*, 116 Wn. App. 777, 789, 67 P.3d 518 (2003) (State's failure to address an aggravating factor of a crime conceded the issue).

This supplemental brief further explains why neither Ordinance 117221 nor Ordinance 117430 can be interpreted as having "adopted" the LPO as a development regulation pursuant to the GMA.

II. ARGUMENT

A. **Neither Ordinance 117221 nor Ordinance 117430 adopted the LPO.**

1. **Ordinance 117221 adopted the City's Comprehensive Plan, which does not adopt or refer to the LPO.**

In July 1994, Ordinance 117221 adopted the City's first Comprehensive Plan under the GMA. This Plan makes no reference to the LPO. Instead, it refers generally in its goals and policies to the importance of historic preservation. For example, Goal 17 states that one of the City's

goals is to “[p]reserve developments of historic, architectural or social significance that contribute to the identity of an area;” and Policy L6.L requires the City to consider “[p]reservation of development having historic, architectural, or social significance within centers and villages.”¹ The goals and policies of the Comprehensive Plan are not mandatory, however (as is discussed at length on pages 2 and 3 of the Plan itself), and the LPO is not identified in the Comprehensive Plan as the regulation that will implement these goals and policies.²

Before Division I, the City referred to Ordinance 117221 only in footnote 35 of its Reply:

CP 470 (Ord. 117430). This followed the City’s adoption of a new GMA-compliant plan that included provisions calling for preserving historically significant developments. Ord. 117221. *See, e.g., id.* Att. 1 at 6.

One of the GMA’s thirteen planning goals is to “[i]dentify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.” RCW 36.70A.020(13). It is appropriate that the City’s Comprehensive Plan encourages preservation of historic landmarks, but Ordinance 117221 is simply not relevant to the issue before this Court, which is whether the City *adopted* the pre-existing LPO

¹ Copies of the pages of the Plan that include Goal 17 and Policy L6.L are attached as Exhibits A and B.

² Pages 2 and 3 of the 1994 Comprehensive Plan comprise the section entitled Application of the Comprehensive Plan. A copy is attached as Exhibit C.

as a development regulation pursuant to the GMA. Simply put, Ordinance 117221 does not adopt the LPO or require the adoption of the LPO or any other particular regulation to implement its goals and policies.

2. Even if the LPO is deemed a development regulation, Ordinance 117430 did not adopt it pursuant to the GMA.

The City's Reply to Section IV.C.2 of Respondent's brief argued, in effect, that the LPO is a development regulation, and therefore Ordinance 117430 "rendered" the LPO adopted pursuant to the GMA.³ The City's argument fails on its own terms for the reasons discussed in this Section A.2. The City's argument also fails because the City's interpretation would mean that Ordinance 117430 was enacted in violation of the GMA and its City Charter, as discussed in Sections B.1 and B.2 below.

RCW 36.70A.103 states that only plans and development regulations adopted "pursuant to" the GMA (and therefore at the conclusion of the GMA's enhanced public process) can be applied to state agencies. Even if one assumes that the LPO is a development regulation, as argued by the City, it is not a development regulation identified in any way in Ordinance 117430, let alone adopted by that Ordinance or "pursuant to" the GMA.

³ City's Opening Brief at 14 and City's Reply at 9.

Section 1 of Ordinance 117430 states the effect of the 95 sections of the Ordinance that follow:

Section 1. The Seattle City Council finds and declares as follows:

(a) The **new and amendatory regulations adopted** by this ordinance are appropriate and reasonable exercises of the police power that **bring the City’s development regulations into compliance with RCW 36.70A.040 and RCW 36.70A.065;**⁴

(b) The City’s development regulations, as amended and supplanted by this ordinance, are **consistent with and implement the City’s Comprehensive Plan;**

(c) The regulations adopted by this ordinance are intended to protect and promote the health, safety, and welfare of the general public and are not intended to recognize or establish any particular person or class or group of persons who will or should be protected or benefitted by them.

(emphasis added).

Ordinance 117430 “adopted” only the new and amendatory regulations set forth in the Ordinance, which are all codified in either the City’s Land Use Code (Title 23) or Building Code (Title 22).⁵ Ordinance 117430 did not adopt regulations that were not new or amendatory – instead, it states that the new and amendatory regulations

⁴ RCW 36.70A.065 addresses time periods for issuing permits; it was amended and re-codified as RCW 36.70A.080 by Chapter 347 of the Laws of 1995, sections 409, 410, and 432.

⁵ The University’s Response Brief mistakenly stated that the Ordinance amended Title 23 SMC *only*; in fact, one section of the Ordinance, section 90, amended a notice provision of the City’s Building Code. However, the University’s point remains: neither the title of the Ordinance nor the text of the Ordinance gives any notice that the City intended to retroactively adopt anything in Title 25.

that it did adopt had the effect of bringing the City's existing development regulations "into compliance with" two sections of the GMA. Subsection 1(b) then declared that as a result, the City's development regulations "are consistent with and implement the City's Comprehensive Plan."

Ordinance 117430, by its own terms, does not adopt the LPO or any development regulation not set forth in the Ordinance – and it could not have done so for the reasons discussed below in Section B. Thus, even if one assumes that the LPO is a development regulation, as the City argues, Ordinance 117430 itself makes clear that the LPO was not one of the new or amendatory regulations adopted by Ordinance 117430.

The City's Reply brief before Division I ignored what Ordinance 117430 actually says, ignored the requirements of the City's Charter (discussed in Section B.2 below), and ignored the GMA's requirements for public process. Both of the City's briefs before Division I relied upon former WAC 365-195-805, but the City's briefs ignored key provisions of this regulation as well.

In its Opening Brief before Division I at page 13, the City cited subsection (2) of former WAC 365-195-805,⁶ and in its Reply Brief at page 9 the City cited subsections (2) and (4). In both briefs, the City

⁶ CP 467-68.

asserted that it had complied with this regulation. The City's assertions, however, ignore the following highlighted language from former WAC 365-195-805:

WAC 365-195-805 Implementation strategy.

Each county or city planning under the act should develop a detailed strategy for implementing its comprehensive plan. The strategy should describe the regulatory and nonregulatory measures (including actions for acquiring and spending money) to be used in order to apply the plan in full. **The strategy should identify each of the specific development regulations needed.**

...

(2) Identification. **The strategy should include a list of all regulations identified as development regulations for implementing the comprehensive plan.** Some of these regulations may already be in existence and consistent with the plan. Others may be in existence, but require amendment. Still others will need to be written.

...

(4) The implementation strategy for each jurisdiction should be in writing and available to the public. A copy should be provided to the department. Completion of adoption of all regulations **identified in the strategy** will be construed by the department as completion of the task of adopting development regulations from the purposes of deadlines under the statute.

(emphasis added). As stated in the first sentence of this former regulation, its purpose was to encourage development of strategies for implementing comprehensive plans, not for adopting regulations pursuant to the GMA as required by RCW 36.70A.103. More fundamentally, the regulation directed local governments to "identify" the specific development regulations needed to implement their comprehensive plans, and directed

preparation of a “list” of the development regulations that would implement their comprehensive plans.⁷

Even if one assumes that the reference to Title 23 in the title of Ordinance 117430 was sufficient to “identify” and “list” all sections of Title 23 as development regulations, there is *no* reference in Ordinance 117430 to Title 25 where the LPO is codified, and thus the former regulation upon which the City relies simply provides an additional demonstration that the City did *not* intend for Ordinance 117430 to have any effect on the LPO, let alone to “adopt” it as a GMA development regulation.

The City’s Reply Brief chided the University for claiming that the City should have listed “every title, chapter, and section comprising development regulations not specifically amended by the 1994 ordinance.”⁸ However, it was the Department of Community Development in 1994, not the University in 2017, that directed preparation of such a list. The City could easily have included the LPO in such a list, just as the City of Bothell expressly included its landmarks preservation regulations in an ordinance amending its development regulations pursuant to the GMA. *Fuhriman v. City of Bothell*, CPSGMHB Case No.

⁷ Former WAC 365-195-805(2).

⁸ City’s Reply Brief at 9.

04-3-0027, Order Finding Compliance (Jul. 25, 2005), 2005 WL2227909 at *1-*2. Had Seattle's City Council intended to adopt its LPO pursuant to the GMA, there is no reason it could not have said so.

The City, however, offers no evidence that the City Council ever considered whether the LPO was a development regulation, whether the LPO was consistent with the GMA or the new Comprehensive Plan (which does not refer to the LPO), or whether the LPO should be retroactively adopted pursuant to the GMA so that the City could apply it to state agencies.

At most, Ordinance 117430 declared that existing development regulations in Title 23 – those regulations that were not set forth in the Ordinance as new or amendatory – were consistent with the City's Comprehensive Plan. Ordinance 117430 did not make even that determination with regard to the LPO because the LPO is not codified in Title 23. And even if the LPO had been codified in Title 23, a determination that an existing regulation is consistent with the Comprehensive Plan is very different from *adopting* that regulation pursuant to the GMA at the conclusion of the enhanced public process required by the GMA, which is what RCW 36.70A.103 requires. Accordingly, even if one assumes that the University is a "state agency" that the Legislature intends to be subject to the LPO (which the University

is not, for all the reasons discussed in the University's brief before Division I), the University cannot be subjected to the LPO until the LPO is adopted pursuant to the GMA and the public (including the University) has the opportunity to engage in the required public process. If the University is dissatisfied with the outcome of that public process, it then can appeal the LPO to the Growth Management Hearings Board, and the issue of whether the LPO is consistent with the GMA can be resolved in the forum the GMA requires.

B. If Ordinance 117221 or Ordinance 117430 had adopted the LPO, such adoption would have violated the GMA and the City's Charter.

1. The City's argument asks this Court rule that the City complied with one section of the GMA by violating another.

In its briefs to Division I, the City also did not address the University's argument that Ordinance 117430, if interpreted as the City wishes it to be interpreted, would have violated the provisions of the GMA that require enhanced public participation. In 1994, RCW 36.70A.140 read as follows:

[Local governments] shall establish procedures providing for *early and continuous public participation* in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision

for open discussion, communication programs, information services, and consideration of and response to public comments.

(emphasis added). *See also* WAC 365-196-600(1)(a).⁹ Public participation “must include broad dissemination of proposals, opportunity for written comment, public meetings after effective notice, open discussion, communication programs, information services, and consideration of and response to public comments.” *City of Burien v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 113 Wn. App. 375, 387, 53 P.3d 1028 (2002). While “[i]nexact compliance with these procedures” does not invalidate a development regulation “if the spirit of the program and procedures is observed,” *id.*, the City does not provide any evidence that adoption of the LPO was ever the subject of the enhanced public process required after enactment of the GMA. Similarly, the City does not attempt to explain how Ordinance 117430 can satisfy either the “spirit” or the letter of the GMA’s enhanced public participation requirements if that Ordinance is interpreted to have adopted the LPO even though the Ordinance does not mention the LPO.

⁹ WAC 365-196-600(1)(a) states that cities “must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations.” *accord Vinatieri et al. v. Lewis Cnty.*, WWGMHB Case No. 03-2-0020c, Compliance Order (Jan. 7, 2005), 2005 WL 3090252, at *5 (“Fundamentally, RCW 36.70A.140 requires early and continuous public participation and broad dissemination of proposals and alternatives”).

The enhanced public participation requirements of the GMA are essential to the integrity of the GMA because the right to appeal to the Growth Management Hearings Board depends upon meaningful notice of the subject and effect of proposed legislation. The University addressed this issue at length in its Brief of Respondent at pages 32-36, and the City made no reply. The GMA's sixty-day appeal period commences on publication of an ordinance or notice of the ordinance, RCW 36.70A.290(2), and the City has never explained how the University or any other entity or person could have known in 1994 that the City was adopting the LPO pursuant to the GMA when the Ordinance makes no reference to the LPO.

The City, in effect, is asking this Court to decide that the City Council in 1994 adopted the LPO pursuant to the GMA without providing any notice to anyone that it was doing so, thereby violating the enhanced-public-participation requirements of the GMA (as well as the City's Charter, as explained in the next section) and denying the University and public reasonable notice of an opportunity to challenge the City's action to the Growth Management Hearings Board. The City should not be heard to argue that the City Council violated the GMA in 1994 and that the violation gives the City the authority to apply the LPO to the University's campus today.

2. **If, as the City argues, the City Council in 1994 had silently adopted the LPO pursuant to the GMA, then the City Council would have violated the City's own Charter and Ordinance 117430 would be invalid.**

The City's Charter states at Article IV, § 7:

Sec. 7. LEGISLATIVE ACTS BY ORDINANCE;
SUBJECT MATTER; TITLE; ENACTING CLAUSE;
Every legislative act of said City shall be by ordinance.
Every ordinance shall be clearly entitled and shall contain
but one subject, which shall be clearly expressed in its title.

...

CP 592-93 (City Charter Article IV, § 7). This Charter provision is similar to, but more demanding than, Article II, § 19 of the Washington Constitution:

SECTION 19 BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title.

Both the Constitution and the Charter require legislation to address "one subject," but while the Constitution requires that one subject to be "expressed in the title," the City's Charter requires the one subject to be "clearly expressed."

As this Court stated in *In re Eng*, 113 Wn.2d 178, 191, 776 P.2d 1336 (1989), this requirement of Seattle's Charter that ordinances clearly express their subject in their titles is essential to the democratic process:

City Charter art. 4, § 7 aims to provide notice of the content of the City's legislative actions; notice is a crucial component of the democratic process. The budget

documents simply do not provide comprehensible notice that the City's legislative body intends to create another municipal court department.

The cases interpreting Article II, § 19 of the Constitution are similar: the title of a bill must be "sufficient to put a reasonably intelligent person on notice" of the substantive changes that the legislation creates. *State ex rel. Washington Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 27–28, 200 P.2d 467 (1948) (the term "ferry connections" in the title of legislation was not sufficient to put the public on notice that the legislation expanded the powers of the Washington Toll Bridge Authority). The purpose of Article II, § 19 (and by analogy Article IV, § 7 of the City's Charter) is to assure that the public is "generally aware of what is contained in proposed new laws." *Fray v. Spokane Cnty.*, 134 Wn.2d 637, 654, 952 P.2d 601 (1998) (an act entitled "AN ACT Relating to making technical corrections" that did not reference the substance of the corrections, where the law made a substantive change of depriving individuals of a right to sue, violated Art. II, § 19).

Ordinance 117430 "clearly expressed" in its title that the subject of the Ordinance was "implementing The City of Seattle Comprehensive Plan, complying with RCW 36.70A.040; [and] amending Title 23 of the

Seattle Municipal Code and Section 303 of the Seattle Building Code.”¹⁰

The title gave *no* notice that the subject of the ordinance was compliance with RCW 36.70A.103, amending Title 25, or adopting the LPO pursuant to the GMA. The title gave no such notice because Ordinance 117430 had no such effect, despite the City’s assertions in its briefs.

In neither of its briefs before Division I did the City address the effect of its arguments on Article IV, § 7 of the City’s own Charter, and any argument the City may make for the first time in its supplemental brief to this Court cannot succeed: even if one assumes that Ordinance 117430 somehow silently adopted the LPO pursuant to the GMA, then to that extent Ordinance 117430 would violate Article IV, § 7 of the Charter and be void:

A city charter bears the same relation to city ordinances that a state constitution bears to state statutes. An ordinance, therefore, can no more change or limit the effect of a city charter than a legislative act can modify or supersede a provision of the state constitution. 5 E. McQuillin, *Municipal Corporations* s 15.19 (3d ed. rev. 1969).

Platt Electric Supply v. City of Seattle, 16 Wn. App. 265, 272, 555 P.2d 421 (1977); *see also Puget Sound Alumni of Kappa Sigma, Inc. v. City of Seattle*, 70 Wn.2d 222, 227-28, 422 P.2d 799 (1967) (invalidating act of

¹⁰ RCW 36.70A.040(4) required the City to adopt “development regulations that are consistent with and implement the comprehensive plan.”

Seattle City Council for failure to comply with the Charter). Similarly, in *Savage v. City of Tacoma*, 61 Wash. 1, 112 P. 78 (1910), this Court struck down a city ordinance because the adoption of the ordinance violated the city's charter, declaring "where a municipal charter prescribes a definite method for the enactment of ordinances, such requirements are mandatory, and no authority is vested in the lawmaking body of the municipality to pass ordinances except in the manner required by the charter." *Id.* at 6; *see also Tennent v. City of Seattle*, 83 Wash. 108, 111–13, 145 P. 83 (1914) (holding a Seattle ordinance invalid for failing to comply with Charter requirements).

This Court's case law makes it clear that ordinances that violate a city charter are invalid, just as statutes that violate the Washington Constitution are invalid. Ordinance 117430 did not violate the City Charter because it did not adopt the LPO pursuant to the GMA. But the City argues that it *did* adopt the LPO, and if one assumes that the City is correct that an ordinance that does not identify or refer to the LPO nonetheless adopted it, the City would simply demonstrate that Ordinance 117430 is invalid because adoption of the LPO was not a subject of the Ordinance expressed in its title, let alone "clearly expressed" as required by Article IV, § 7 of Seattle's Charter. Ordinance 117430 did

not adopt the LPO pursuant to the GMA, but if it did, the Ordinance to that extent is invalid.

III. CONCLUSION

For the reasons discussed in this supplemental brief, and for the reasons previously discussed in Respondent's Brief before Division I, Ordinances 117221 and 117430 were not sufficient to adopt the LPO pursuant to the GMA, as RCW 36.70A.103 requires in order for development regulations to be applied to state agencies. Even if one assumes that the LPO would otherwise be a development regulation, and also assumes that the University of Washington is a state agency within the meaning of RCW 36.70A.103, the City cannot seek to apply the LPO to the University until the City conducts the public process required by the GMA and adopts the LPO as a development regulation pursuant to the GMA.

Respectfully submitted this 4th day of May, 2017.

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DECLARATION OF SERVICE

I hereby certify that on the 4th day of May, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send notification of such filing to the following, and served a copy by the method indicated below:

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DATED this 4th day of May, 2017.

/s/ Brenda Bole _____
Brenda Bole

EXHIBIT A

- ◆ Residential urban villages are intended for concentrations of low to moderate densities of predominantly residential development with a compatible mix of support services and employment.

In some instances, the urban village designation is intended to transform automobile-oriented environments into more cohesive, mixed-use pedestrian environments, or within economically distressed communities to focus economic reinvestment to benefit the existing population.

- G7 More efficiently use limited land resources.
- G8 Support regional growth management and the countywide centers concept.
- G9 Accommodate planned levels of household and employment growth.
- G10 Maximize the benefit of public investment in infrastructure and services.
- G11 Deliver services more equitably, pursue a development pattern that is more economically sound, and collaborate with the community in planning for the future.
- G12 Increase public safety by making villages "people places" at all times of the day.
- G13 Increase opportunities for detached single family dwellings attractive to many residents, including families with children.
- G14 Develop ground-related housing types including townhouses, duplexes, triplexes, ground-related apartments, small cottages, accessory units and single-family homes.
- G15 Provide open space to enhance the village environment, to help shape the overall development pattern, and to refine the character of each village.
- G16 Promote physical environments of the highest quality throughout the city, and particularly within urban centers and villages while emphasizing the special identity of each area.
- G17 Preserve developments of historic, architectural or social significance that contribute to the identity of an area.
- G18 Maintain and enhance retail commercial services throughout the city with special emphasis on serving urban villages.

EXHIBIT B

- F. Most future households accommodated in multifamily housing.
 - G. Additional opportunities for housing in existing single family areas, to the extent provided through neighborhood planning, and within other constraints consistent with this plan.
 - H. Public facilities and human services that reflect the role of each village category as the focus of housing and employment and as the service center for surrounding areas.
 - I. Open space.
 - J. A place, amenities or activities that serve as a community focus.
 - K. A design review process, supplemented by neighborhood design guidelines.
 - L. Preservation of development having historic, architectural, or social significance within centers and villages.
- L7 Indicate whether residential or employment related activities are to be emphasized in the mix of uses by the urban village designation.
- L8 Adopt the designations for hub urban villages, residential urban villages and neighborhood anchors as indicated in Land Use Figure 1. Consider the designations to be preliminary, subject to further objective analysis in neighborhood planning. Develop objective criteria including:
- a. existing zoned capacity;
 - b. existing and planned density;
 - c. growth targets;
 - d. population;
 - e. amount of neighborhood commercial land;
 - f. public transportation investments and access; and
 - g. other characteristics of hub or residential urban villages and neighborhood anchors as provided in this plan, or further refined.

Additional criteria consistent with this plan may be established.

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EXHIBIT C

APPLICATION OF THE COMPREHENSIVE PLAN

The principal purpose of this Comprehensive Plan is to provide policies that guide the development of the City in the context of regional growth management. These policies can be looked to by citizens and by all levels of government in planning for growth. Specifically, the plan will be used by the City of Seattle to help make decisions about proposed ordinances, policies, and programs. Although the plan will be used to direct the development of regulations which govern land use and development, the plan will not be used to review applications for specific development projects except when reference to this Comprehensive Plan is expressly required by an applicable development regulation.

The plan format generally presents a plan "goal", followed by "policies" related to the goal, and may include a "discussion" about the goals and policies. Each of these components is defined as follows:

Goals represent the results that the City hopes to realize over time, perhaps within the twenty-year life of the plan, except where interim time periods are stated. Whether expressed in terms of numbers or only as directions for future change, goals are not guarantees or mandates.

Policies should be read as if preceded by the words "it is the City's general policy to"... A policy helps to guide the creation or change of specific rules or strategies (such as redevelopment regulations, budgets or program area plans). City officials will generally make decisions on specific City actions by following ordinances, resolutions, budgets or program area plans that themselves reflect relevant plan policies, rather than by referring directly to this plan. Implementation of most policies involves a range of City actions over time, so one cannot simply ask whether a specific action or project would fulfill a particular plan policy. For example, a policy that the City will "give priority to" a particular need indicates that need will be treated as important, not that it will take precedence in every City decision.

Some policies use the words "shall" or "should", "ensure" or "encourage", and so forth. In general, such words should be read to describe the relative degree of emphasis that the policy imparts, but not necessarily to establish a specific legal duty to perform a particular act, to undertake a program or project, or to achieve a specific result. Whether such a result is intended must be determined by reading the policy as a whole and by examining the context of other related policies in the plan.

Some policies may appear to conflict, particularly in the context of a specific fact situation or viewed from the different perspectives of persons whose interests may conflict on a given issue. A classic example is the oft-referenced "conflict" between policies calling for "preservation of the environment" and policies that "promote economic development." Because plan policies do not exist in isolation, and must be viewed in the

context of all potentially relevant policies, it is largely in the application of those policies that the interests which they embody are reconciled and balanced by the Legislative and Executive branches of city government.

Before this plan was adopted, the City of Seattle had many policies in place which were approved over the course of many years, and which affect the full range of programs and services provided by the City. To the extent a conflict may arise between such a policy and this plan, the plan will generally prevail, except that policies that are used in the application of existing development regulations shall continue to be used until those regulations are made consistent with the plan pursuant to RCW 36.70A.040.

Discussion is provided to explain the context in which decisions on goals and policies have been made, the reasons for those decisions, and how the goals and policies are related. The discussion portions of the plan do not establish or modify policies, but they may help to interpret policies.

Appendices to the plan contain certain required maps, inventories and other information required by the GMA, and in some cases further data and discussion or analysis. The appendices are not to be read as establishing or modifying policies or requirements unless specified for such purposes in the plan policies. For example, descriptions of current programs in an appendix do not require that the same program be continued, and detailed estimates of how the City may expect to achieve certain goals do not establish additional goals or requirements.

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FOSTER PEPPER PLLC

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