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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

1426 FIRST AVENUE LLC,

Petitioner/Plaintiff,

v.

CITY OF SEATTLE,

Respondent/Defendant.

No.

LAND USE PETITION AND
COMPLAINT FOR DECLARATORY
RELIEF AND CONSTITUTIONAL
DAMAGES

1426 First Avenue LLC, by and through its counsel of record, alleges as follows:

I. BACKGROUND FACTS

1. For over two decades the property at 1426 First Avenue in downtown Seattle, Washington, has been zoned for high-rise redevelopment.
2. Since 2007, the building on the site has been appraised by the King County Assessor’s Office as worth only one thousand dollars (\$1,000). The dirt under the building is appraised at over twelve million dollars and taxed accordingly because of the redevelopment prospects of the property. The City of Seattle (“City”) has enjoyed the benefit of the collection of those taxes for years. Over the last four years, the real estate taxes attributable because of the property’s redevelopment value totals over \$354,000.
3. The building is on a City list of buildings at risk of collapse in an earthquake because of its unreinforced masonry construction some of which dates to 100 years ago.
4. The building was reviewed by a City consultant regarding potential landmark issues in 2007. But, it received the lowest possible score for such potential status because the

1 building was deemed to lack any redeeming landmark features. This was partly because the
2 building had been remodeled during its many uses in the past including as a comedy stage, an
3 adult entertainment arcade, a furniture store and a bingo hall. It has been renovated many
4 times. In the 1980s and 1990s, a prior manager, Harbor Properties, extensively remodeled
5 both the interior and exterior of the building. It currently houses, in part, the Showbox music
6 performance venue. The City, in 2011, created a “Historic Theater District,” designating five
7 performance venues for special treatment under this classification. The Showbox was not
8 deemed worthy of such a designation.

9
10 5. Against this background, suddenly now, and through the gerrymandered
11 mechanisms described below, the City is spot zoning this one property and declaring that the
12 building be saved, be operated as a performance venue in perpetuity and forcing both the
13 building and operation to be solely at the expense of the current owner with the benefit
14 running to the City. The City’s action is fundamentally inconsistent with the property’s
15 location and deteriorated state, inconsistent with the development of the Pike Place Market in
16 the 1970s, and inconsistent with the rights of the property owner.

17 6. In 1997 the present owner purchased the property for redevelopment purposes
18 because of the high-rise zoning and the property’s location in the central downtown core. A
19 high-rise apartment/condominium building is immediately behind it.

20 7. The prior owner, who sold the property in 1997, was the Lyons family. Jeff
21 Steichen operated at the time a music venue having taken over part of the site from a failed
22 comedy club. Because Steichen knew that the new buyer was looking to eventually close
23 down the business and redevelop the property, he sought out and later opened a new Showbox
24 concert venue in the City’s SoDo neighborhood called Showbox SoDo. The 1426 Showbox
25 was and is not expected to continue in use much longer, so Petitioner licensed the “Showbox”
26 name to the new location so that eventually that new location would be the Showbox
performance venue. This would allow for a seamless transition and continuous offering of a

1 music venue in Seattle when the property on First Avenue was redeveloped. As it is, the 1426
2 First Avenue location is undersized as a viable venue, among other issues, given the age of
3 the structure and modifications over time.

4 8. Petitioner marketed the property to developers to develop the property into a
5 high-rise as allowed by City zoning.

6 9. When purchased in 1997, the property was zoned for approximately 24 floors.
7 In 2006, the property was rezoned to approximately 40 floors. In 2017 the property was
8 upzoned again. This time to permit up to 44 floors as part of the City’s comprehensive plan to
9 encourage dense high-rise residential development and to increase the supply of and provide
10 funding for affordable housing. If developed, the property would generate approximately \$5
11 million in affordable housing funds for the City. In addition, it would generate far more tax
12 revenue than the present use on an annual basis.

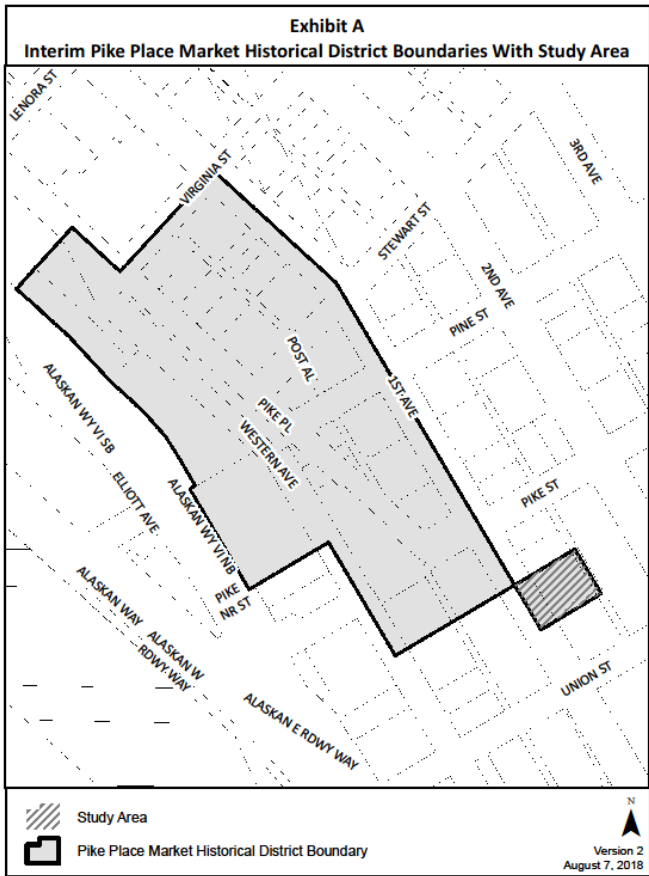
13 10. In April 2018, Petitioner, 1426 First Avenue LLC, entered into a contract to
14 sell the property to Onni Group (“Onni”), a high-rise developer.

15 11. In July 2018, Onni applied for a project number at Seattle City Hall to build a
16 high-rise apartment building on the property. Word of this was reported in the press.

17 12. In response to a campaign to “Save the Showbox,” the Seattle City Council, on
18 August 13, 2018, voted to provide the public the benefit of a downtown Seattle performance
19 hall, by imposing a spot-zone for just the 1426 First Avenue property. This was accomplished
20 by down zoning the property – and just that one property – from an allowed 440 foot building
21 to being essentially frozen in time by including it in the Pike Place Historic District (where it
22 does not belong or fit) based only on public passion to keep the Showbox in its current
23 configuration and continued use as a music performance hall.

24 13. A map was included with the ordinance that showed Petitioner’s property as
25 the sole property subject to the action of the Council:
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14. In creating the spot zone for just the one property on the east side of First Avenue, various City Councilmembers flatly rejected the developer’s idea of potentially building a new performance space within the new development. The developer’s idea was not only rejected, but was mocked by Councilmember Herbold. She stated the City had to be “creative” to save the existing Showbox. A week earlier, Herbold echoed comments that called for a “drag out fight” against Onni. Councilmember Bagshaw said that the City would do everything in its power to prevent the development with whatever tools were available, and “maybe even the ones we don’t have available yet.”

15. When politicians cater to populist calls – whether those calls are “lock her up,” “build the wall,” “ban Muslims,” or “Save the Showbox” – civil and other rights are placed at risk. Populism, and politicians’ desires to appease their loudest constituents and generate

1 headlines must, however, yield to the rule of law. Luckily for those who prefer protection of
2 civil, constitutional and property rights, the courts exist to preserve, protect and enforce the
3 rule of law.

4 16. The City’s overreach and incongruous spot zone is made plainly obvious by
5 reviewing the original 1974 plans for the Pike Place Market Historic District. In the 1970s the
6 City designated a Pike Place Project Area. It included the Historic District itself (roughly
7 seven acres), which was the area where the farmers’ market arose and an area twice that size
8 that would buffer the Historic District from surrounding development, which was called
9 collectively the Pike Place Project Area. The Historic Market properties were purchased by
10 the City of Seattle under threat of condemnation for Market redevelopment purposes under
11 the urban renewal plan. These purchased properties included not only the Historic District but
12 also the adjacent broader buffer areas to create and complete the broader Project Area. Under
13 the plan, privately held properties with owners willing to voluntarily accept the heavy
14 restrictions and controls were allowed to remain.

15 17. When created, and for almost five decades since, the east side of First Avenue
16 has not been included within the Historic District and it has not been included within the
17 urban renewal Project Area.

18 18. Even when expanded in later years, the Pike Place Historic District expansion
19 never included any property on the east side of First Avenue. Nor did the Project Area ever
20 include any property on the east side of First Avenue.

21 19. In 1974, the City plan for creating a buffer to the south of the Historic District
22 implicated four properties on the west side of First Avenue between Pike Street and Union
23 Street. This desired buffer area was called “MC-1” in the Pike Place redevelopment plan.
24 Recognizing that the onerous and rigid Project Area redevelopment restrictions and controls
25 (let alone the Historic regulations) would be a taking by the City of those properties, the
26

1 City's 1974 plan required that the four MC-1 properties on the west side of First Avenue be
2 "acquired" for the City/Redevelopment Project if they were to be included.

3
4 20. However, in 2018, when it came to the one and only property on the east side
5 of First Avenue that the City Council suddenly wanted to make part of the Historic District,
6 the City did not follow its own 1974 precedent, and did not seek to (or even announce an
7 intent to) acquire the property.

8 21. Instead, the City Council, to enhance its political popularity, enacted an
9 unlawful ordinance that was intended to, and did, place all the burden of providing a public
10 music venue to City residents onto the shoulders of a private landowner. The ordinance
11 greatly and instantly devalued the property and will scuttle its redevelopment unless the City's
12 improper spot down zone is declared unlawful. The goal and purpose of the ordinance, as
13 expressed within the Council Bill itself, is to make a "permanent district expansion." The
14 ruse of an interim study period is exposed by a lack of authorized funding for any study and
15 the mandate of the Bill which expressly is to have a "permanent district expansion effective"
16 by July 2019.

17 22. The City Council's actions affecting 1426 First Avenue were unlawful and
18 unconstitutional. And for the reasons set forth herein 1426 First Avenue LLC brings both a
19 Land Use Petition and a Civil Complaint to redress these wrongs.

20 **II. LAND USE PETITION**

21 23. Petitioner is 1426 First Avenue LLC. The decision at issue is the Council Bill
22 and Ordinance voted and passed on August 13, 2018, which spot zoned the 1426 site into the
23 Pike Place Historic District for an initial period of ten months and with the express intent to
24 make this permanent. The effect now, and into the future, is to prevent redevelopment. The
25 stated intent of the City Council was to keep the Showbox in its current use, for perpetuity, by
26 all means possible.

1 24. The decision was made without any public hearing by the City’s Land Use
2 Department; without any review of past land use decisions; in derogation of current zoning; in
3 disregard of the historic preservation goals and plans for the Pike Place Market Historic
4 District; and without regard for the taking of private property for an openly declared public
5 use.

6 25. The decision is a discriminatory spot zone adopted without proper procedures
7 and in violation of state law.

8 26. Petitioner has standing as the property owner. The owner’s address is P.O.
9 Box 2602 Seattle, Washington 98111.

10 27. The property taxpayer is the owner, 1426 First Avenue LLC.

11 28. The attorneys for Petitioner are Bradley S. Keller and John A. Tondini, Byrnes
12 Keller Cromwell LLP, 1000 Second Avenue, 38th Floor, Seattle, Washington 98104.

13 29. The Respondent City of Seattle is a Washington municipal corporation. The
14 address of the City is 600 Fourth Avenue, Seattle, Washington 98104. The Seattle City
15 Council made the Decision which is the subject of this Petition. There is no administrative
16 procedure for administrative review of a City Council decision.

17 30. The Decision is the adoption of Council Bill (“CB”) 119330, Ordinance No.
18 125650, on August 13, 2018. A copy of the Council Bill is attached hereto as Exhibit A. A
19 precursor to the Council Bill was discussed in committee on August 8, 2018. It was signed by
20 the mayor on August 24, 2018.

21 31. Petitioner has standing as the owner under RCW 36.70C.060. Petitioner is
22 aggrieved because the development purchase and sale agreement will be cancelled if the
23 Decision stands; because the property value has been diminished by tens of millions of dollars
24 as of August 13, 2018; because the development opportunity may be irrevocably lost; and
25 because of the fundamental invasion of ownership rights. A judgment in favor of Petitioner
26 would redress the prejudice caused by the Decision.

1 32. Petitioner has exhausted its administrative remedies because the highest
2 administrative authority in the City is the City Council. Any proceeding in a lesser
3 department of the City would be futile.

4 33. The facts sustaining the error are in the Decision, the public record of the
5 Council meeting on August 13, 2018, the committee meeting of August 8, 2018, as set out
6 herein and as will be supplemented in this proceeding.

7 34. A concise summary is as follows:

8 35. In 1974 the City enacted a plan to preserve the historic Pike Place Market. The
9 City did so by creating and defining a Historic District of approximately seven acres, which
10 was the historic market area. The City also sought to create a buffer around the historic
11 market by creating a larger area with the two contiguous areas together called the Project Area
12 and totaling 22 acres. The Historic District has never been expanded outside of the Project
13 Area – until now.

14 36. The Historic Area did not extend down First Avenue opposite 1426 First
15 Avenue. The First Avenue terminal point of the Historic District is north of the northern most
16 part of 1426 and on the opposite side of the street.

17 37. In 1974, the Plan Area for the market sought to create a southern buffer for the
18 Historic District. The City did so in 1974 by planning to purchase four properties on the west
19 side of First Avenue south of the Historic District, and north of Union Street. This “to be
20 acquired” area was called “MC-1” on maps of the 1974 plan.

21 38. At no time was any property on the east side of First Avenue placed into either
22 the Historic District or the Project Area. Ever.

23 39. The Historic District and Project Area are subject to tight and onerous use and
24 development restrictions.

25 40. Those restrictions have no connection to any property on the east side of First
26 Avenue, including 1426 First Avenue.

1 41. The restrictions in place for the Market are incongruous with the Showbox
2 performance hall. For example, the restrictions for the Market generally prohibit amplified
3 public music. The square footage of an establishment in the Historic District should be 2,000
4 square feet or less (the Showbox is many times that size). The Showbox marquee is a backlit
5 sign, which is not allowed in the Historic District. These incongruities and a host of others
6 were ignored by the City Council in its Decision.

7 42. In the 1974 Pike Place Market plan, the west side of First Avenue from
8 Virginia to Pike was the “transition zone” to downtown. Contrary to this longstanding City-
9 approved transition zone, the City Council in 2018, without conducting any review of historic
10 documentation of the plan on the record, decided based only on a contingent of populist
11 supporters, cheered on by certain City Councilmembers, now placed one parcel on the east
12 side of First Avenue into the Historic District. The City’s action is out of step with the
13 founding of the Pike Place Market redevelopment and is the definition of arbitrary and
14 capricious.

15 43. In late July of 2018, City Councilmember Sawant attached herself to and
16 became a vocal cheerleader for a campaign to save the Showbox. The Showbox is not even in
17 Sawant’s district representation area. On Facebook and Twitter she repeatedly posted her
18 support for defeating Onni’s redevelopment plan and to stop any redevelopment of the 1426
19 First Avenue property. She rallied participation for the movement and met ex parte with
20 supporters of the group whose aim was to “Save the Showbox.”

21 44. Other City Councilmembers also supported and campaigned in support of
22 “Save the Showbox” and defeating Onni’s redevelopment proposal from late July 2018 up
23 through August 13, 2018.

24 45. The Councilmembers’ campaign against the development continued at an
25 August 8, 2018 committee meeting and at a full Council meeting on August 13, 2018.
26

1 46. At the August 13, 2018 meeting the Councilmembers again voiced that they
2 wanted to stop Onni’s development; wanted to save the Showbox; and mocked an Onni
3 concept to make a new performance space available within its redevelopment plan for the site.
4

5 47. By a unanimous vote (councilmember Rob Johnson was absent) the Council
6 spot zoned the 1426 First Avenue site into the Pike Place Historic District thus subjecting the
7 site to onerous and incongruous development regulations and controls. The clear and stated
8 effect of the Council action was to close the permit process window to Onni’s proposed
9 redevelopment (or any other proposed redevelopment) and thwart the pending sale of the
10 property by 1426 First Avenue.

11 48. Council Bill 119330 passed 8-0 on August 13, 2018.

12 49. In adopting CB 119330 the City Council engaged in unlawful procedure,
13 erroneously interpreted its procedures and law, rendered a decision not supported by
14 substantial evidence, made a clearly erroneous application of law to the facts, acted outside its
15 authority and violated petitioner’s constitutional rights.

16 **PETITIONER’S SPECIFIC OBJECTIONS TO THE DECISION**

17 50. The City Council’s Decision constitutes an illegal spot zone and constitutes a
18 manifest abuse of discretion. The Decision bears no rational relationship to promoting a
19 legitimate public interest; it singles a small area out of a larger area for use and development
20 restrictions that are not in accordance with similarly situated neighboring properties and not in
21 accordance with the City’s Comprehensive Plan.

22 51. The City Council engaged in unlawful procedure when several City Council
23 members participated actively in the decision debate and vote despite their clear bias and
24 openly-voiced prejudgment. Ex parte communications were not disclosed on the record.
25 They also relied on information outside the record of that meeting. Because this was a site-
26 specific rezone, and was quasi-judicial, this conduct violated the legal right of Petitioner

1 under the Appearance of Fairness Statute, Chapter 42.36 RCW, and the Washington State
2 Constitution.

3 52. The City Council failed to follow the procedural requirements for rendering a
4 rezone decision, including but not limited to the rezone requirements in the Seattle Municipal
5 Code.

6 53. The City wrongfully evaded a SEPA review by declaring, falsely, an
7 emergency when no such emergency within the meaning of WAC 197-11-880 existed, as
8 evident, by among other things, the provision in the ordinance providing for a 30-day tolling
9 prior to effectiveness of CB-119330.

10 54. The City Council's Decision is inconsistent with and unauthorized by the
11 City's Comprehensive Plan and development zoning for 1426 First Avenue, including but not
12 limited to the most recent 2017 up-zone for the property and similar properties on the east
13 side of First Avenue and other core parts of downtown adjacent to the Market. The Decision
14 to prejudge the Showbox a landmark is contrary to the City's own prior assessment that the
15 building lacked any landmark-worthy features.

16 55. The City Council unlawfully adopted a discriminatory, site specific, spot zone
17 specifically designed to thwart petitioner's sale and the redevelopment of the property. The
18 City Council's Decision was ultra vires and in violation of state constitutional rights of
19 freedom from uncompensated takings of private property, rights of free speech and sanctity of
20 private affairs, protections for due process and of equal protection of the law.

21 **LUPA PRAYER FOR RELIEF**

22 Petitioner therefore seeks the following relief regarding its Land Use Petition:
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- 1 A. For an order invalidating the Ordinance by reversing the decision pursuant to
2 RCW 36.70C.140;
- 3 B. For a judgment in its favor under RCW 36.70C.130 (a)-(f);
- 4 C. For pretrial discovery pursuant to RCW 36.70C.120(2);
- 5 D. For an award of Petitioner’s attorneys’ fees and costs against the City;
- 6 E. For permission to amend this petition to the proof; and
- 7 F. For such other relief as the court deems just and equitable.

8 **CIVIL COMPLAINT**

9 1426 First Avenue LLC for its civil complaint against the defendant, City of Seattle, a
10 Washington municipal corporation alleges as follows:

11 56. Plaintiff is a Nevada limited liability company.

12 57. Defendant City is a municipal corporation with its principal office at 600
13 Fourth Avenue, Seattle, Washington 98104.

14 **VENUE AND JURISDICTION**

15 58. Venue is proper in King County pursuant to RCW 4.12.020 and 4.12.025
16 because the subject property at issue is in King County and the defendant is located in King
17 County. This court has jurisdiction under the declaratory judgment statute and because the
18 amount in controversy exceeds \$300.

19 **RESTATEMENT OF ALLEGATIONS**

20 59. The allegations set forth above in the LUPA Petition are realleged as though
21 stated herein and in each cause of action below.

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION: DECLARATORY RELIEF**

24 60. Plaintiff’s rights, status and other legal relationships have been affected by the
25 City’s Decision to adopt CB-119330.

26 61. Pursuant to RCW 7.24, plaintiff is entitled to have the Court review the
controversy and declare the rights, status and other legal relations of the plaintiff in regard to

1 the City's action. The enactment of CB-119330 creates an actual, present and existing dispute
2 with the City due to the Decision's impact on plaintiff and plaintiff's property.

3 62. Pursuant to RCW 7.24, plaintiff petitions for declaratory judgment that CB-
4 119330 is invalid, is an illegal spot zone, fails to comply with the law, failed to comply with
5 procedures, was a violation of the Appearance of Fairness doctrine and is a violation of due
6 process and equal protection; and if not immediately invalidated is an illegal taking of
7 plaintiff's property without just compensation.

8 **SECOND CAUSE OF ACTION: TAKING OF PROPERTY**

9 63. Plaintiff repeats and realleges the preceding paragraphs as though fully set
10 forth herein.

11 64. If the Ordinance is not immediately invalidated, the ordinance is an illegal
12 taking under the United States Constitution and Constitution of the State of Washington.

13 65. The taking results from the City's commandeering of the property for
14 continued use as a concert venue.

15 66. The taking further results from regulatory requirements which grant a public
16 benefit at the disproportionate impact on one property owner.

17 67. The taking further results from the impairment of fundamental rights of
18 property ownership.

19 68. At all times the City acted under color of law.

20 69. The damages for the taking are approximately \$40 million, the exact amount to
21 be proven at trial, based upon a fair and reasonable offer for the property in the open market.

22 70. Plaintiff is entitled to recover its damages under the State Constitution or
23 alternatively the federal Constitution under 42 U.S.C. § 1983.

24 71. Plaintiff is also entitled to attorneys' fees for having retained attorneys to
25 vindicate its rights as provided for by state law and 42 U.S.C. § 1988.
26

EXHIBIT A

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL ___ 119330 _____

..title

AN ORDINANCE relating to the Pike Place Market Historical District; amending Chapter 25.24 of the Seattle Municipal Code to adopt an interim boundary expansion for the Pike Place Market Historical District.

..body

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council makes the following legislative findings of fact and declarations:

A. The Pike Place Market Historical District (District) was created in 1971 through a Citizens' Initiative.

B. The boundaries of the District have been amended twice since it was created: (1) in 1986 through Ordinance 113199 and (2) in 1989 through Ordinance 114863.

C. The City's Historic Resources Survey identifies multiple structures in the vicinity of the District that may be eligible as landmarks but are not currently designated as landmarks.

D. Recent development activity adjacent to the District has put potentially eligible landmarks at risk of demolition or alteration before the protections of the district may be applied, thus constituting an emergency pursuant to WAC 197-11-880.

E. The Showbox Theater is a significant cultural resource to Seattle and the region with a history connecting it to the adjacent Pike Place Market;

F. The loss of the Showbox Theater would erode the historical and cultural value of the Pike Place Market neighborhood;

1 G. Adopting a boundary expansion on an interim basis will allow the City to consider
2 whether and to what extent to expand the boundaries of the District to include the Showbox
3 Theater.

4 H. The Council finds that the Pike Place Market Historical District ordinance is a
5 development regulation that is not subject to referenda and that the Council has the authority to
6 provide for the immediate effectiveness of this amendment to that ordinance.

7 Section 2. Section 25.24.020 of the Seattle Municipal Code, last amended by Ordinance
8 114863, is amended as follows:

9 **25.24.020 Historical District designated.**

10 There is created a Pike Place Market Historical District (hereafter called "Historical District")
11 whose physical boundaries are illustrated on a map attached as Exhibit "A" to Ordinance 100475
12 which is codified at the end of this chapter. These boundaries include an interim expansion that
13 encompasses a Study Area, which will be considered for a future permanent expansion.

14 Section 3. Exhibit A of Ordinance 100475, last amended by Ordinance 114863, is
15 amended and redrawn to expand the boundaries of the Pike Place Market Historical District to
16 include an interim Study Area, as shown on Exhibit A to this ordinance.

17 Section 4. Under RCW 36.70A.390, the Council approves the following work plan for
18 the development of regulations to address the issues in this ordinance and directs the Department
19 of Neighborhoods to transmit proposed legislation to the Council by June 2019.

Review the historic significance of the Showbox theater, study the relationship between the Showbox theater and the Pike Place Market, consider amendments to the Pike Place Market Historical District Design Guidelines related to the	August 2018 - April 2019
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Showbox theater, draft legislation, conduct outreach to stakeholders, and conduct State Environmental Policy Act (SEPA) Review on permanent expansion of the Historical District, as appropriate	
Publish SEPA threshold determination if necessary	March 2019
Mayor transmits legislation to Council	May 2019
Council deliberations on proposed expansion of the Historical District	June 2019
Permanent district expansion effective	July 2019

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Section 5. Sunset provision. Sections 2 and 3 of this ordinance shall expire on the earlier of: (a) ten months from the effective date of this ordinance or (b) the date an ordinance establishing the boundaries of a permanent expansion becomes effective.

1 Section 6. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the _____ day of _____, 2018,
5 and signed by me in open session in authentication of its passage this ____ day of
6 _____, 2018.

7 _____
8 President _____ of the City Council

9 Approved by me this _____ day of _____, 2018.

10 _____
11 Jenny A. Durkan, Mayor

12 Filed by me this _____ day of _____, 2018.

13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)

16 Exhibits:
17 Exhibit A – Interim Pike Place Market Historical District Boundaries with Study Area
18

Exhibit A

Interim Pike Place Market Historical District Boundaries With Study Area



Study Area



Pike Place Market Historical District Boundary



Version 2
August 7, 2018