

**ATTACHMENT B – ORDINANCE FOR MERCY HOUSING/PEACHEALTHNW ZONING  
MAP CHANGE AND ASSOCIATED CHANGES TO A PUBLIC FACILITIES MASTER PLAN  
AND DEVELOPMENT AGREEMENT**

06/01/20

06/15/20

ORDINANCE NO. M\_\_\_\_\_

AN ORDINANCE relating to zoning for the City of Vancouver and Vancouver Municipal Code (VMC) Title 20; amending the Vancouver Zoning map designation for tax parcel # 37916241, 37916237, 37916235, 37916243, 37916245, 37916249, 37916251, 37916281, 37916283, 37916239, and 37916247; and amending an associated Public Facilities Master Plan (PFMP) and a Development Agreement (DA) applying to these properties; providing for severability, and providing for an effective date.

WHEREAS, an application for property-specific changes to zoning map designations was submitted to the City of Vancouver; and

WHEREAS, the Vancouver Planning Commission reviewed the proposed map designation changes at a duly advertised workshop on December 10, 2019, and a duly advertised public hearing on February 11, 2020, and voted unanimously to recommend approval of the zoning map amendment described herein for adoption to the City Council; and

WHEREAS, the City Council conducted a duly advertised first reading on June 1, 2020, and duly advertised public hearing on June 15, 2020, following which the Council wishes to adopt the Planning Commission recommendations for approval; and

WHEREAS, the cumulative environmental impacts of the proposed zoning change has been reviewed and determined to be nonsignificant pursuant to the State Environmental Policy Act. A Notice of Determination of Non-significance (DNS) was issued on January 8, 2020, and no SEPA comments or appeals were received; and

WHEREAS, the City Council finds and concludes that the proposed change is consistent with all relevant criteria for Zoning Map Amendments (VMC 20.285), Public Facility Master Plans (VMC 20.268) and Development Agreements (VMC 20.250), and is consistent with the policies and provisions of the Comprehensive Plan that encourage orderly development within the community and the Growth Management Act pursuant to the requirements of Chapter 36.70A. RCW.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

**Section 1. Findings and Conclusions.** The Planning Commission findings and conclusions as set forth in the staff report for the February 11, 2020, public hearing, are hereby adopted as the City Council's findings of fact

**Section 2. Zoning Code Map Amendment.** The City of Vancouver Zoning Map established under VMC 20.130.020 is hereby amended to change tax parcels # 37916241, 37916237, 37916235, 37916243, 37916245, 37916249, 37916251, 37916281, 37916283, 37916239, and 37916247 from Office Campus Industrial (OCI) to Urban High Density Residential (R-35)

**Section 3. Public Facilities Master Plan Amendments.** Public Facilities Master Plan Map Phase I dated February 3, 2015, approved in Vancouver Hearings Examiners Decision dated August 31, 2015 in case number PRJ – 145134/LUP-43504, is hereby amended to exclude the zone change properties noted herein within the master plan boundary, as indicated in Exhibit A of this ordinance.

**Section 4. Development Agreement Amendments.** The City Manager is hereby authorized to enter into the amendment of Development Agreement dated October 10, 2016, recorded on

March 9, 2017, AGR 5384086. Exhibit B of this ordinance highlights the amendments. Exhibit C of this ordinance is the amended Development Agreement in full.

**Section 5. Severability.** If any clause, sentence, paragraph, section, or part of this ordinance or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any parts thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

**Section 6. Effective Date.** This ordinance shall go into effect 30 days after adoption

**Section 5. Instruction to City Clerk.** The City Clerk shall transmit a copy of the revised development code to the Washington Department of Commerce.

Read First Time:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Council Members

Read Second Time:

PASSED BY THE FOLLOWING VOTE:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Anne McEnery Ogle, Mayor

Attest:

\_\_\_\_\_  
Natasha Ramras, City Clerk

Approved as to form:

\_\_\_\_\_  
Jonathan Young, City Attorney

## SUMMARY

ORDINANCE NO. M\_\_\_\_\_

AN ORDINANCE relating to zoning for the City of Vancouver and Vancouver Municipal Code (VMC) Title 20; amending the Vancouver Zoning map designation for tax parcel # 37916241, 37916237, 37916235, 37916243, 37916245, 37916249, 37916251, 37916281, 37916283, 37916239, and 37916247; and amending an associated Public Facilities Master Plan (PFMP) and a Development Agreement (DA) applying to these properties; providing for severability, and providing for an effective date.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via [www.cityofvancouver.us](http://www.cityofvancouver.us) (Go to City Government and Public Records).

## ORDINANCE EXHIBIT A - AMENDED PUBLIC FACILITY MASTER PLAN MAP



## ORDINANCE EXHIBIT B - AMENDMENTS TO DEVELOPMENT AGREEMENT

| **FIRST AMENDMENT TO AND RESTATEMENT OF**  
| **DEVELOPMENT AGREEMENT**  
| **BETWEEN THE CITY OF VANCOUVER AND PEACE-HEALTH SOUTHWEST**  
| **MEDICAL CENTER**

**Grantors:**  
PeaceHealth

**Grantees:**  
The City of Vancouver, a municipal corporation

**Abbreviated Legal/Parcel Nos.:**  
(To be inserted) Abbreviated Legal: FIRCREST LOT 10 BLK 1; Parcel No. 37916219 (Refer to additional Parcel Numbers on Exhibit A, Page 1 through 5; and Exhibit B, Page 1)

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| **Effective Date:** \_\_\_\_\_, 2016~~2020~~

**Parties:** PeaceHealth Southwest Medical Center  
400 NE Mother Joseph Place  
Vancouver WA 98664  
  
City of Vancouver  
PO Box 1995  
Vancouver WA 98668-1995



## RECITALS

WHEREAS, PeaceHealth Southwest Medical Center (PeaceHealth) is the record owner of the property, which is legally described in Exhibit A ("Property") to this Agreement and is located within the City limits of Vancouver, attached hereto and incorporated herein by this reference; and

WHEREAS, There are six additional properties that PeaceHealth intends to acquire that upon acquisition will become subject to this Agreement. These properties are identified on that parcel table attached hereto as Exhibit B to this Agreement

WHEREAS, the City of Vancouver (City) is a Washington Municipal Corporation with land use planning and permitting authority over all land within its corporate limits; and

WHEREAS, local governments and private property owners are authorized by RCW 36.70B.170 to enter into development agreements; and

WHEREAS, this Agreement relates to future development of the property for healthcare and related accessory purposes; and provides mutual benefit to the City and PeaceHealth.

**NOW, THEREFORE,** based on the foregoing recitals, the parties agree as follows:

**Section 1. Recitals.** The recitals above set forth are incorporated into this Agreement by reference.

**Section 2. Purpose.** The purpose of this Agreement is to:

A. Support a Public Facilities Master Plan (PFMP) approved by the City for an expansion of PeaceHealth's medical campus to better serve the region's healthcare and related needs. This approval is found in the Hearings Examiners Decision dated August 31, 2015 in case number PRJ – 145134/LUP-43504.

B. Vest the conceptual components of the development of the Property under the provisions of the VMC on the Effective Date of this Agreement, including the permitted uses of the Property, and the applicable development standards and regulations.

C. Continue to reserve capacity and vest the unused 299 weekday p.m. peak hour trips (provided for in the prior development agreement and ~~3648~~ existing PM peak hour trips associated with the single-family homes purchased by PeaceHealth all of which are legally described as part of Exhibit A to this Agreement. For any development or redevelopment that may occur on the Property within 10 years of the effective date of the this Development Agreement.



- D. Set forth the timing and cost of right-of-way dedication and vacations.
- E. Vest transportation concurrency for the term of this Agreement.
- F. Set forth the required transportation mitigation as that included in the Hearings Examiner Decision dated August 31, 2015.

**Section 3. Development Agreement.** This agreement is a ~~d~~Development ~~a~~Agreement that is adopted and shall be implemented and interpreted in accordance with RCW 36.70B. 170 through RCW 36.70B. 210 and VMC 20.250. It shall be a binding contract between PeaceHealth and the City upon the City's approval by ordinance or resolution following a public hearing in accordance with RCW 36.70B. 170.

**Section 4. Definitions.** Except as state law may provide otherwise, the following terms shall have the following meanings: "VMC" means the Vancouver Municipal Code as it exists on the effective date of this Agreement and as it may subsequently be amended from time to time by the Vancouver City Council. "Development Agreement" means the Development Agreement between the City of Vancouver and PeaceHealth Southwest Medical Center with an effective date of October 10, 2016. "Agreement" means this First Amendment to and Restatement of the Development Agreement.

**Section 5. Effective Date, Term, Termination, and Modification.** This agreement shall be effective (the "Effective Date") upon adoption of a resolution or ordinance by the Vancouver City Council and thereafter upon execution and signature of the authorized representatives of both parties. This agreement shall be and remain in force for a period of 10 years from the effective date, after which it shall expire automatically and become null and void (the "Termination Date"), except that any development approvals, (master plan, land use, land division, building permits and the like) issued by the City for development of the property shall remain in place and continue to impose on-going legal obligations on the holder of those development approvals. This agreement may be modified prior to termination only upon mutual written agreement of both parties after a public hearing as required by RCW 36.70B. 200. Notwithstanding the foregoing, the Mayor is authorized to approve on behalf of the City minor modifications to this Agreement of the exhibits attached hereto without the necessity of a public hearing.

**Section 6. Prior Development Agreement.** Notwithstanding the expiration thereof on December 20, 2014, the terms and provisions of a Prior Development Agreement between the parties dated January 22, 2002 are hereby reinstated as of that termination date and shall be in full force and effect in the 299 Reserved and unused transportation trips provided for in such Prior Development Agreement which shall be and remain vested under this ~~Development~~ Agreement.

**Section 7. Transportation Infrastructure and Reservation of Traffic Capacity.**

PeaceHealth will construct transportation improvements at its own cost and expense pursuant to the conditions set forth in the Hearings Examiner Decision dated August 31, 2015. The Hearings Examiner Decision identifies all required improvements for the full buildout of the Property and the specific standards that apply to future development. The timing of all required improvements will be addressed during site plan approval for the individual projects included in the PFMP approval.

**Section 8. Right of Way Dedication and Vacation.** Final build-out of the proposed projects contemplated herein and in the Public Facilities Master Plan will require dedication of the NE 9th Street Extension (from the existing terminus of NE 9th Street near NE 90th Avenue to NE 87th Avenue) and vacation of existing rights-of-way (subject to the City's right of way vacation process,) in the expansion areas, including:

- NE 90th Avenue (south of NE 9th Street)
- NE 8th Street (between Henrietta Lacks Health and Bioscience High School and NE 90th Avenue)
- NE 91st Avenue (between NE 8th Street and NE 7th Street)
- NE Pietz Street (west of NE 92nd Avenue)
- NE 7th Street (between NE 90th and NE 91st Avenues)
- NE 93rd Avenue (north of Mill Plain Boulevard and south of parcel 37916251 NE 5th Street)
- Completion of the NE 9th Street Extension and dedication will be phased with the build-out of the campus and will be finished after completion of the two medical office building projects in the north campus area identified on Exhibit A2. The City shall initiate proceedings for vacation of the rights-of-way this Agreement prior to the submittal of Type II site plan review applications for projects included in the PFMP that will require a right-of-way vacation to be constructed.

**Section 9. Vesting of Vehicle Trips and Concurrency.** For purposes of future concurrency management and Transportation Impact Fees (TIFs) that would be assessed by the City on the redevelopment or change in use of the Property, the City will credit the Average Daily Trip (ADT) generation and p.m. peak hour trips from the existing uses on the Property as of the effective date of this Agreement. The TIF that will be due for the redevelopment and change in use of the Property will be based on the increase in ADT generation attributable to the new development or use beyond the current level of trip generation by the current use. Capacity for the current 335347 weekday p.m. peak hour trips (299 vested and unused weekday PM peak hour trips as provided for in the Prior Development Agreement and 3648 existing weekday PM peak hour trips associated with the single-family homes purchased by PeaceHealth from the current use of the Property for a total of 335347 shall be reserved by the City and vested for the Property, for any development or redevelopment that may occur within 10 years of the effective date of this Agreement. PeaceHealth will prepare trip



generation letters for all future projects included in the PFMP at the time of site plan review, with the exception of Tower 2, which will require a new Transportation Impact Analysis (TIA). The trip generation letters will verify the proposed trip volumes and that resulting traffic operations would remain consistent with the February 2015 TIA submitted with the PFMP.

**Section 10. Vesting.** As provided for in RCW 36.70B.170(1) and VMC 20.250, during the term of this Agreement, development of the property and the master plan therefor shall be controlled by the terms and condition of this Agreement and any requirements and/or standards adopted by the City that are not inconsistent with the terms and requirements of the agreement. The parties agree that the development of the Property and this ~~Development~~ Agreement vests as to the permitted use, land use ordinance, regulation, and development standards in effect in VMC section 20.250.040 as of the earlier of the date of any fully complete land use application being processed for approval with ~~the this~~ Development Agreement, or October 10, 2016, the effective date of the ~~execution of this~~ Development Agreement. "Vesting" shall mean that the property is entitled to be used and to implement a public facilities master plan, site plan or other land use permit or approval that is substantially consistent with that shown in Exhibit A, and that the Property is entitled to be eligible to receive land use approval of development proposals ("implementing land use approval(s)") that are consistent therewith, in accordance with the zoning, development and land use ordinances in effect upon the date of the vesting of ~~the this~~ Development Agreement without any such application being subject to changes in ordinance, regulation, and development standards and regulations that are enacted or implemented subsequent to the date thereof. Further, if an implementing land use approval has become final (not appealed), which is at variance with such ordinance, regulation, and development standards and regulations with the agreement of the applicant(s), the ordinance, regulation, and development standards and regulations manifested in such implementing land use approval(s) shall become vested under ~~the this~~ Development Agreement. This ~~Development~~ Agreement and the development standards in, and terms of, ~~the this~~ Development Agreement govern during the term of ~~the this~~ Development Agreement and may not be subject to an amendment to a zoning ordinance, land use regulation, or development standard adopted after the effective date of ~~the this~~ Development Agreement except with the written agreement of the Developer; provided that Developer or its assignee may elect to waive vesting as to an ordinance, requirement, condition or standard and proceed under any ordinance, requirement, condition or standard more recently in effect by the City of Vancouver as allowed under VMC 20.250.040. This vesting shall continue beyond the term of ~~the this~~ Development Agreement as to any fully complete implementing land use application in process or granted by the City during the term of ~~the this~~ Development Agreement, for the normal term of approval of any such application or approval. Any permit or approval issued by the City, including any implementing land use approval, after the vesting of ~~the this~~ Development Agreement must be consistent with ~~the this~~ Development Agreement; provided that applicable storm water regulations are subject



to the City of Vancouver Phase 2 National Pollutant Discharge Elimination System (NPDES) permit.

**Section 11. Property Governed.** This ~~Development~~-Agreement governs and vests the development of the PeaceHealth Property described on the drawings attached to this Agreement as Exhibit A1 and A2 and to the extent the properties ~~highlighted~~ on the parcel table attached to this Agreement as Exhibit B are acquired by PeaceHealth, the Agreement shall be re-recorded with the legal descriptions for those properties identified on Exhibit B and each and every term and provision of this Agreement shall apply to the newly added properties which will be identified as Exhibit B including but not limited to the vesting provision which shall vest the newly acquired property on the date of the re-recording of this Agreement. No further City Council action is required to record this agreement is provided for in this section.

**Section 12. Exception to Vesting/Serious Threat to Public Health.** Nothing contained in this ~~Development~~-Agreement shall preclude the City from exercising any and all rights it has under RCW 36.70.170(4) to address issues of public health and safety.

**Section 13. Construction.** This ~~Development~~-Agreement sets forth the entire agreement of the parties. This Agreement shall be construed as a whole. No amendment, change or modification of any provision of this Agreement shall be valid unless set forth in writing and signed by both parties. To the extent of any conflict with any City regulations which may otherwise govern the Property, the terms and conditions of this ~~Development~~-Agreement shall prevail.

**Section 14. Further Discretionary Actions.** Nothing in this Agreement shall be construed to limit the authority of the City to process development applications for the property, including one or more building permits, under the processes established by the City; provided however those processes shall not impose any conditions inconsistent with the provisions of this Agreement.

**Section 15. Remedies.** Should a disagreement arise between the City and the land owner regarding the interpretation and application of this Agreement, the parties agree to attempt to resolve the disagreement by first meeting and conferring. If this does not result in resolution the parties agree to employ a mutually agreed upon mediator to resolve the disagreement. If mediation proves unsuccessful the disagreement may be resolved by judicial action filed in the Clark County Superior Court.

**Section 16. Performance.** Failure by either party at any time to require performance by the other party of any of the provisions or requirement of the agreement shall in no way affect the parties' rights hereunder to enforce any and all requirements of this Agreement, nor shall any failure by a party to declare a default or breach of the

agreement by the other party be deemed a waiver of a default or breach or a waiver of this non-waiver clause.

**Section 17. Enforcement and Venue.** In the event of any litigation arising hereunder, or with respect hereto, the law of the State of Washington shall control, and all signatories hereto, do hereby submit themselves personally to the jurisdiction of the courts of the State of Washington, and do hereby agree that any action arising hereunder may be instituted in Clark County Superior Court, if the parties are served, including anywhere not within the State of Washington, by any method authorized by Washington law.

**Section 18. Required Public Hearing.** This ~~Development~~ Agreement is authorized by a resolution of the City Council of the City of Vancouver following a hearing as required by RCW 36.70B.170.

**Section 19. Default.** In the event either party fails to perform the terms and provisions of this ~~Development~~ Agreement, which failure continues uncured for a period of sixty (60) days following written notice from the other party (unless the parties have mutually agreed in writing to extend this period) shall constitute a default under this Agreement. Any notice of default shall specify the nature of the alleged default and, where appropriate, the manner in which the alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot be reasonably cured within the sixty (60) day period, then the commencement of actions to cure the alleged default within the sixty (60) day period and diligent prosecution of such actions necessary to complete the cure of the alleged default, shall be deemed to be a cure within sixty (60) day period. Upon a default of this Agreement that is not cured as provided above, the non-defaulting party may institute legal proceedings to enforce the terms of this Agreement. If the default is cured, then no default exists, and the noticing party shall take no further action. Notwithstanding the foregoing, in the event of a serious threat to public health and safety or irreparable harm, the City may immediately enforce the provisions of this ~~Development~~ Agreement or any other provision of law.

**Section 20. Extensions of Time for Performance.** Notwithstanding anything to the contrary contained in this Agreement, neither party shall be deemed to be in default where delays and performance or failure to perform are due to war, insurrection, strike or other labor disturbances, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, extended appeals by third parties or similar basis for excused performance which are not within the reasonable control of the party to be excused. Upon the request of either party, an extension of time for such cause shall be granted in writing for the period of the forced delay, or longer, as may be mutually agreed upon.



**Section 21. Binding Effect.** This ~~Development~~-Agreement, or a summary therefore, shall be recorded against the Property and shall run with the land, subject only to the express conditions or limitations of this Agreement, and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties. Upon assignment of this ~~Development~~-Agreement or the conveyance of any parcel of the Property to which this Agreement is applicable, the assignee/grantee shall be deemed to assume all rights, obligations and liabilities set forth in this Agreement as they relate to such parcel.

**Section 22. Cooperation.** Each party shall take such action (including, but not limited to the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other party for the implementation or continuing performance of this ~~Development~~-Agreement. In the event of any administrative, legal or equitable action or proceeding instituted by any person or party to this Agreement challenging the validity of any provision of this ~~Development~~-Agreement, or any subsequent action taken consistent with this Agreement, the parties shall cooperate in defending such action or proceeding to settlement or final judgment, including all appeals. Each party shall select its own legal counsel and retain such counsel at its own expense.

**Section 23. Severability.** If any portion of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

**Section 24. Inconsistencies.** If any provision of the Vancouver Municipal Code is deemed inconsistent with the provisions of the agreement, the provisions of this Agreement shall control.

**Section 25. Binding on Successors and Recording.** This agreement shall run with the land and be binding upon and inure to the benefit of the parties to this Agreement and to their respective heirs, successors and assigns. This agreement shall be recorded in Clark County real property records for the property. PeaceHealth may sell or otherwise lawfully dispose of all or any portion of the property to another person, corporation, partnership or other entity, who shall be bound by and benefitted by the requirements and terms of this Agreement.

**Section 26. Term.** The initial term of ~~the this~~ Development Agreement shall be for ten (10) years from the effective date of this Agreement, with the parties entitled to extend the term if approved by the City by resolution following public hearing or as otherwise allowed under state law.

|       **Section 27. Enforcement.**   This ~~Development~~ Agreement may be enforced through any remedy provided by law or in equity

|       **Section 28. Effective Date.**   This ~~Development~~ Agreement will become effective upon signature by the City, after a public hearing has occurred.

|       **Section 29. Run with the Land.**   This ~~Development~~ Agreement shall run with the land and be binding on the parties' successors and assigns.   This ~~Development~~ Agreement shall be recorded with the Clark County Auditor

**IT IS SO AGREED**, as indicated by the below-signed authorized representative of the parties hereto.

**City of Vancouver:**

**PeaceHealth, LLC:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_



ORDINANCE EXHIBIT C - AMENDED DEVELOPMENT AGREEMENT IN FULL