

ATTACHMENT A: ORDINANCE A FOR 192nd AVENUE MAP DESIGNATION CHANGE

12/18/23
01/08/24

ORDINANCE NO. M_____

AN ORDINANCE relating to zoning for the City of Vancouver and Vancouver Municipal Code (VMC) Title 20; amending the Vancouver Comprehensive Plan and Zoning map designation for adjacent tax lots 177224000, 177224005, 177224010, 177240000, 177242000, 177238000, and 177239000, and approximately 12,015 square feet of unimproved right-of-way, all located at the northwest corner of SE 192nd Avenue and SE 15th Street; authorizing the City Manager to enter into a Development Agreement related to future use of the site; and providing for severability; and providing for an effective date.

WHEREAS, pursuant to the 2023 City of Vancouver Annual Review program a timely application for property-specific changes to Comprehensive Plan and zoning map designations was submitted to the City of Vancouver to change the Comprehensive Plan and zoning map designations on said properties from Urban Low Density Residential and R-6 to Urban High Density Residential and R-22; and

WHEREAS, the Vancouver Planning Commission reviewed the proposed map designation changes at duly advertised workshops on July and September 12, 2023, and a duly advertised public hearing on October 24, 2023, and at which the Planning Commission voted 7-0 to recommend approval of the map designation change and associated Development Agreement; and

WHEREAS, the City Council conducted duly advertised workshops on October 23 and November 20, 2023, and a duly advertised Council Communications discussion on November 6 and November 20, 2023, and duly advertised First Readings on December 4 and December 18, 2023 and public hearing on January 8, 2024, following which the Council wishes to adopt the Planning Commission recommendation for approval, with minor modification to the Development Agreement; and

WHEREAS, the cumulative impacts of proposal have been reviewed in conjunction with other

Comprehensive Plan change applications under consideration in 2023; and

WHEREAS, the cumulative environmental impacts of the proposed zoning change have 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 September 22, 2023, and no comments or appeals to the DNS were received; and

WHEREAS, the City Council finds and concludes, and the Planning Commission found and concluded, that the proposed change is consistent with the balance of relevant criteria for Comprehensive Plan and Zoning Map Amendments (VMC 20.285), and Development Agreements (VMC 20.250) and is consistent with the policies and provisions of the Comprehensive Plan and Strategic 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 October 24, 2023, public hearing, and subsequent deliberation by the Planning Commission and City Council, are hereby adopted as the City Council's findings of fact.

Section 2. Comprehensive Plan Map Amendments. The Vancouver Comprehensive Plan Land Use Map, established as part of the Vancouver Comprehensive Plan 2011-2030, adopted through Ordinance M-3994, is amended to change the Comprehensive Plan Land Use Map designation at tax lots 177224000, 177224005, 177224010, 177240000, 177242000, 177238000, and 177239000, from Urban Low Density Residential to Urban High Density Residential.

Section 2 Zoning Code Map Amendments. The City of Vancouver Zoning Map established under VMC 20.130.020 is hereby amended to change the Zoning Map designation at tax lots 177224000, 177224005, 177224010, 177240000, 177242000, 177238000, and 177239000, from R-6 to R-22.

Section 3 Development Agreement. The City Manager is hereby authorized to enter into a

Development Agreement substantially in the form attached hereto as Exhibit A and such executed Development Agreement will be timely recorded with the Clark County, Washington Assessor on the properties that are the subject of this ordinance.

Section 4. 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 the date of final passage.

Section 7. Instruction to City Clerk. The City Clerk shall transmit a copy of the revised development code to the Washington Department of Commerce.

DATE OF FINAL PASSAGE by the Vancouver City Council: _____.

SIGNED this _____ day of _____, 2024.

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 Comprehensive Plan and Zoning map designation for adjacent tax lots 177224000, 177224005, 177224010, 177240000, 177242000, 177238000, and 177239000, and approximately 12,015 square feet of unimproved right-of-way); authorizing the City Manager to enter into a Development Agreement related to future use of the site; and 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 (Go to City Government and Public Records).

Exhibit A Development Agreement

MAIL TAX STATEMENTS TO:

AFTER RECORDING RETURN TO:

Jordan Ramis PC
Attn: James D. Howsley
PACWEST, 27th Floor
1211 SW Fifth Avenue
Portland, OR 97204

This space provided for recorder's use.

INSTRUMENT TITLE: DEVELOPMENT AGREEMENT

GRANTOR: Vance Development LLC, a Washington limited liability company; Larry Nielsen, Rochelle Nielsen, and Brenda Holbrook, individuals; Jens C. Nielsen Irrevocable Trust

GRANTEE: City of Vancouver, a Washington municipal corporation

PROPERTY ADDRESS: Northwest corner of SE 192nd Ave. and SE 15th St. in Vancouver, WA 98683

FULL LEGAL DESC: See **EXHIBIT A** to This Document

ASSESSOR'S PROPERTY TAX
PARCEL ACCOUNT NUMBERS: 177224000, 177224005, 177224010, 177240000,
177242000, 177238000, 177239000

REFERENCE NUMBER OF
RELATED DOCUMENTS: N/A

DEVELOPMENT AGREEMENT

Effective Date: _____, 2023

PARTIES

Larry Nielsen, Rochelle Nielsen, and Brenda Holbrook, Jens C. Nielsen Irrevocable Trust and Vance Development LLC (collectively “Grantor”) hold interest in APNs 177224000, 177224005, 177224010, 177240000, 177242000, 177238000, and 177239000, and approximately 12,015 square feet of unimproved right-of-way (collectively the “Property”), located at the northwest corner of SE 192nd Ave. and SE 15th St. in Vancouver, WA 98683. The legal description for the Property is attached as **EXHIBIT A**. Vancouver is a Washington municipal corporation (the “City”), and is responsible for land use planning and permitting pursuant to the Growth Management Act. Grantor and City are individually referred to as Party and collectively referred to as the Parties. The Parties wish to enter into a development agreement (the “Agreement”) as described in detail below.

RECITALS

Whereas, pursuant to RCW 36.70B.170, a development agreement may set forth the development standards and other provisions that will apply to, govern and vest the development, use and mitigation of the development of real property for the duration specified in the agreement, which statute provides:

(1) A local government may enter into a Development Agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that will apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement will be consistent with applicable development

regulations adopted by a local government planning under chapter 36.70A RCW;

Whereas, the legislative findings supporting the enactment of this section provide:

The legislature finds that the lack of certainty of the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private, participation and comprehensive planning, and reduce the economic cost of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the legislature by RCW 36.70B.170 through 36.70B.210 to allow local governments and owners and developers of real property to enter into development agreements;

WHEREAS, Grantor plans to submit the necessary land use and building permit applications in order to build approximately 210-223 residential dwelling units (the “Project”) on the Property, a preliminary draft proposed site plan for which is attached as **EXHIBIT B, which future development will generally conform to;**

WHEREAS, pursuant to Chapter 20.250 Vancouver Municipal Code (VMC), City wishes to facilitate the Project pending applicable land use and building permit approvals;

WHEREAS, the Parties have agreed to a number of items in order to facilitate the Project;

WHEREAS, City agrees to support a comprehensive plan designation change on the Property from Urban Low Density Residential to Urban High Density Residential;

WHEREAS, City agrees to support a zone change on the Property from R-6 to R-22;

WHEREAS, City and Grantor agree to establish the green building standards for the Project;

WHEREAS, Grantor agrees to limit access to the Project site;

WHEREAS, Grantor agrees to site the Project with setbacks beyond those required;

WHEREAS, Grantor agrees to include enhanced landscaping ; and

WHEREAS, Grantor agrees to include affordable housing in the Project.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

Section 1. Development Agreement. This Agreement is a development agreement to be implemented under the authority of and in accordance with RCW 36.70B.170 – 210 and Chapter 20.250 VMC. It will become a contract between the Parties pursuant to the Effective Date clause below.

Section 2. Term of Agreement. This Agreement will commence on the Effective Date and will remain in effect twenty (20) years, unless extended, amended or terminated by mutual written consent of the Parties.

Section 3. Enhanced Project Setbacks. Grantor agrees, regardless of the applicable criterion, that the Project will include enhanced setbacks from adjacent property lines. All 1- and 2-story buildings will be set back at least 35-feet from the northern and western edges of the Property. All 3-story buildings will be set back at least 120-feet from the western and northern edges of the Property. No building in the Project will be greater than 3 stories. However, if the City does not approve the vacation of the approximately 12,015 square feet of right-of-way along

the western edge of the Property, the Project shall include no enhanced setbacks along the western edge of the Property adjacent to the right-of-way.

Section 4. Enhanced Landscape Buffer. Grantor agrees, that regardless of the applicable criterion, the Project will include a landscape buffer at least 20-feet in width along the western and northern edges of the Property, except for southern part of the western edge of the Property (west and southwest of the existing home) where a stormwater facility is planned, as shown in Exhibit B. As part of this landscape buffer, the Project will include, maintain, and enhance as many of the Property's existing mature trees as reasonably practicable. However, if the City does not approve the vacation of the approximately 12,015 square feet of right-of-way along the western edge of the Property, the Project shall include no enhanced landscape buffer along the western edge of the Property adjacent to the right-of-way.

Section 5. Affordable Housing. Grantor agrees to include affordable dwelling units in the Project. Specifically, 5% of the total number of dwelling units in the Project will be covenanted affordable housing available to those households earning no more than 80% of area medium income for a period of at least twenty-five (25) years. Prior to the issuance of the first building permit, Grantor shall execute and record against the property an affordable housing covenant to the City that has been approved by the City. This covenant shall ensure affordability throughout the affordability period, provide for annual monitoring by the City (with an annual monitoring fee paid to the City), and provide adequate legal and equitable remedies to the City in the event of non-compliance and/or breach of the covenant.

Section 6. Green Building.

Grantor agrees that new buildings in the project will undertake the below pursuant to the City of Vancouver Interim Green Building Policy:

- A. Buildings shall comply with the Washington Energy Code
- B. Apartment buildings shall be fully electric, with an exception for water heaters if they are shared with multiple units on a single tank and heater system

- C. EnergyStar appliances, low flow plumbing fixtures and high efficiency LED light fixtures shall be utilized to the fullest extent possible
- D. At least 110 parking stalls will be provided with a conduit from electrical panels capable of supporting a load to ensure electric vehicle readiness, and at least 22 stalls will have installed and operational electric vehicle charging stations
- E. Outdoor bike racks and covered bike parking area shall be provided
- F. Dark sky lighting will be provided to minimize light pollution
- G. Drought resistant vegetation and light colored paving surfaces shall be utilized in open spaces

Section 7. SITE ACCESS

Except as the City requires, Grantor agrees to design the Project in a manner such that there will be no vehicular access between the Project and SE 191st Ave and no pedestrian or vehicular access between the Project and SE 13th St.

MISCELLANEOUS PROVISIONS

Recitals. Each of the recitals contained herein are intended to be, and are incorporated as, covenants between the Parties and will be so construed.

Counterparts. This Agreement may be executed in counterparts; however all signature pages will be recorded together, and the complete recorded Agreement will constitute the final instrument.

Effective Date. This Agreement is effective upon the later of 1) recording, which shall occur within thirty (30) days of Vancouver City Council approval by resolution, or 2) the City's adoption of a comprehensive plan designation change on the Property from Urban Low Density Residential to Urban High Density Residential, a zone change on the Property from R-6 to R-22.

Termination. This Agreement will terminate upon the mutual agreement of the Parties in writing, which will be recorded, or upon expiration of the Term, whichever first occurs.

City's Reserved Authority. Notwithstanding anything in this Agreement to the contrary, the City will have the authority to impose new or different regulations to the extent required by a serious threat to public health and safety as required by RCW 36.70B; provided, however that traffic congestion is not a serious threat to public health and safety, and that such action will only be taken by legislative act of the Vancouver City Council after appropriate public process.

Authorization. The persons executing this Agreement on behalf of the Parties are authorized to do so and, upon execution by such parties, this Agreement will be a valid and binding obligation of such parties in accordance with its terms. The Parties have each obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby.

Run with the Land. This Agreement will run with the land and be binding on the Parties' successors and assigns, and will be recorded with the City.

Public Hearing. The Vancouver City Council has approved execution of this Agreement by resolution after a public hearing.

Specific Performance. The Parties specifically agree that monetary damages are not an adequate remedy for breach of this Agreement. Therefore, the Parties are entitled to seek specific performance of all material terms of this Agreement, including but not limited to the development standards established in the Enhanced Project Setbacks, Enhanced Landscape Buffer, Affordable Housing, and Green Building sections of this Agreement, by any Party in breach.

Dispute Resolution. Should a disagreement arise between the Parties, the Parties agree to attempt to resolve the disagreement by first meeting and conferring. If such meeting proves unsuccessful to resolve the dispute, the disagreement may be resolved by a civil action.

Venue. This Agreement will be construed in accordance with the laws of the State of Washington, and venue is in the Clark County Superior Court.

Attorneys' Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party will be entitled to recover its attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

Enforcement. Failure by any Party at any time to require performance by the other Parties of any of the provisions hereof will not affect the Parties' rights hereunder to enforce the same, nor will any waiver by a Party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this clause.

Severability. If any portion of this Agreement will be invalid or unenforceable to any extent, the validity of the remaining provisions will not be affected thereby. If a material provision of this Agreement is held invalid or unenforceable such that a Party does not receive the benefit of its bargain, then the other Parties will renegotiate in good faith terms and provisions that will effectuate the spirit and intent of the Parties' agreement herein.

Vesting. The specific development standards set forth in this Agreement govern the Property for the Term of the Agreement as of the Effective Date, pursuant to VMC 20.250.040.

Amendments. This Agreement may only be amended by mutual written agreement of the Parties, and all amendments will be recorded with the Assessor's Office in Clark County, Washington.

Survival. Any covenant or condition set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination but which by its terms is to survive the termination of this Agreement, will survive the expiration or earlier termination of this Agreement and will remain fully enforceable thereafter.

No Benefit to Third Parties. The Parties are the only parties to this Agreement and are the only parties entitled to enforce its terms, except as otherwise specifically provided in this Agreement. There are no third-party beneficiaries.

Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the subject matter.

Notices. All notices will be in writing and may be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

City	Vancouver City Council Councilors Attn.: Eric Holmes, City Manager 415 West 6th Street, 2 nd Fl. Vancouver, WA 98660
Grantor	Larry Nielsen, Rochelle Nielsen, Brenda Holbrook, and Jens C. Nielsen Irrevocable Trust 19004 SE 15 th St. Vancouver, WA 98683
Grantor	Vance Development Attn.: Gary Vance 2005 SE 192 nd Ave., Ste. 200 Camas, WA 98607
With a copy to:	Jordan Ramis, PC Attn.: James D. Howsley PACWEST, 27 th Fl. 1211 SW Fifth Ave. Portland, OR 97204

Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a Party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

Non-waiver. Waiver by any Party of strict performance of any provision of this Agreement will not be deemed a waiver of or prejudice a Party's right to require strict performance of the same or any other provision in the future. A claimed waiver must be in writing and signed by the Party granting a waiver. A waiver of one provision of this Agreement will be a waiver of only

that provision. A waiver of a provision in one instance will be a waiver only for that instance, unless the waiver explicitly waives that provision for all instances.

Headings, Table of Contents. The section headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

Interpretation of Agreement; Status of Parties. This Agreement is the result of arm's-length negotiations between the Parties and will not be construed against any Party by reason of its preparation of this Agreement. Nothing contained in this Agreement will be construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar relationship between the Parties.

Future Assurances. Each of the Parties will promptly execute and deliver such additional documents and will do such acts that are reasonably necessary, in connection with the performance of their respective obligations under this Agreement according to the Schedule so as to carry out the intent of this Agreement.

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Signatures appear on the following pages.

LARRY NIELSEN

Date

ROCHELLE NIELSEN

Date

BRENDA HOLBROOK

Date

JENS C. NIELSEN IRREVOCABLE TRUST

By: _____
Its: _____

Date

VANCE DEVELOPMENT, LLC

By: _____
Its: _____

Date

CITY OF VANCOUVER

By: _____
Its: _____

Date

Approved as to Form:

Attest:

By: _____
Its: _____

By: _____
Its: _____

NOTARY ACKNOWLEDGEMENTS

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2023.

(Seal or stamp)

Signature
My Commission Expires: _____

State of Washington)
) ss.
County of)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2023.

(Seal or stamp)

Signature
My Commission Expires: _____

State of Washington)

) ss.

County of Clark)

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Dated: _____, 2023.

(Seal or stamp)

Signature

My Commission Expires: _____

State of Washington)

) ss.

County of Clark)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2023.

(Seal or stamp)

Signature

My Commission Expires: _____

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2023.

(Seal or stamp)

Signature
My Commission Expires: _____

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2023.

(Seal or stamp)

Signature
My Commission Expires: _____

EXHIBIT INDEX

EXHIBIT INDEX

EXHIBIT A – Legal Description and Site Map

EXHIBIT B – Proposed Development Map

EXHIBIT A

Legal Description and Site Map

The project site consists of tax lots 177224000, 177224005, 177224010, 177240000, 177242000, 177238000, and 177239000 together with a 27-foot-wide by approximately 445-foot-long unimproved right-of-way (ROW), further identified as Lots 1, 2, and 3 in the Nielsen Short Plat (Book 2, Page 634).



EXHIBIT B

Draft Proposed Site Plan

