ORDINANCE NO. 3410-14

An Ordinance amending Sections 1, 2 and 4 of Ordinance No. 3380-14 which authorized a Pilot Project for Student housing for Trinity Lutheran College at the Southwest corner of Oakes and California.

WHEREAS, the City Council finds the following:

1. The City Council approved a pilot project in Ordinance No. 3380-14 to allow student housing in the downtown with the required off-street parking to be provided off-site.
2. If the off-street parking was to be provided on-site, the student housing would have been allowed without the need for a pilot project ordinance, as it would have fit within the B-3 zone permitted land use category of "dwelling, multiple family."
3. The pilot project is encouraged to allow Trinity Lutheran College to grow while minimizing student housing construction costs and making use of existing parking facilities conveniently located near the proposed student housing.
4. Section 2, paragraph 6 of Ordinance No. 3380-14 provides the opportunity to reduce the amount of required off-street parking in the Trinity Lutheran College parking garage based upon a parking analysis demonstrating lower utilization, subject to approval by the City.
5. Section 2, paragraph 9 of Ordinance No. 3380-14 restricts the use of the proposed building to student housing, but does provide for the City Council to consider an alternative use if it determines the proposal is in the best long term interests of the community.
6. The financial institution providing project financing has stated its concerns that the language in Section 2, paragraph 9 creates the potential for a building that may not be capable of being fully occupied in the event that Trinity Lutheran College ever ceases to exist in downtown, and has requested an amendment to the ordinance as a condition of providing financing for the project.
7. Leaving the determination about occupancy by housing other than student housing to a future City Council review process jeopardizes initial project funding.
8. koz Development and Trinity Lutheran College have proposed the amendment of Ordinance No. 3380-14, so that in the event the building cannot be fully occupied by student housing by Trinity Lutheran College, Everett Community College, or Washington State University, that it would be allowed to be occupied as non-subsidized, market rate
housing with a parking standard of one off-street parking space per rental room provided in the Trinity Lutheran College parking garage.

9. The Planning Commission held a public hearing on October 7, 2014, and has recommended that the City Council approve the proposed amendment to the pilot project ordinance.

WHEREAS, the City Council concludes the following:

1. Student housing is still the preferred use for the subject property, but the lender has a valid financial reason for requesting a contingency in the event that student housing becomes a non-viable restriction on the full occupancy of the subject building.

2. koz Development and Trinity Lutheran College have proposed that in the event student housing is not viable for the full occupancy due to Trinity Lutheran College ceasing to exist in downtown, and the inability to secure a master lease for student housing with Everett Community College and/or Washington State University, that occupancy by non-subsidized, market rate rental housing be allowed, with one off-street parking space per rental room provided in perpetuity within the Trinity Lutheran College parking garage.

3. One off-street parking space per rental room is identical to the required parking standard for multiple family housing in the B-3 zone.

4. The proposed amendment provides for the health, safety and welfare of the Everett community.

5. The proposed amendment promotes the best long-term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 1 of Ordinance No. 3380-14, which reads as follows:

Pilot Project Established.
A. Section 34 of Ordinance No. 1671-89 and Section 7 of Ordinance No. 2347-98, as amended, are hereby amended to provide for a pilot project for student housing and associated parking for student housing in the central business district.
B. The City hereby establishes a pilot project to allow student micro-housing on a site located on the southwest corner of California Street and Oakes Avenue in the B-3 (Central Business District) zone, in accordance with the conditions stated herein. Before January 1, 2017, or one year following the issuance the certificate of occupancy by the City’s Building Official, whichever date occurs later, the City Council will review this pilot project to evaluate this new use as well as other micro-housing opportunities in the downtown and determine whether this type of use should be authorized including appropriate parking standards, and if so, under what conditions.
C. Although this Ordinance establishes certain rights for Footprint to develop the Property in accordance with the conditions specified herein, additional City requirements are required to be met prior to any development activity on the Property including zoning, building, multifamily housing property tax exemption, and public works requirements and reviews, as well as issuance of appropriate City approvals and permits.

**Is hereby amended to read as follows:**

**Pilot Project Established.**
A. Section 34 of Ordinance No. 1671-89 and Section 7 of Ordinance No. 2347-98, as amended, are hereby amended to provide for a pilot project for student housing and associated parking for student housing in the central business district.

B. The City hereby establishes a pilot project to allow student housing on a site located on the southwest corner of California Street and Oakes Avenue in the B-3 (Central Business District) zone, in accordance with the conditions stated herein. Before January 1, 2017, or one year following the issuance the certificate of occupancy by the City’s Building Official, whichever date occurs later, the City Council will review this pilot project to evaluate this new use as well as micro-housing opportunities in the downtown and determine whether this type of use should be authorized including appropriate parking standards, and if so, under what conditions.

C. Although this Ordinance establishes certain rights for the Developer to develop the Property in accordance with the conditions specified herein, additional City requirements are required to be met prior to any development activity on the Property including zoning, building, multifamily housing property tax exemption, and public works requirements and reviews, as well as issuance of appropriate City approvals and permits.

**Section 2.** Section 2 of Ordinance No. 3380-14, which reads as follows:

**Requirements.** The following requirements shall apply to the subject pilot project:

1. For purposes of this pilot project “student housing” is a permitted use in the B-3 zone at the property on the southwest corner of California Street and Oakes Avenue.
2. The building is to be used exclusively for approximately 100 units of student housing. TLC shall provide a letter to the Planning Department before January 31 each year confirming that the building is used exclusively for student housing.
3. The building shall comply with all requirements of the B-3 zone except as specifically modified in this Ordinance.
4. The off-street parking standard for student housing shall be one parking space per habitable unit in the subject building.
5. For the purposes of complying with EMC 19.34.060.A and EMC 3.78.070D7, the required off-street parking is authorized in the TLC garage by providing one off-street parking space for each habitable unit of the Footprint building.

6. When the Footprint building reaches 90% occupancy for a period of three months, Footprint shall provide the City a parking monitoring report prepared by a qualified professional with expertise in analysis of parking and transportation, to document utilization of on-street parking by building tenants, and utilization of off-street parking spaces reserved in the TLC parking garage. This plan will be reviewed by the City Traffic Engineer and the Planning Director to determine if tenants are impacting the supply of on-street parking spaces, and how many spaces are being used in the TLC garage over time. If utilization is consistently lower over a period of time approved by the City's Traffic Engineer than required in this Section, the City may reduce the required amount of off-street parking required in the TLC garage to the number determined by the Planning Director and City Traffic Engineer to be necessary to provide adequate off-street parking, and authorize an amendment to the covenant recorded on both properties accordingly (provided it is first approved by the Planning Director and City Attorney).

7. The Footprint building will be eligible for consideration for the Multiple Family Property Tax Exemption of EMC Chapter 3.78 with required off-street parking provided in the TLC parking garage per this Ordinance, provided it meets all other eligibility and design requirements of EMC 3.78 and of the B-3 zone.

8. No City building permit will be issued for the Project until 1) The developer records a covenant approved by the Planning Director and the City Attorney, with a copy of this Ordinance, restricting the use of the Project to student housing and committing to complying with the provisions of this Ordinance, including the parking requirement; 2) TLC records a covenant approved by the Planning Director and the City Attorney reserving one off-street parking space in the TLC garage at the southeast corner of California and Wetmore for each habitable unit of the building (which is anticipated to be approximately 100 units); and 3) Footprint submits and the City approves a parking management plan that describes how The developer and/or TLC will ensure that student tenants park in the TLC garage, and discourage their parking in on-street spaces. The covenants shall run with the land for both the Footprint property and the TLC parking garage property, and shall be binding upon any future owner, heir or assign.

9. The Project will be restricted exclusively to student housing. The use and the parking requirements established by this Ordinance can be changed only as described in Subsection 6 of this Section (for parking only), or by Council amending this Ordinance upon a finding that such change is in the best long term interests of the community. In the event a new use is proposed, City Council shall have the authority to establish a new off-street parking standard for said use at the time it considers the change in use.

Is hereby amended to read as follows:
Requirements. The following requirements shall apply to the subject pilot project:

1. For purposes of this pilot project “student housing” is a permitted use in the B-3 zone at the property on the southwest corner of California Street and Oakes Avenue.
2. Except as provided in Paragraph 9 of this section, the building is to be used exclusively for approximately 100 units of student housing. TLC shall provide a letter to the Planning Department before January 31 each year confirming that the building is used exclusively for student housing.
3. The building shall comply with all requirements of the B-3 zone except as specifically modified in this Ordinance.
4. The off-street parking standard for student housing shall be one parking space per habitable unit in the subject building.
5. For the purposes of complying with EMC 19.34.060.A and EMC 3.78.070D7, the required off-street parking is authorized in the TLC garage by providing one off-street parking space for each habitable unit of the building.
6. When the building reaches 90% occupancy for a period of three months, the Developer shall provide the City a parking monitoring report prepared by a qualified professional with expertise in analysis of parking and transportation, to document utilization of on-street parking by building tenants, and utilization of off-street parking spaces reserved in the TLC parking garage. This plan will be reviewed by the City Traffic Engineer and the Planning Director to determine if tenants are impacting the supply of on-street parking spaces, and how many spaces are being used in the TLC garage over time. If utilization is consistently lower over a period of time approved by the City’s Traffic Engineer than required in this Section, the City may reduce the required amount of off-street parking required in the TLC garage to the number determined by the Planning Director and City Traffic Engineer to be necessary to provide adequate off-street parking, and authorize an amendment to the covenant recorded on both properties accordingly (provided it is first approved by the Planning Director and City Attorney).
7. The building will be eligible for consideration for the Multiple Family Property Tax Exemption of EMC Chapter 3.78 with required off-street parking provided in the TLC parking garage per this Ordinance, provided it meets all other eligibility and design requirements of EMC 3.78 and of the B-3 zone.
8. No City building permit will be issued for the Project until 1) The Developer records a covenant approved by the Planning Director and the City Attorney, with a copy of this Ordinance, restricting the use of the Project to student housing and committing to complying with the provisions of this Ordinance, including the parking requirement; 2) TLC records a covenant approved by the Planning Director and the City Attorney reserving one off-street parking space in the TLC garage at the southeast corner of
California and Wetmore for each habitable unit of the building (which is anticipated to be approximately 100 units); and 3). The Developer submits and the City approves a parking management plan that describes how the Developer and/or TLC will ensure that student tenants park in the TLC garage, and discourage their parking in on-street spaces. The covenants shall run with the land for both the Developer’s property and the TLC parking garage property, and shall be binding upon any future owner, heir or assign.

9. The Project will be restricted exclusively to student housing. However, in the event that:

   a) TLC is unable to provide student housing for the Project; and
   b) Everett Community College has declined to assume TLC’s obligation to provide student housing for the Project; and
   c) Washington State University Everett has declined to assume TLC’s obligation to provide student housing for the Project; and
   d) All of these colleges combined or a combination thereof including other institutions of higher education cannot collectively meet TLC’s obligation for student housing for the Project;

Then in lieu of the continued student housing requirement, the building for the Project may be converted to non-subsidized, market-rate housing provided TLC, or its successor, owns the parking garage and is able to meet the minimum requirement of one parking space for every dwelling unit for the Project’s building which requirement shall be in a revised covenant approved by the Planning Director and City Attorney, recorded on the TLC property. The converted dwelling units shall meet applicable building code requirements for multiple family dwellings, or, if the City has established regulations allowing “micro-housing” in the B-3 zone, and the Developer proposes converting the student housing to market rate micro-housing, the converted units shall meet applicable zoning and building code requirements for such housing. The building shall be converted, occupied and managed in a manner so there is not a mix of both student housing and non-student housing. Nothing herein shall preclude a student from renting a market-rate housing unit within the building following conversion.

Section 3. Section 4 of Ordinance No. 3380-14, which reads as follows:

Effective Date - Termination. This Ordinance becomes effective 15 days after the date it becomes valid. This Ordinance shall terminate and become null and void if Footprint has failed
obtain building permits for the student housing on the Property and commenced construction of the student housing building prior to December 31, 2015.

Is hereby amended to read as follows:

**Effective Date - Termination.** This Ordinance becomes effective 15 days after the date it becomes valid. This Ordinance shall terminate and become null and void if the Developer has failed obtain building permits for the student housing on the Property and commenced construction of the student housing building prior to December 31, 2015.

**Section 4. Violation.** Failure to comply with any provision of this Ordinance will constitute a violation of the City’s Zoning Code. Further, the City is authorized to apply to any court with jurisdiction and any court upon hearing and for cause shown, may grant a preliminary, temporary or permanent injunction restraining any person, firm or corporation from violating any provision of this Ordinance and compelling compliance therewith. The violator shall comply with the injunction and pay all costs, including reasonable attorney’s fees, incurred by the City in seeking the injunction.

**Section 5. Severability.** Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 6. Corrections.** The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

**Section 7. General Duty.** It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.
ATTEST: [Signature]
CITY CLERK - Deputy

Passed: 11/5/14
Valid: 11/7/14
Published: 11/12/14
Effective Date: 11/22/14