

**RESOLUTION NO. 2013/020**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, AMENDING RESOLUTION NO. 2011/009; SUPPLEMENTING THE CITY COUNCIL'S ORIGINAL APPROVAL OF THE NORTH KELSEY, LLC DEVELOPMENT AGREEMENT TO REEVALUATE AND ENSURE THE UNDERLYING PROJECT'S COMPLIANCE WITH APPLICABLE PUBLIC OPEN SPACE AREA LIGHTING AND SEATING GUIDELINES; ENTERING SUPPORTIVE FINDINGS AND CONCLUSIONS; AND PROVIDING DIRECTION TO STAFF.

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WHEREAS, through passage of Resolution No. 2011/009, the Monroe City Council approved a Development Agreement with North Kelsey, LLC with respect to the use and development of certain real property located in the North Kelsey Planning Area; and

WHEREAS, in accordance with a limited remand ordered by the Washington Court of Appeals, the City Council has conducted a new public hearing on the proposed development's compliance with certain lighting and seating standards contained in the North Kelsey Design Guidelines; and

WHEREAS, upon careful consideration of all relevant testimony and evidence submitted, the Monroe City Council desires to affirm the proposed development's compliance with the above-referenced standards; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Amendment of Resolution No. 2011/009. Resolution No. 2011/009 is hereby amended by the addition of a new Attachment "A" to provide in its entirety as set forth in Attachment "A" hereto, said attachment being hereby incorporated herein as if set forth in full. The findings, conclusions and other provisions set forth in Attachment "A" shall be deemed to supersede any conflicting or inconsistent findings, conclusions or other provisions in Resolution 2011/009 to, and only to, the extent of such conflict or inconsistency.

Section 2. Intent. The sole purpose of this resolution is to comply with the Court of Appeals' decision in *Friends of North Kelsey v. City of Monroe et al* (Case No. 68463-9-I) with respect to the lighting and seating issues remanded by the Court for further proceedings. This resolution shall be construed in furtherance of this purpose. Except as expressly provided herein, the City Council does not intend, and hereby expressly disclaims, any intent to re-open any other aspect of the approval(s) previously granted under Resolution No. 2011/009, or to otherwise disturb any finding or conclusion set forth therein.

Section 3. Notice of Decision. The Community Development Director is hereby authorized and directed to prepare and issue a Notice of Decision for this approval in accordance with applicable state law and local regulations.

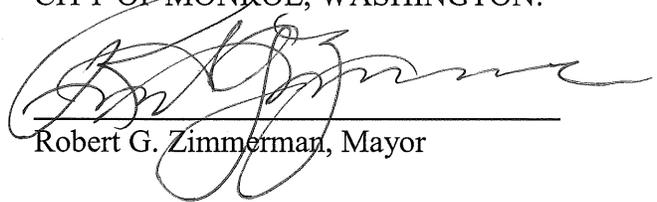
Section 4. Appeal; Reconsideration. The City Council decision effectuated by this resolution is appealable to the Snohomish County Superior Court in accordance with MMC 21.060.030 and Chapter 36.70C RCW. The City Council's decision is also subject to reconsideration pursuant to MMC 21.50.080, which provides as follows:

**21.50.080 Reconsideration.**

A party to a public hearing or closed record appeal may seek reconsideration only of a recommendation or a decision by the hearing examiner or hearing body by filing a written request for reconsideration with the community development department within ten calendar days following issuance of the written final decision. All motions for reconsideration shall state specific errors of facts or law. Failure to do so will be grounds for nonconsideration. The hearing examiner or hearing body shall consider the request, without any public comment or argument. Reconsideration will be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision. If a request for reconsideration is accepted, a decision or recommendation is not final until after a decision on the reconsideration request has been issued.

RESOLVED this 2<sup>nd</sup> day of July, 2013.

CITY OF MONROE, WASHINGTON:



Robert G. Zimmerman, Mayor

ATTEST/AUTHENTICATED:



Eadye Martinson, Deputy City Clerk

APPROVED AS TO FORM:



J. Zachary Lell, City Attorney

## Attachment "A"

### Limited Remand Issues: Lighting and Seating

Section I. Findings and Conclusions. As its findings and conclusions in support of its approval decision on remand herein, the City Council hereby adopts and incorporates by reference the Staff Report & Recommendation prepared for the July 2, 2013, public hearing. Anything contained in the above-referenced staff report that could be construed as a finding is expressly adopted as such. Anything contained in the above-referenced staff report that could be construed as a conclusion is expressly adopted as such. The City Council further enters the following findings and conclusions:

#### A. Findings

1. In accordance with RCW 36.70B.200 and the Court of Appeals' opinion in *Friends of North Kelsey v. City of Monroe et al* (Case No. 68463-9-I), the City Council conducted a duly noticed public hearing on July 2, 2013. The public hearing was limited to testimony, information and argument pertaining to the two aspects of the underlying development proposal remanded by the Court of Appeals for further administrative proceedings: (i) Compliance with the lighting standards set forth in the North Kelsey Design Guidelines, Chapter 3 – Site Planning, Section A, Public Open Space, Number 4 – Pedestrian Open Spaces, Guideline Number 3, and (ii) compliance with the seating standards set forth in the North Kelsey Design Guidelines, Chapter 3 – Site Planning, Section A Public Open Space, Number 4 – Pedestrian Open Spaces, Guideline Number 6.

2. At the July 2, 2013, remand hearing, the City Council heard presentations by City staff and the applicant and accepted oral testimony from the public. All interested parties were afforded an opportunity to address the City Council at the hearing.

3. Under explanatory cover correspondence, the applicant has submitted a revised site plan, a plaza enhancement exhibit, and examples of plaza area seating and pedestrian scale lighting. The revised site plan identifies seating areas and pedestrian scale lighting for the development proposal.

4. At the conclusion of the deliberative phase of the July 2, 2013, remand hearing, the City Council voted to amend Resolution No. 2011/009 by passage of this resolution.

#### B. Conclusions

1. As demonstrated by the applicant's revised site plan, the associated submittals and relevant testimony, the underlying project complies with the lighting standards set forth in the North Kelsey Design Guidelines, Chapter 3 – Site Planning, Section A, Public Open Space, Number 4 – Pedestrian Open Spaces, Guideline Number 3.

2. As demonstrated by the applicant's revised site plan, the associated submittals and relevant testimony, the underlying project complies with the seating standards set

forth in the North Kelsey Design Guidelines, Chapter 3 – Site Planning, Section A Public Open Space, Number 4 – Pedestrian Open Spaces, Guideline Number 6.

3. Without prejudice to the foregoing, the City Council further concludes that even if the applicant's proposal did not strictly satisfy the above-referenced standards, the applicant's proposal meets the intent of the Design Guidelines by providing pedestrian lighting and seating amenities in a manner harmonious with, complementary to, and appropriate for the surrounding aesthetic, site configuration and public open space features of the larger development proposal as previously approved under Resolution No. 2011/009.

4. The City Council concurs in the manner in which the two issues remanded by the Court of Appeals have been reviewed and processed by the City.

Section II. Condition. Without prejudice to any other requirement, standard or condition applicable to the Development Agreement, the underlying project is expressly conditioned upon compliance with the lighting and seating standards addressed in this resolution. Specific compliance shall be verified by City staff in accordance with applicable City permitting procedures, and no building permits for the underlying project shall be issued until such verification occurs.