SEATTLE CITY COUNCIL

Legislative Summary

CB 118736

Record No.: CB 118736 **Type:** Ordinance (Ord) **Status:** Passed

Version: 3 **Ord. no:** Ord 125108 **In Control:** City Clerk

File Created: 07/12/2016

Final Action: 08/17/2016

Title: AN ORDINANCE relating to land use and zoning; adding a new Chapter 23.58C of the Seattle Municipal Code (SMC) to establish the framework for mandatory housing affordability for residential development; and amending Section 23.34.004, subsections 23.40.020.A, 23.76.006.B, and 23.76.032.B, Sections 23.90.002 and 23.90.015, and subsection 23.90.018.C of the SMC.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Johnson

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments: Att A - Findings of Fact

Drafter: patrick.wigren@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File **Legal Notice Published:** ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	07/13/2016	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office **Notes:**						
1	Council President's Office	07/13/2016	sent for review	Planning, Land Use, and Zoning Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Planning, Land Use, and Zoning Committee **Notes:**						
1	Full Council	07/18/2016	referred	Planning, Land Use, and Zoning Committee			
	Action Text: The Council Bill (CB) was referred. to the Planning, Land Use, and Zoning Committee **Notes:**						

1 Planning, Land Use, and Zoning Committee 07/19/2016 discussed

Action Text: The Council Bill (CB) was discussed in Committee.

Notes:

1 Planning, Land Use, and Zoning Committee 08/02/2016 pass as amended Pass

Action Text: The Committee recommends that Full Council pass as amended the Council Bill (CB).

In Favor: 5 Chair Johnson, Vice Chair O'Brien, Member Herbold, Alternate González , Burgess

Opposed: 0

2 Full Council 08/15/2016 passed as amended Pass

Action Text: The Motion carried, the Council Bill (CB) was passed as amended by the following vote, and the President signed the Bill:

Notes: ACTION 1:

Motion was made by Councilmember O'Brien, duly seconded and carried, to amend Council Bill 118736, by amending Seattle Municipal Code Section 23.58.C, Section 1.B, as shown in the strike through and underlined language below.

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B. Amendment of payment and performance amounts

1. Ongoing review. The Council directs that, during the first six months of 2018 and annually after July 1, 2018, the Director of the Seattle Department of Construction and Inspections (SDCI) and Director of Housing shall report on the performance of the mandatory affordable housing program provided in Chapter 23.58C, including the amount of payments collected under the payment option, the number of units produced with such payments, and the number of units constructed through the performance option. The July 1, 2018 report shall compare changes in the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, WA, All Items (1982-1984 = 100), with changes in multifamily residential rents and other housing market variables used to determine initial payment amounts since passage of the Ordinance introduced as Council Bill 118736. If the Consumer Price Index has lagged or exceeded rents or other housing market

variables, the Director of Housing shall propose an alternative measure or index upon which to base changes in program requirements. The July 1, 2019 report should include an assessment of past and anticipated program performance, including an assessment of whether a developer building outside of the Downtown and South Lake Union Urban Centers would be economically indifferent between performance and payment given market conditions at that time. If the Council determines that ~~adopted in-lieu fee payments for~~ developers of projects, other than smaller projects and projects ~~out~~inside of the Downtown and South Lake Union Urban Centers~~,~~ favor the payment option, the Council will consider raising payment amounts to avoid a bias towards payment, consistent with statutory authority. Units produced under the mandatory housing affordability program provided in Chapter 23.58C shall be measured as net new units. Existing rent- and income-restricted affordable units demolished for development subject to the program are subtracted from the target production.

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ACTION 3:

Motion was made by Councilmember Johnson, duly seconded and carried, to amend Council Bill 118736, by adding a new Section 1, and Attachment A, as shown in the underlined language below, and by renumbering the remaining sections accordingly:

Section 1. The City Council hereby makes the Findings of Fact in Attachment A to this ordinance.

ACTION 4:

Motion was made and duly seconded to pass Council Bill 118736 as amended.

		In Favor: 8	Councilmember Bagshaw, Councilmember Burgess, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien	
		Opposed: 0		
3	City Clerk	08/16/2016	submitted for Mayor's signature	Mayor
3	Mayor	08/17/2016	Signed	
	Action Text:	The Council Bill (CB) was Signed.		
	Notes:			
3	Mayor	08/17/2016	returned	City Clerk
3	City Clerk	08/17/2016	attested by City Clerk	
	Action Text:	The Ordinance (Ord) was attested by City Clerk.		
	Notes:			

CITY OF SEATTLE

ORDINANCE 125108

COUNCIL BILL 118736

AN ORDINANCE relating to land use and zoning; adding a new Chapter 23.58C of the Seattle Municipal Code (SMC) to establish the framework for mandatory housing affordability for residential development; and amending Section 23.34.004, subsections 23.40.020.A, 23.76.006.B, and 23.76.032.B, Sections 23.90.002 and 23.90.015, and subsection 23.90.018.C of the SMC.

WHEREAS, in May 2013 the City Council adopted Resolution 31444, which established a work program for reviewing and potentially modifying the City's affordable housing incentive programs; and

WHEREAS, according to Resolution 31444, the City Council commissioned reports examining national best practices for increasing the availability of affordable housing to identify new strategies for Seattle; and

WHEREAS, in September 2014 the City Council adopted Resolution 31546, in which the Council and Mayor proposed that a Seattle Housing Affordability and Livability Agenda (HALA) Advisory Committee be jointly convened by the Council and the Mayor to evaluate potential housing strategies; and

WHEREAS, the HALA Advisory Committee provided final recommendations to the Mayor and City Council on July 13, 2015; and

WHEREAS, the HALA Advisory Committee recommended extensive citywide upzoning of residential and commercial zones and, in connection with such upzones, implementation of a mandatory inclusionary housing requirement for new construction residential development and commercial linkage fees for new construction commercial development; and

WHEREAS, the HALA Advisory Committee recommended that the mandatory inclusionary housing requirement offer developers the option of building affordable housing or making a cash contribution to fund preservation and production of affordable housing, and that the requirement be implemented upon approval of extensive citywide upzoning of residential and commercial zones; and

WHEREAS, in November 2015 the City Council adopted Resolution 31612, stating the Council's intent to make changes to zoning and land use regulations to implement a mandatory inclusionary affordable housing program for residential development recommended by the HALA Advisory Committee and the Mayor; and

WHEREAS, the City has the authority to require mandatory housing affordability for residential development according to its police power; and

WHEREAS, a mandatory housing affordability requirement for residential development is one of many actions the City intends to undertake to implement the Comprehensive Plan's goals and policies for housing affordability; and

WHEREAS the Countywide Planning Policies, as ratified by the King County Council, provide that jurisdictions may consider a full range of programs, from optional to mandatory, that will assist in meeting the jurisdiction's share of the countywide need for affordable housing; and

WHEREAS, one of the City's planning goals under the Growth Management Act, chapter 36.70A RCW, is to make adequate provision for the housing needs of all economic segments of the city; and

WHEREAS, the Affordable Housing Incentives Program Act, RCW 36.70A.540, authorizes and encourages cities to enact or expand affordable housing incentive programs providing for

the development of low-income housing units through development regulations or conditions on rezoning or permit decisions, or both; and

WHEREAS, according to the Affordable Housing Incentives Program Act, jurisdictions may establish a minimum amount of affordable housing that must be provided by all residential developments in areas where increased residential development capacity has been provided; and

WHEREAS, to facilitate implementation of a mandatory housing affordability requirement for residential development as recommended by the HALA Advisory Committee, the City Council deems it advisable to promptly adopt the governing framework for such a program; and

WHEREAS, the July 13, 2015, Statement of Intent for Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee (commonly referred to as the "Grand Bargain") states that the mandatory housing affordability requirements for residential and commercial development should achieve a projected production level by 2025 of no less than 6,000 units of housing affordable to households with incomes no greater than 60 percent of median income, and that, if the projected production level falls below the target, all parties agree to develop and consider options to achieve the agreed-upon production target; and

WHEREAS, this ordinance provides a framework by which residential development in areas receiving increases in residential development capacity will be required to provide affordable housing, as authorized by RCW 36.70A.540; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council hereby makes the Findings of Fact in Attachment A to this ordinance.

Section 2. The Council expresses the following intent as to implementation of Seattle Municipal Code Chapter 23.58C:

A. Initial implementation

1. The Council intends that the initial implementation phase of Seattle Municipal Code Chapter 23.58C will consist of:

a. An increase in residential development capacity for all zones in the Downtown and South Lake Union Urban Centers except the Downtown Harborfront 1 (DH-1), International District Mixed 75-85 (IDM 75-85), Pike Market Mixed (PMM), Pioneer Square Mixed (PSM), Seattle Mixed 85/65-160 (SM 85/65-160), Seattle Mixed 85-240 (SM 85-240), and Commercial 2-40 (C2-40) zones, to be enacted no later than September 2016;

b. Zone-wide increases in residential development capacity in all Neighborhood Commercial (NC), Commercial (C), Seattle Mixed (SM), Lowrise (LR), Midrise (MR), and Highrise (HR) zones, and zoning changes to increase the residential development capacity of lands zoned single-family within designated Urban Villages and Urban Centers, outside the Downtown and South Lake Union Urban Centers, to be enacted no later than September 2017; and

c. Increases in residential development capacity through rezones of any portions of the University District that are upzoned in accordance with the University District urban design framework process.

2. Setting initial payment and performance amounts

a. Payment and performance amounts are not included in Chapter 23.58C in this Council Bill 118736. Payment and performance amounts for particular zones will be added to Tables A and B for 23.58C.040 and Tables A and B for 23.58C.050 at the time development capacity is increased in those zones during the initial implementation phase according to subsection A.1 of this section. The Council intends to consider whether to include higher performance and payment amounts, subject to statutory limits, for those areas where the increase in development capacity would be likely to increase displacement risk. Factors to consider are (a) areas that have been identified in *Seattle 2035, Growth and Equity, Analyzing Impacts on Displacement and Opportunity Related to Seattle's Growth Strategy*, May 2016, as having a high displacement risk; (b) areas where the increment of increased development capacity is greater than the standard MHA-implementing zone change; and (c) areas where planning processes, including, but not limited to, the SEPA process for MHA-R implementation have identified affordable units at risk of demolition, the Council will consider whether to implement additional or alternate MHA program measures to increase affordable units sufficient to offset the affordable units at risk of demolition as a result of the increase in development capacity due to MHA.

b. The Council recognizes that, after Chapter 23.58C is amended to include payment and performance amounts for particular zones, additional amendments to the payment and performance amounts provided in Chapter 23.58C for those zones may be needed during the initial implementation phase according to subsection A.1 of this section to further the target production level of no less than 6,000 affordable units for households with incomes no higher than 60 percent of median income over a ten-year period described in the July 13, 2015, Statement of Intent for Basic Framework for Mandatory Inclusionary Housing and Commercial

Linkage Fee. Such amendments could include changes to the payment and performance amounts in Tables A and B for 23.58C.040 and Tables A and B for 23.58C.050, and adding amounts for additional zones or portions of zones in connection with rezones of specific subareas such as portions of the University District. The Council intends that amendments during the initial implementation phase be preceded by a robust stakeholder engagement process including representatives of the for-profit and non-profit development sectors who participated in the July 13, 2015, Statement of Intent for Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee.

B. Amendment of payment and performance amounts

1. Ongoing review. The Council directs that, during the first six months of 2018 and annually after July 1, 2018, the Director of the Seattle Department of Construction and Inspections (SDCI) and Director of Housing shall report on the performance of the mandatory affordable housing program provided in Chapter 23.58C, including the amount of payments collected under the payment option, the number of units produced with such payments, and the number of units constructed through the performance option. The July 1, 2018 report shall compare changes in the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, WA, All Items (1982-1984 = 100), with changes in multifamily residential rents and other housing market variables used to determine initial payment amounts since passage of the Ordinance introduced as Council Bill 118736. If the Consumer Price Index has lagged or exceeded rents or other housing market variables, the Director of Housing shall propose an alternative measure or index upon which to base changes in program requirements. The July 1, 2019 report should include an assessment of past and anticipated program performance, including an assessment of whether a developer building outside of the Downtown and South

Lake Union Urban Centers would be economically indifferent between performance and payment given market conditions at that time. If the Council determines that developers of projects, other than smaller projects and projects inside of the Downtown and South Lake Union Urban Centers, favor the payment option, the Council will consider raising payment amounts to avoid a bias towards payment, consistent with statutory authority. Units produced under the mandatory housing affordability program provided in Chapter 23.58C shall be measured as net new units. Existing rent- and income-restricted affordable units demolished for development subject to the program are subtracted from the target production.

2. Post-initial implementation phase review. Except as provided according to subsection B.3 of this section, the Council intends that, after the completion of the initial implementation phase according to subsection A.1 of this section, amendments to the payment and performance amounts in Tables A and B for 23.58C.040 and Tables A and B for 23.58C.050 shall be consistent with the following provisions:

a. Amendments may be considered if:

1. After five years from the effective date of the ordinance introduced as Council Bill 118736, there is a failure to meet expectations for program performance;

2. There are significant positive or negative changes in real estate development market conditions;

3. There is a need to adjust the relationship between the amounts for the payment option according to Section 23.58C.040 and the performance option according to Section 23.58C.050; or

4. None of the preceding criteria is met and ten years have elapsed since the completion of the initial implementation phase according to subsection A.1 of this section.

b. If amendments are considered according to subsection B.2.a of this section, the Mayor and Council shall appoint a Technical Review Committee whose membership includes appropriate stakeholder representation, including representatives of the for-profit and non-profit development sectors and members of community-based groups, and shall provide the Committee with clear objectives to be accomplished by a revision of the payment and performance amounts in Chapter 23.58C.

c. If appointed, the Technical Review Committee shall recommend amendments to the payment and performance amounts in Tables A and B for 23.58C.040 and Tables A and B for 23.58C.050. The Mayor shall consider the Technical Review Committee's recommendations and shall transmit them to the Council along with any recommendation by the Mayor for amendments.

3. Amendments concurrent with increased capacity. In conjunction with any increase in residential development capacity other than those increases in development capacity identified according to subsection A.1 of this section, the Council will apply Chapter 23.58C to the zones in which capacity is increased and may amend Tables A and B for 23.58C.040 and Tables A and B for 23.58C.050 for those zones in which capacity is increased.

C. Process for modifications of development standards

1. The Council intends that, at the time reference to Chapter 23.58C is made in the provisions of a zone, Land Use Code changes will be adopted providing a process by which the Director of SDCI would be authorized to modify certain dimensional development standards to

ensure that, in most cases, utilization of the increased development capacity is not prohibited by development standards. The provisions for such modification of development standards are not included in Chapter 23.58C in this Council Bill 118736, but placeholders for references to such provisions are included in this Council Bill 118736 by using the language "[CODE SECTION RESERVED]."

2. To enable development of such Land Use Code changes, the Director of SDCI shall report on which development standards, if any, might be appropriate for modification in particular zones and the extent to which modifications might be allowed from particular standards.

3. If there are cases in which a portion of the increased development capacity cannot be used because of a development standard from which a modification is not available or is not granted, and not because of decisions of the applicant, the Council intends that any development standard modification process will provide for a reduction of the payment and/or performance amounts. The expectation is that the number of cases where development standards would preclude use of some of the additional capacity, such that payment and/or performance amounts would be reduced, would be limited. Specific provisions for such modification of payment and/or performance amounts are not included in Chapter 23.58C in this Council Bill 118736, but a placeholder for such provisions is included in this Council Bill 118736 as subsection 23.58C.035.B.

4. The intent is that the need for the provisions described in this subsection C for modification of development standards and payment and/or performance amounts will be reevaluated after five years from the effective date of the ordinance introduced as Council Bill 118736 and that these provisions ultimately will be phased out.

Section 3. Section 23.34.004 of the Seattle Municipal Code, which section was last amended by Ordinance 123913, is amended as follows:

23.34.004 Contract rezones

A. Property Use and Development Agreement. The Council may approve a map amendment subject to the execution, delivery, and recording of a property use and development agreement (PUDA) executed by the legal or beneficial owner of the property to be rezoned containing self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone. All restrictions imposed by the PUDA shall be directly related to the impacts that may be expected to result from the rezone.

B. Notwithstanding any contrary provision of subsection 23.34.004.A, the Council may approve a map amendment subject to execution, delivery, and recording of a property use and development agreement (PUDA) executed by the legal or beneficial owner of the property to be rezoned containing self-imposed restrictions applying the provisions of Chapter 23.58B or Chapter 23.58C to the property. The Director shall by rule establish payment and performance amounts for purposes of subsections 23.58C.040.A and 23.58C.050.A that shall apply to a contract rezone until Chapter 23.58C is amended to provide such payment and performance amounts for the zone designation resulting from a contract rezone.

C. A contract rezone shall be conditioned on performance or compliance with the terms and conditions of the PUDA. Council may revoke a contract rezone or take other appropriate action allowed by law for failure to comply with a PUDA. The PUDA shall be approved as to form by the City Attorney, and shall not be construed as a relinquishment by the City of its discretionary powers.

((~~B~~)) D. Waiver of Certain Requirements. The ordinance accepting the PUDA may waive specific bulk or off-street parking and loading requirements if the Council determines that the waivers are necessary under the agreement to achieve a better development than would otherwise result from the application of regulations of the zone. No waiver of requirements shall be granted that would be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

Section 4. A new Chapter 23.58C is added to Division 2, Authorized Uses and Development Standards, within Subtitle III, Land Use Regulations, of Title 23 of the Seattle Municipal Code as follows:

Chapter 23.58C Mandatory Housing Affordability for Residential Development

23.58C.005 Intent for implementation

Section 1 of the ordinance introduced as Council Bill 118736 provides a statement of intent for implementation of this Chapter 23.58C that generally addresses the Council's intent as to an initial implementation phase of this Chapter 23.58C, the setting and changing of payment and performance amounts during that initial implementation phase, review of program performance, the amendment of payment and performance amounts after the initial implementation phase, and the establishment of additional processes for modifying dimensional development standards and/or payment and performance amounts.

23.58C.010 Purpose

The purpose of this Chapter 23.58C is to implement an affordable housing incentive program authorized by RCW 36.70A.540, as it may be amended, as well as by other authority.

23.58C.015 Scope of chapter

This Chapter 23.58C contains requirements that apply only where provisions of the zone refer to this Chapter 23.58C, or through the terms of a contract rezone according to Section 23.34.004.

23.58C.020 Definition

For purposes of this Chapter 23.58C, unless otherwise specified in this Chapter 23.58C, the term "unit" refers to a dwelling unit, except an accessory dwelling unit or detached accessory dwelling unit; live-work unit; or congregate residence sleeping room.

23.58C.025 Applicability and general requirements

A. General. If an applicant seeks approval of a permit for development as described according to subsection 23.58C.025.B, the applicant shall comply with this Chapter 23.58C, either through the payment option according to Section 23.58C.040 or the performance option according to Section 23.58C.050.

B. Applicability. Except as provided according to subsection 23.58C.025.C, this Chapter 23.58C shall apply to development that includes units, whether such development occurs through one or more of the following:

1. Construction of a new structure;

2. Construction of an addition to an existing structure that results in an increase in the total number of units;

3. Alterations within an existing structure that result in an increase in the total number of units; or

4. Change of use that results in an increase in the total number of units.

C. Exemptions. Development is exempt from the requirements of this Chapter 23.58C if it receives public funding and/or an allocation of federal low-income housing tax credits, and is subject to a regulatory agreement, covenant or other legal instrument recorded on the property title and enforceable by The City of Seattle, Washington State Housing Finance Commission, State of Washington, King County, U.S. Department of Housing and Urban Development, or other similar entity as approved by the Director of Housing, which restricts at least 40 percent of the units to occupancy by households earning no greater than 60 percent of median income, and controls the rents that may be charged, for a minimum period of 40 years.

D. Relationship to incentive zoning. Where the provisions of the zone refer to this Chapter 23.58C and where bonus residential floor area or extra residential floor area may be achieved according to the provisions of the zone and/or Chapter 23.58A, the following provisions apply:

1. All affordable housing requirements for achieving bonus residential floor area or extra residential floor area according to the provisions of the zone and/or Chapter 23.58A shall be satisfied solely by compliance with this Chapter 23.58C.

2. Any non-housing requirements for achieving bonus residential floor area or extra residential floor area shall be satisfied according to the provisions of the zone and/or Chapter 23.58A.

23.58C.030 Permit documentation

A. General

1. For any development to which this Chapter 23.58C applies, the Master Use Permit application and the first building permit application that includes the structural frame for the structure shall include the following:

a. If the applicant elects the payment option, the amount of the required cash contribution according to subsection 23.58C.040.A;

b. If the applicant elects the performance option, the number of units required to be provided according to subsection 23.58C.050.A, the amount of any cash contribution according to subsection 23.58C.050.A.3.b, and a proposal for units that meet the requirements according to subsection 23.58C.050.C; and

c. If the applicant seeks relief according to [CODE SECTION RESERVED] or seeks a modification according to subsection 23.58C.035.B or subsection 23.58C.035.C, the earliest application according to this subsection 23.58C.030.A.1 shall include requests for such relief or modifications including all supporting materials required for a decision on the requests.

2. The Director shall, as a Type I decision and in consultation with the Director of Housing, determine:

a. If the applicant elects to comply with this Chapter 23.58C through the payment option according to Section 23.58C.040, the amount of the cash contribution;

b. If the applicant elects to comply with this Chapter 23.58C through the performance option according to Section 23.58C.050, the number of units that shall meet the requirements according to subsection 23.58C.050.C, the amount of any cash contribution according to subsection 23.58C.050.A.3.b, and the compliance of the proposal required according to subsection 23.58C.030.A.1.b with the requirements according to subsection 23.58C.050.C.

3. The Director shall, as a special exception according to Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions, in consultation with the

Director of Housing, determine any modification according to subsections 23.58C.035.B and 23.58C.035.C.

4. The final plans that include the structural frame for the structure shall demonstrate compliance with the requirements according to Section 23.58C.040 or Section 23.58C.050 and state the ongoing requirements according to Section 23.58C.050.

5. If the applicant elects to comply with this Chapter 23.58C through the performance option according to Section 23.58C.050, the requirements according to Section 23.58C.050 shall be considered terms of the first building permit that includes the structural frame for the structure.

6. Unit substitution according to subsection 23.58C.050.C.6.f and conversion to ownership housing according to subsection 23.58C.050.C.6.i shall require a separate review and approval by the Director in consultation with the Director of Housing.

B. Timing

1. Master Use Permit. Prior to the issuance of a Type II Master Use Permit, the applicant shall provide the following:

a. If the applicant elects the payment option, the amount of the required cash contribution according to subsection 23.58C.040.A; or

b. If the applicant elects the performance option, the number of units required to be provided according to subsection 23.58C.050.A, the amount of any cash contribution according to subsection 23.58C.050.A.3.b, a proposal for units that meet the requirements according to subsection 23.58C.050.C, and a draft agreement according to subsection 23.58C.050.E.

2. Building permit. Prior to issuance of the first building permit that includes the structural frame for the structure, the applicant shall provide the following:

a. If the applicant elects to comply with this Chapter 23.58C through the payment option according to Section 23.58C.040:

1) Final plans that include the structural frame for the structure showing the calculation of the amount of the required cash contribution according to subsection 23.58C.040.A; and

2) Documentation from the Director of Housing of receipt of payment of the required cash contribution according to subsection 23.58C.040.A; or

b. If the applicant elects to comply with this Chapter 23.58C through the performance option according to Section 23.58C.050:

1) Final plans that include the structural frame for the structure that:

a) Include the calculation of the number of units required to be provided according to subsection 23.58C.050.A;

b) Demonstrate compliance with the requirements according to Section 23.58C.050 and state the ongoing requirements according to Section 23.58C.050; and

c) Include the calculation of the amount of any cash contribution according to subsection 23.58C.050.A.3.b;

2) Documentation from the Director of Housing of receipt of payment of any cash contribution according to subsection 23.58C.050.A.3.b; and

3) The executed and recorded agreement required according to subsection 23.58C.050.E.

c. The applicant may change its election between performance and payment prior to issuance of the first building permit that includes the structural frame for the structure, provided that an applicant changing its election shall obtain any necessary approvals affected by the change in election. Review and approval of a change in election between performance and payment is a Type I decision, unless the requested change affects a modification according to subsection 23.58C.035.C.

23.58C.035 Modification of payment/performance amounts

A. General

1. An applicant may request a modification, according to this Section 23.58C.035, of the amount of payment required according to subsection 23.58C.040.A or the amount of performance required according to subsection 23.58C.050.A.

2. An applicant requesting a modification according to subsection 23.58C.035.B shall have requested any available relief according to [CODE SECTION RESERVED], and the Director will evaluate relief according to [CODE SECTION RESERVED] before evaluating a modification according to subsection 23.58C.035.B. An applicant requesting a modification according to subsection 23.58C.035.C shall have requested any available relief according to [CODE SECTION RESERVED] and any available modification according to subsection 23.58C.035.B, and the Director will evaluate relief according to [CODE SECTION RESERVED] and a modification according to subsection 23.58C.035.B before evaluating a modification according to subsection 23.58C.035.C.

3. The decision on any modification according to subsection 23.58C.035.B or subsection 23.58C.035.C shall specify a per-square-foot payment amount for the development and/or a percentage of units in each structure that shall meet the requirements of subsection 23.58C.050.C, as applicable, that can be applied to the final plans for the development or, in the case of a modification according to subsection 23.58C.035.C, an absolute payment amount for the development or number of units in each structure that shall meet the requirements according to subsection 23.58C.050.C along with a limitation on the degree of change in the final plans that is permissible without a redetermination of the modification.

B. [Reserved]

C. Modification based on severe economic impact

1. The purpose of this subsection 23.58C.035.C is to allow the Director to modify the amount of payment required according to subsection 23.58C.040.A or the amount of performance required according to subsection 23.58C.050.A if the applicant can demonstrate facts supporting a determination of severe economic impact at such a level that a property owner's constitutional rights may be at risk.

2. For purposes of this subsection 23.58C.035.C, the Director is not making a determination of the constitutional rights of a property owner, but instead is reviewing the credibility and strength of facts demonstrating severe economic impact.

3. The Director may, as a special exception according to Chapter 23.76, waive or reduce the amount of payment required according to subsection 23.58C.040.A or the number of units required to meet the requirements according to subsection 23.58C.050.C if the applicant shows that application of the requirements of this Chapter 23.58C would:

a. Create severe economic impact by depriving a property owner of all economically beneficial use of the property; or

b. Create severe economic impact, not reaching deprivation of all economically beneficial use, but reaching the level of an undue burden that should not be borne by the property owner.

4. In determining whether there is a severe economic impact reaching the level of an undue burden that should not be borne by the property owner, the Director may weigh the following nonexclusive factors:

a. The severity of the economic impact caused by the application of the requirements of this Chapter 23.58C;

b. The degree to which the requirements of this Chapter 23.58C were or could have been anticipated;

c. The extent to which alternative uses of the property or configurations of the proposed development would alleviate the need for the requested waiver or reduction;

d. The extent to which any economic impact was due to decisions by the applicant and/or property owner; and

e. Other factors relevant to whether the burden should be borne by the property owner.

5. The waiver or reduction may be approved only to the extent necessary to grant relief from the severe economic impact.

6. A request to the Director for a modification according to this subsection 23.58C.035.C shall include, at a minimum, all of the following:

a. A description of the requested waiver or reduction, including the proposed payment or performance amount;

b. Documentation showing that any relief available according to [CODE SECTION RESERVED] or subsection 23.58C.035.B would not eliminate the need for the requested waiver or reduction;

c. The identity of the property owner and the date of the owner's acquisition of the property;

d. Documentation showing the use of the property at the time of the request or, if the property is vacant at that time, the use of the property prior to commencement of vacancy;

e. Documentation explaining and supporting the claim of economic impact; and

f. Documentation showing that a different development configuration that satisfied the requirements of this Chapter 23.58C would not alleviate the need for the requested waiver or reduction.

7. The applicant shall provide any additional information as may be required by the Director to make a determination on the request. The applicant shall have the burden of proving by a preponderance of the evidence that a waiver or reduction authorized according to this subsection 23.58C.035.C is justified.

8. None of the following, standing alone and without consideration of the full range of relevant factors including those according to subsection 23.58C.035.C.4, shall be a sufficient basis for the Director to grant a waiver or reduction authorized according to this subsection 23.58C.035.C:

a. The fact of a decrease in property value;

b. The fact that a property owner is unable to utilize the full amount of any increase in residential development capacity enacted in connection with implementation of this Chapter 23.58C in the zone in which the property is located; or

c. The fact that any such increase in residential development capacity, combined with the requirements of this Chapter 23.58C, did not leave the property owner in a better financial position than would have been the case with no increase in residential development capacity and no application of the requirements of this Chapter 23.58C.

9. In any appeal to the Hearing Examiner, the parties will have an additional opportunity to make a record on the factual issues consistent with due process.

23.58C.040 Affordable housing – Payment option

A. Payment amount

1. An applicant complying with this Chapter 23.58C through the payment option shall provide a cash contribution to the City, calculated by multiplying the payment amount per square foot according to Table A or Table B for 23.58C.040 and Map A for 23.58C.050, as applicable, by the total gross floor area in the development, excluding the floor area of parking located in stories or portions of stories that are underground, as follows:

a. In the case of construction of a new structure, the gross floor area in residential use and the gross floor area of live-work units;

b. In the case of construction of an addition to an existing structure that results in an increase in the total number of units within the structure, the gross floor area in residential use and the gross floor area of live-work units in the addition;

c. In the case of alterations within an existing structure that result in an increase in the total number of units within the structure, the gross floor area calculated by dividing the total gross floor area in residential use and gross floor area of live-work units by the total number of units in the proposed development, and multiplying that quotient by the net increase in units in the structure;

d. In the case of change of use that results in an increase in the total number of units, the gross floor area that changed to residential use or live-work units; or

e. Any combination of the above.

Table A for 23.58C.040 Payment calculation amounts: inside Downtown and SM-SLU zones	
Zone category	**Dollars per square foot of gross floor area according to subsection 23.58C.040.A.1**
[RESERVED]	[RESERVED]

Table B for 23.58C.040 Payment calculation amounts: outside Downtown and SM-SLU zones			
Zone category	**Dollars per square foot of gross floor area according to subsection 23.58C.040.A.1**		
	Low	**Medium**	**High**
[RESERVED]	[RESERVED]	[RESERVED]	[RESERVED]
The location of the zone, by low, medium, or high area, is as shown on Map A for 23.58C.050.			

2. Automatic adjustments to initial payment amounts. On March 1, 2017, and on the same day each year thereafter, the amounts for payment calculations according to Table A and Table B for 23.58C.040 shall automatically adjust in proportion to the annual change for the previous calendar year (January 1 through December 31) in the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, WA, All Items (1982-1984 = 100), as determined by the U.S. Department of Labor, Bureau of Labor Statistics or successor index.

B. Use of cash contributions

1. The Director of Housing shall be authorized to accept all cash contributions on behalf of the City. Cash contributions shall be deposited by the Director of Housing in a special account and shall be used for purposes authorized by RCW 36.70A.540. Earnings on balances in the special account shall accrue to that account.

2. Income levels

a. Rental housing supported by cash contributions shall be rent- and income-restricted to serve households with incomes no greater than 60 percent of median income for a minimum period of 50 years, with an expectation of ongoing affordability.

b. Ownership housing supported by cash contributions shall be priced to serve and sold to households with incomes no greater than 80 percent of median income for a minimum period of 50 years, with an expectation of ongoing affordability.

3. Location. For purposes of determining the location for use of cash contributions, the City shall consider the extent to which the housing supported by cash contributions advances the following factors:

a. Affirmatively furthering fair housing choice;

b. Locating within an urban center or urban village;

c. Locating in proximity to frequent bus service or current or planned light rail or streetcar stops;

d. Furthering City policies to promote economic opportunity and community development and addressing the needs of communities vulnerable to displacement and;

e. locating near developments that generate cash contributions.

23.58C.050 Affordable housing – Performance option

A. Performance amount

1. An applicant complying with this Chapter 23.58C through the performance option shall provide, as part of the units to be developed in each structure, a number of units that meet the requirements according to subsection 23.58C.050.C calculated by multiplying the percentage set aside according to Table A or Table B for 23.58C.050 and Map A for 23.58C.050, as applicable, by the total number of units to be developed in each structure.

2. If the number of units that meet the requirements according to subsection 23.58C.050.C calculated according to subsection 23.58C.050.A.1 equals less than two, the applicant shall:

a. Round up to two units; or

b. Provide one dwelling unit that meets the requirements according to subsection 23.58C.050.C that is three bedrooms or larger, as determined by the Director of Housing.

3. If the number of units that meet the requirements according to subsection 23.58C.050.C calculated according to subsection 23.58C.050.A.1 equals two or more and includes a fraction of a unit, the applicant shall:

a. Round up to the nearest whole unit; or

b. Round down to the nearest whole unit and pay a cash contribution for the fraction of a unit not otherwise provided, calculated by multiplying the amount per square foot according to Table A or Table B for 23.58C.040 and Map A for 23.58C.050, as applicable, by the total gross floor area to be developed as measured according to subsection 23.58C.040.A.1, multiplying that product by the fraction of a unit not provided, and dividing the

resulting number by the total number of units required to be provided based on the calculation according to subsection 23.58C.050.A.1. Use of cash contributions according to this subsection 23.58C.050.A.3.b shall be governed according to subsection 23.58C.040.B.

4. When the applicant elects to comply with this Chapter 23.58C through the performance option for a development that contains multiple structures and the calculation according to subsection 23.58C.050.A.1 results in fractions of units in more than one structure, the Director may, as a Type I decision in consultation with the Director of Housing, allow such fractions of units to be combined, provided:

a. If the sum of the combined fractions of units calculated according to this subsection 23.58C.050.A.4 equals fewer than two, the applicant shall:

1) Round up to two units; or

2) Provide one dwelling unit that meets the requirements according to subsection 23.58C.050.C that is three bedrooms or larger, as determined by the Director of Housing;

b. If the sum of the combined fractions of units calculated according to this subsection 23.58C.050.A.4 equals two or more and includes a fraction of a unit, the applicant shall:

1) Round up to the nearest whole unit; or

2) Round down to the nearest whole unit and pay a cash contribution for the fraction of a unit not otherwise provided, calculated according to subsection 23.58C.050.A.3.b; and

c. The construction of the structure(s) containing the units that meet the requirements according to subsection 23.58C.050.C shall be completed at the same time or at an

earlier time than completion of construction of other structures in the development containing units.

Table A for 23.58C.050 Affordable housing to be provided (performance option): inside Downtown and SM-SLU zones	
Zone category	**Percentage of total units**
[RESERVED]	[RESERVED]

Table B for 23.58C.050 Affordable housing to be provided (performance option): outside Downtown and SM-SLU zones			
Zone category	**Percentage of total units**		
	Low	**Medium**	**High**
[RESERVED]	[RESERVED]	[RESERVED]	[RESERVED]
The location of the zone, by low, medium, or high area, is as shown on Map A for 23.58C.050.			

Map A for 23.58C.050
Payment and performance areas: high, medium, and low

[RESERVED]

B. Duration. The obligation, as to a structure that includes units to whose development this Chapter 23.58C applies according to subsection 23.58C.025.B, to provide units that meet the requirements according to subsection 23.58C.050.C in the amount required according to subsection 23.58C.050.A, subject to any applicable modifications, shall last:

1. If rental units are provided to comply with this Chapter 23.58C:

a. For a period of 75 years from the date of certificate of occupancy or, if a certificate of occupancy is not required, from the date of the final building permit inspection, for the development to which this Chapter 23.58C applies according to subsection 23.58C.025.B, or

b. Until such earlier time when:

1) The structure is demolished, or its use is changed, so as to eliminate all of the units to whose development this Chapter 23.58C applies according to subsection 23.58C.025.B in that structure, and the requirements according to subsection 23.58C.050.C.6.j are met; or

2) All of the units to whose development this Chapter 23.58C applies according to subsection 23.58C.025.B in the structure are converted to ownership housing, and the requirements according to subsection 23.58C.050.C.6.i are met; or

2. If ownership units are provided to comply with this Chapter 23.58C, for a period of 75 years from the date of certificate of occupancy or, if a certificate of occupancy is not required, from the date of the final building permit inspection, for the development to which this Chapter 23.58C applies according to subsection 23.58C.025.B.

C. Performance requirements. Units provided to comply with this Chapter 23.58C through the performance option shall meet the following requirements:

1. Distribution. Units provided through the performance option shall be generally distributed throughout each structure in the development containing units.

2. Unit size, type, and term of lease

a. Units provided through the performance option shall be comparable to the other units to be developed in terms of the following:

1) Status as a dwelling unit, live-work unit, or congregate residence sleeping room;

2) Number of bedrooms and bathrooms;

3) Net unit area by square feet;

4) Access to amenity areas;

5) Functionality; and

6) Term of the lease.

b. The bedroom and bathroom sizes for units provided through the performance option shall be generally comparable to the bedroom and bathroom sizes for the other units to be developed.

3. Eligible households. Units provided through the performance option shall serve only:

a. At initial occupancy by a household:

1) For a rental unit with net unit area of 400 square feet or less, households with incomes no greater than 40 percent of median income;

2) For a rental unit with net unit area of greater than 400 square feet, households with incomes no greater than 60 percent of median income;

3) For an ownership unit, households with incomes no greater than 80 percent of median income, and that meet a reasonable limit on assets. The Director of Housing shall establish by rule the method to establish a reasonable limit on assets.

b. At the time of annual certification according to subsection 23.58C.050.C.6.c:

1) For a rental unit with net unit area of 400 square feet or less, households with incomes no greater than 60 percent of median income;

2) For a rental unit with net unit area of greater than 400 square feet, households with incomes no greater than 80 percent of median income.

4. Affirmative marketing. Units provided through the performance option shall be affirmatively marketed to attract eligible households from all racial, ethnic, and gender groups in the housing market area of the property, particularly to inform and solicit applications from households who are otherwise unlikely to apply for housing in the development. Proposed marketing efforts shall be submitted to the Office of Housing for review and approval. Records documenting affirmative marketing efforts shall be maintained and submitted to the Office of Housing upon request.

5. Public subsidy. If any public subsidy, including the Multifamily Housing Property Tax Exemption authorized by Chapter 5.73 and chapter 84.14 RCW, is used for a development containing units provided to comply with this Chapter 23.58C through the performance option, and the public subsidy operates through subjecting some of the units in the development to restrictions on the income levels of occupants and the rents or sale prices that

may be charged, the units provided to comply with this Chapter 23.58C shall be different units than the units that are subject to such restrictions as a condition of the public subsidy.

6. Additional requirements for rental units provided through the performance option

a. Rent levels. Monthly rent shall not exceed 30 percent of 60 percent of median income or, in the case of rental units with net unit area of 400 square feet or less, 30 percent of 40 percent of median income. For purposes of this subsection 23.58C.050.C.6.a, "monthly rent" includes a utility allowance for heat, gas, electricity, water, sewer, and refuse collection, to the extent such items are not paid for tenants by the owner, and any recurring fees that are required as a condition of tenancy.

b. Limitation on charges. Fees charged to eligible households upon move-in or transfer within the development shall be limited to a reasonable level to be established by the Director of Housing by rule. No tenant of a rental unit may be charged fees for income verifications or reporting requirements related to this Chapter 23.58C.

c. Annual certification, third party verification

1) The owner of the rental unit shall obtain from each tenant, no less than annually, a certification of household size and annual income in a form acceptable to the City. The owner shall examine the income of each tenant household in accordance with 24 CFR 5.609, with guidance from the HUD Occupancy Handbook 4350.3, Chapter 5. The owner also shall examine the income and household size of any tenant at any time when there is evidence that the tenant's written statement was not complete or accurate. If so requested by the City, the owner shall obtain such certifications and/or examine incomes and household sizes at any other times upon reasonable advance notice from the City. The owner shall maintain all

certifications and documentation obtained according to this subsection 23.58C.050.C.6.c.1 on file for at least six years after they are obtained, and shall make them available to the City for inspection and copying promptly upon request.

2) Owners of rental units shall attempt to obtain third party verification whenever possible to substantiate income at each certification, which shall include contacting the individual income source(s) supplied by the household. The verification documents shall be supplied directly to the independent source by the owner and returned directly to the owner from the independent source. In the event that the independent source does not respond to the owner's faxed, mailed, or emailed request for information, the owner may pursue oral third party verification. If written or oral third party documentation is not available, the owner may accept original documents (pay stubs, W-2, etc.) at the discretion of the Director of Housing and shall document why third party verification was not available. At the discretion of the Director of Housing, the owner may accept tenant self-certifications after the initial income verification and first annual recertification.

d. Reporting. At such times as may be authorized by the Director of Housing, but no less than annually, the owner of the rental unit shall submit to the Director of Housing a written report, verified upon oath or affirmation by the owner, demonstrating compliance with this Chapter 23.58C. The written report shall state, at a minimum, the occupancy and vacancy of each rental unit, the monthly rent charged for the unit, and the income and size of the household occupying the unit. The Director of Housing may require other documentation to ensure compliance with this subsection 23.58C.050.C, including but not limited to documentation of rents, copies of tenant certifications, documentation supporting determinations of tenant income (including employer's verification or check stubs), and other

documentation necessary to track program outcomes and the demographics of households served. The first annual report shall include documentation of issuance of the certificate of occupancy or final building permit inspection for the rental unit. The Director of Housing is authorized to assess a late fee of $50 per day, to accrue starting 14 days from the date the Office of Housing notifies the owner of the rental unit that the report is overdue, until the report is submitted.

e. Annual fee. The owner of the rental unit shall pay the Office of Housing an annual fee of $150 per rental unit for the purposes of monitoring compliance with the requirements according to this Section 23.58C.050. On March 1, 2017, and on the same day each year thereafter, the annual fee shall automatically adjust in proportion to the annual change for the previous calendar year (January 1 through December 31) in the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, WA, All Items (1982-1984 = 100), as determined by the U.S. Department of Labor, Bureau of Labor Statistics or successor index.

f. Over-income households; unit substitution. If, based on any certification, a previously eligible household occupying a rental unit provided through the performance option is determined to be ineligible due to exceeding the income limits according to subsection 23.58C.050.C.3.b, the owner of the development to which this Chapter 23.58C applies shall, through the process according to subsection 23.58C.030.A.6, designate a comparable substitute rental unit within the development, as approved by the Director of Housing, as soon as such a unit becomes available, and upon such designation the requirements according to this subsection 23.58C.050.C shall transfer to the substitute unit. Upon such determination that a previously eligible household is ineligible, the owner shall promptly give the ineligible household notice of such determination and notice that the requirements according to

this subsection 23.58C.050.C will transfer to a substitute unit when such unit becomes available. Upon the transfer of the requirements, the owner shall give the ineligible household six months' notice prior to any rent increase.

g. Maintenance, insurance. Rental units provided through the performance option, and the structure in which they are located, shall be maintained by the owner in decent and habitable condition, including the provision of adequate basic appliances. The owner shall keep such units, and the structure in which they are located, insured by an insurance company licensed to do business in the state of Washington and reasonably acceptable to the City, against loss by fire and other hazards included with broad form coverage, in the amount of 100 percent of the replacement value.

h. Casualty

1) If a rental unit provided through the performance option is destroyed or rendered unfit for occupancy by casualty that does not affect all of the other units in the development to which this Chapter 23.58C applies, the owner of the development shall, through the process according to subsection 23.58C.030.A.6, designate a comparable substitute rental unit within the development, as approved by the Director of Housing, as soon as such a unit becomes available, which the tenant household of the unit affected by casualty shall be allowed to move into, and upon such designation the requirements according to this subsection 23.58C.050.C shall transfer to the substitute unit.

2) If all of the units in the development to which this Chapter 23.58C applies are substantially destroyed by casualty, including by earthquake or fire, the requirements according to this subsection 23.58C.050.C shall terminate.

i. Conversion to ownership housing. If all of the units to whose development this Chapter 23.58C applies according to subsection 23.58C.025.B in a structure are converted to ownership housing, including through a conversion to condominiums, prior to 75 years from the date of certificate of occupancy or, if a certificate of occupancy is not required, from the date of the final building permit inspection, for the development to which this Chapter 23.58C applies according to subsection 23.58C.025.B:

1) The owner of the development shall, at the time of such conversion, either pay to the City a payment in lieu of continuing affordability or convert the rental units provided through the performance option to ownership units provided through the performance option, as follows:

a) Where a payment in lieu of continuing affordability is made, the amount of the payment shall be equal to the amount of the cash contribution according to subsection 23.58C.040.A that would have been required at the time of issuance of the first building permit that includes the structural frame for the structure if the applicant had elected the payment option, adjusted for each calendar year following issuance of that permit in proportion to the annual change in the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, WA, All Items (1982-1984 = 100), as determined by the U.S. Department of Labor, Bureau of Labor Statistics or successor index, multiplied times the percentage in Table C for 23.58C.050 that corresponds to the number of years that the rental units provided through the performance option satisfied the requirements according to this subsection 23.58C.050.C. The City shall use the payment to support continued housing affordability in The City of Seattle consistent with applicable statutory requirements.

Table C for 23.58C.050 **Payment in lieu of affordability calculation percentages for conversion to ownership housing**	
Number of years units provided through performance option satisfied the requirements according to subsection 23.58C.050.C	**Percentage**
Less than 7.5	100%
Between 7.5 and 15	95%
Between 15 and 22.5	90%
Between 22.5 and 30	85%
Between 30 and 37.5	80%
Between 37.5 and 45	75%
Between 45 and 52.5	65%
Between 52.5 and 60	55%
Between 60 and 67.5	40%
Between 67.5 and 75	20%

b) Where rental units provided through the performance option are converted to ownership units provided through the performance option, the converted units shall meet the requirements of subsections 23.58C.050.C.1 through 23.58C.050.C.5 and subsection 23.58C.050.C.7.

2) If the units to whose development this Chapter 23.58C applies according to subsection 23.58C.025.B are in multiple structures, conversion to ownership housing of such units in an individual structure shall not be a basis for reducing the number of rental units provided through the performance option in the other structures.

3) If a rental unit provided through the performance option is converted to a condominium, the owner shall comply with the requirements according to Section 22.903.030 and Section 22.903.035, the requirement of RCW Ch. 63.34.440(2) to offer to convey the unit to the tenant who leases the unit, and any other applicable requirements.

j. Demolition or change of use

1) If the units to whose development this Chapter 23.58C applies according to subsection 23.58C.025.B are in a single structure and the structure is demolished, or its use is changed, prior to 75 years from the date of certificate of occupancy or, if a certificate of occupancy is not required, from the date of the final building permit inspection, for the development to which this Chapter 23.58C applies according to subsection 23.58C.025.B, so as to eliminate all of the units to whose development this Chapter 23.58C applies according to subsection 23.58C.025.B in that structure, the owner of the development shall pay to the City a payment in lieu of continuing affordability for each rental unit provided through the performance option that is eliminated, as follows:

a) The payment shall be based on the difference between the monthly restricted rent according to subsection 23.58C.050.C.6.a for each rental unit provided through the performance option that is eliminated and the average monthly rent of a comparable unit according to subsection 23.58C.050.C.2 that is not subject to rent and income restrictions and is located in the same payment and performance area as shown on Map A for 23.58C.050, multiplied by the typical number of months between demolition of multifamily housing on a property and completion of redevelopment of a property in the zone in which the eliminated rental unit is located, not to exceed 30 months. The Director shall by rule establish an appropriate methodology and inputs for determining the payment amount in particular zones.

b) The City shall use the payment to support continued housing affordability in The City of Seattle, including but not limited to providing rental assistance to the tenants of rental units provided through the performance option that were eliminated.

2) If the units to whose development this Chapter 23.58C applies according to subsection 23.58C.025.B are in multiple structures and an individual structure is demolished, or its use is changed, prior to 75 years from the date of certificate of occupancy or, if a certificate of occupancy is not required, from the date of the final building permit inspection, for the development to which this Chapter 23.58C applies according to subsection 23.58C.025.B, so as to eliminate all of the units to whose development this Chapter 23.58C applies according to subsection 23.58C.025.B in the individual structure, the owner of the development shall:

a) Except as provided according to subsection 23.58C.050.C.6.j.2.b, pay to the City a payment in lieu of continuing affordability according to subsection 23.58C.050.C.6.j.1.a for each rental unit provided through the performance option that is eliminated; or

b) If a rental unit that is eliminated resulted from the combination of fractions of units according to subsection 23.58C.050.A.4, designate, subject to review by the Director in consultation with the Director of Housing, a comparable substitute rental unit within the other structures to replace each such unit that is eliminated or, if such designation is not possible, pay to the City a payment in lieu of continuing affordability according to subsection 23.58C.050.C.6.j.1.a.

c) Demolition or change of use of an individual structure shall not be a basis for reducing the number of rental units provided through the performance option in the other structures and any comparable substitute rental units shall be in addition to any existing rental units provided through the performance option in the other structures.

7. Additional requirements for ownership units provided through the performance option

a. Affordable sale price; down payment. The initial sales price for an ownership unit provided through the performance option shall be an amount according to which total ongoing housing costs do not exceed 35 percent of 65 percent of median income, in order to allow for equity growth for individual homeowners while maintaining affordability for future buyers. The Director of Housing shall establish by rule the method for calculating the initial sales price including standard assumptions for determining upfront housing costs, including the down payment, and ongoing housing costs, which shall include mortgage principal and interest payments, homeowner's insurance payments, homeowner or condominium association dues and assessments, and real estate taxes and other charges included in county tax billings. The Director of Housing may establish a maximum down payment amount for eligible households at initial sale of an ownership unit. The applicant for the development to which this Chapter 23.58C applies shall be responsible for any costs incurred in the initial sale of an ownership unit necessary to ensure compliance with this Chapter 23.58C, including but not limited to marketing to eligible households, income verification, buyer education, and verification of buyer financing.

b. Affordable resale price. For an ownership unit provided through the performance option, the sale price for sales subsequent to the initial sale shall be calculated to allow modest growth in homeowner equity while maintaining long-term affordability for future buyers. All buyers of an ownership unit subsequent to the initial sale shall be households with incomes no greater than 80 percent of median income at initial occupancy. The Director of Housing shall by rule:

1) Establish the method for calculating the resale price and may establish a maximum down payment amount for eligible households at resale,

2) Establish specific requirements for documents ensuring affordability requirements are met at resale, and

3) Provide for recovery of reasonable administrative costs.

c. Other restrictions. An eligible household purchasing an ownership unit provided through the performance option, either at initial sale or resale, shall:

1) Occupy the unit as its principal residence for the duration of its ownership and shall not lease the unit, unless the Director of Housing approves a limited short-term exception, and

2) Comply with all other program rules established by the Director of Housing as necessary to maintain the long-term viability of the unit. Such rules may include, but are not limited to, refinancing approvals and debt limits; limits on credit for capital improvements at the time of resale; requirements for basic maintenance, inspections, and compliance procedures; minimum insurance requirements; obligations to provide information regarding compliance when and as requested; and fees to cover the full costs of calculating the maximum sales price at resale, marketing to eligible households, and screening and selecting eligible households to purchase the unit at resale.

d. Annual fee. The owner of the ownership unit shall pay the Office of Housing an annual fee, payable in 12 equal payments, for the purposes of monitoring compliance with the requirements according to this Section 23.58C.050. The initial fee shall be established by the Director of Housing by rule. On March 1, 2017, and on the same day each year thereafter, the annual fee shall automatically adjust in proportion to the annual change for the previous calendar year (January 1 through December 31) in the Consumer Price Index, All Urban

Consumers, Seattle-Tacoma-Bremerton, WA, All Items (1982-1984 = 100), as determined by the U.S. Department of Labor, Bureau of Labor Statistics or successor index.

e. Ongoing stewardship. Either prior to or subsequent to the initial sale, the Director of Housing is authorized to designate an agency or organization with sufficient capacity, as approved by the Director of Housing, to perform ongoing stewardship and management functions for ownership units provided through the performance option, including but not limited to the following:

1) Calculating maximum sale prices;

2) Marketing sales to eligible households;

3) Screening, educating, and selecting eligible households;

4) Approving buyer financing; and

5) Managing successive resales to eligible households.

D. Enforcement. The requirements according to this Section 23.58C.050 shall be terms of the building permit according to subsection 23.58C.030.A.5. In addition to any other remedies available to the City, the City is authorized to enforce such permit terms using the procedures of Chapter 23.90.

E. Agreement. If the applicant elects to comply with this Chapter 23.58C through the performance option, the City and the property owner of the development to which this Chapter 23.58C applies shall enter into an agreement specifying the requirements according to this Section 23.58C.050. The agreement shall be recorded on the title of the property on which that development is located. The requirements specified in the agreement shall be consistent with the final plans.

Section 5. Subsection 23.40.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 124895, is amended as follows:

23.40.020 Variances

A. Variances may be sought from the provisions of Subtitle III, Divisions 2, 3, and 4 of this Title 23, except for the establishment of a use that is otherwise not permitted in the zone in which it is proposed, for a structure height in excess of that shown on the Official Land Use Map or in excess of a height limit established in Chapter 23.75, from the provisions of subsection 23.55.014.A, or from the provisions of Chapter 23.52, Chapter 23.58A, ((~~and~~)) Chapter ((~~23.52B~~)) 23.58B, and Chapter 23.58C. Applications for prohibited variances shall not be accepted for filing.

* * *

Section 6. Subsection 23.76.006.B of the Seattle Municipal Code, which section was last amended by Ordinance 124895, is amended as follows:

23.76.006 Master Use Permits required

* * *

B. The following decisions are Type I:

1. Determination that a proposal complies with development standards;

2. Establishment or change of use for uses permitted outright, interim use parking under subsection 23.42.040.G, uses allowed under Section 23.42.038, temporary relocation of police and fire stations for 24 months or less, transitional encampment interim use, ((~~and~~)) temporary uses for four weeks or less not otherwise permitted in the zone, and renewals of temporary uses for up to six months, except temporary uses and facilities for light rail transit facility construction and transitional encampments;

3. The following street use approvals:

a. Curb cut for access to parking whether associated with a development proposal or not;

b. Concept approval of street improvements associated with a development proposal, such as additional on-street parking, street landscaping, curbs and gutters, street drainage, sidewalks, and paving;

c. Structural building overhangs associated with a development proposal;

d. Areaways associated with a development proposal;

4. Lot boundary adjustments;

5. Modification of the following features bonused under Title 24:

a. Plazas;

b. Shopping plazas;

c. Arcades;

d. Shopping arcades;

e. Voluntary building setbacks;

6. Determinations of Significance (determination that an environmental impact statement is required) for Master Use Permits and for building, demolition, grading, and other construction permits (supplemental procedures for environmental review are established in Chapter 25.05, Environmental Policies and Procedures), except for Determinations of Significance based solely on historic and cultural preservation;

7. Discretionary exceptions for certain business signs authorized by subsection 23.55.042.D;

8. Waiver or modification of required right-of-way improvements;

9. Special accommodation pursuant to Section 23.44.015;

10. Reasonable accommodation;

11. Minor amendment to Major Phased Development Permit;

12. Determination of public benefit for combined lot development;

13. Streamlined design review decisions pursuant to Section 23.41.018 if no development standard departures are requested pursuant to Section 23.41.012, and design review decisions in an MPC zone if no development standard departures are requested pursuant to Section 23.41.012;

14. Shoreline special use approvals that are not part of a shoreline substantial development permit;

15. Determination that a project is consistent with a planned action ordinance, except as provided in subsection 23.76.006.C;

16. Decision to approve, condition, or deny, based on SEPA policies, a permit for a project determined to be consistent with a planned action ordinance;

17. Modification of mitigation amounts under Section 23.58B.040 or Section 23.58B.050 pursuant to subsection 23.58B.025.B.2; ((~~and~~))

18. Determination of requirements according to subsections 23.58C.030.A.2.a and 23.58C.030.A.2.b; and

19. Other Type I decisions.

C. The following are Type II decisions:

***

2. The following decisions are subject to appeal to the Hearing Examiner (except shoreline decisions and related environmental determinations that are appealable to the Shorelines Hearings Board):

a. Establishment or change of use for temporary uses more than four weeks not otherwise permitted in the zone or not meeting development standards, including the establishment of temporary uses and facilities to construct a light rail transit system for so long as is necessary to construct the system as provided in subsection 23.42.040.F, but excepting temporary relocation of police and fire stations for 24 months or less;

b. Short subdivisions;

c. Variances; provided that the decision on variances sought as part of a Council land use decision shall be made by the Council pursuant to Section 23.76.036;

d. Special exceptions; provided that the decision on special exceptions sought as part of a Council land use decision shall be made by the Council pursuant to Section 23.76.036;

e. Design review decisions, except for streamlined design review decisions pursuant to Section 23.41.018 if no development standard departures are requested pursuant to Section 23.41.012, and except for design review decisions in an MPC zone pursuant to Section 23.41.020 if no development standard departures are requested pursuant to Section 23.41.012;

f. Administrative conditional uses, provided that the decision on administrative conditional uses sought as part of a Council land use decision shall be made by the Council pursuant to Section 23.76.036;

g. The following shoreline decisions; provided that these decisions shall be made by the Council pursuant to Section 23.76.036 when they are sought as part of a Council land use decision (supplemental procedures for shoreline decisions are established in Chapter 23.60A):

1) Shoreline substantial development permits;

2) Shoreline variances; and

3) Shoreline conditional uses;

h. Major Phased Developments;

i. Determination of project consistency with a planned action ordinance, only if the project requires another Type II decision;

j. Establishment of light rail transit facilities necessary to operate and maintain a light rail transit system, in accordance with the provisions of Section 23.80.004;

k. Downtown planned community developments;

l. Establishment of temporary uses for transitional encampments, except transitional encampment interim uses provided for in subsection 23.76.006.B.2;

m. Modification of mitigation amounts under Section 23.58B.040 or Section 23.58B.050 pursuant to subsection 23.58B.025.B.3;

n. Modification of payment or performance amounts under subsection 23.58C.040.A or subsection 23.58C.050.A pursuant to section 23.58C.035; and

o. Except for projects determined to be consistent with a planned action ordinance, decisions to approve, condition, or deny based on SEPA policies if such decisions are integrated with the decisions listed in subsections 23.76.006.C.2.a. through 23.76.006.C.2.l; provided that, for decisions listed in subsections 23.76.006.C.2.c, 23.76.006.C.2.d, 23.76.006.C.2.f, and 23.76.006.C.2.g that are made by the Council, integrated decisions to approve, condition, or deny based on SEPA policies are made by the Council pursuant to Section 23.76.036.

***

Section 7. Subsection 23.76.032.B of the Seattle Municipal Code, which section was last amended by Ordinance 124873, is amended as follows:

23.76.032 Expiration and renewal of Type I and II Master Use Permits

* * *

B. If a Master Use Permit is issued for a project, a building permit is issued for the project, and the project is constructed pursuant to the building permit ((~~,~~)) :

1. ((~~conditions~~)) Conditions of or incorporated in the Master Use Permit shall remain in effect, notwithstanding expiration of the Master Use Permit pursuant to subsection 23.76.032.A, until the project is demolished or until an earlier date on which:

((~~(1)~~)) a. The condition by its terms expires or is fully satisfied;

((~~(2)~~)) b. The condition is removed through a permitting decision; or

((~~(3)~~)) c. If the condition was imposed as to a specific use within the project, that use is terminated ((~~.~~)) ; and

2. Terms of a building permit relating to requirements according to Section 23.58C.050 shall remain in effect for the time period specified according to subsection 23.58C.050.B, notwithstanding:

a. Expiration of the Master Use Permit according to subsection 23.76.032.A, or

b. Any contrary provision of Title 22.

* * *

Section 8. Section 23.90.002 of the Seattle Municipal Code, last amended by Ordinance 122050, is amended as follows:

23.90.002 Violations ((.))

A. It is a violation of this Title 23 for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land, or property within ((~~The~~)) the City of Seattle without first obtaining the permits or authorizations required for the use by this Title 23.

B. It is a violation of this Title 23 for any person to use, construct, locate, demolish, or cause to be used, constructed, located, or demolished any structure, land, or property within The City of Seattle in any manner that is not permitted by the terms of any permit or authorization issued pursuant to this Title 23 or previous codes, provided that the terms or conditions are explicitly stated on the permit or the approved plans.

C. It is a violation of this Title 23 to remove or deface any sign, notice, complaint, or order required by or posted in accordance with this Title 23.

D. It is a violation of this Title 23 to misrepresent any material fact in any application, plans, or other information submitted to obtain any land use authorization.

E. It is a violation of this Title 23 for anyone to fail to comply with the requirements of this Title 23.

F. It is a violation of this Title 23 for any person to construct or use any structure or portion thereof in a manner contrary to a permit term related to Chapter 23.58C.

Section 9. Section 23.90.015 of the Seattle Municipal Code, enacted by Ordinance 122407, is amended as follows:

23.90.015 Order of the Director ((~~,~~))

A. Where review by the Director has been conducted pursuant to Section 23.90.014, the Director shall issue an order of the Director containing the decision within ((~~fifteen (15)~~)) 15 days of the date that the review is completed and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation and, if possible, mailed to the complainant.

B. Unless a request for review before the Director is made pursuant to Section 23.90.014, the notice of violation shall become the order of the Director.

C. ((~~Because civil actions to enforce Title 23 SMC are brought in Seattle Municipal Court pursuant to Section 23.90.018, orders~~)) Orders of the Director issued under this ((~~chapter~~)) Chapter 23.90 are not subject to judicial review pursuant to chapter 36.70C RCW, except for orders of the Director involving compliance with permit terms related to Chapter 23.58C.

Section 10. Subsection 23.90.018.C of the Seattle Municipal Code, which section was last amended by Ordinance 124919, is amended as follows:

23.90.018 Civil enforcement proceedings and penalties

* * *

C. Civil actions to enforce this Title 23 shall be brought exclusively in Seattle Municipal Court except for violations of permit terms related to Chapter 23.58C or as otherwise required by law or court rule. The Director shall request in writing that the City Attorney take enforcement action. The City Attorney shall, with the assistance of the Director, take appropriate action to enforce this Title 23. In any civil action filed pursuant to this ((~~chapter~~)) Chapter 23.90, the City

has the burden of proving by a preponderance of the evidence that a violation exists or existed. The issuance of the notice of violation or of an order following a review by the Director is not itself evidence that a violation exists.

* * *

Section 11. Report by the Office of Housing on Ongoing Affordable Ownership. The Council requests that the Director of Housing report to the Council by March 31, 2017 on options for maintaining affordability for ownership units provided through the performance option. The report shall examine the volatility of local homeowner and condominium association dues and examine best practices from other jurisdictions of addressing the cost of capital improvements and special assessments borne by owners of affordable units and incorporating the value of capital improvements from special assessments into affordable unit resale prices.

Section 12. The provisions of this ordinance are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Section 13. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 15th day of August, 2016, and signed by me in open session in authentication of its passage this 15th day of August, 2016.

President _____ of the City Council

Approved by me this 17th day of August, 2016.

Edward B. Murray, Mayor

Filed by me this 17th day of August, 2016.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment A – Findings of Fact

Attachment A

CITY OF SEATTLE

FINDINGS OF FACT

Overview

1. The City Council is implementing an affordable housing incentive program under RCW 36.70A.540, to apply within the City of Seattle or portions thereof. Implementation of this affordable housing incentive program will address the need for increased residential development, consistent with the City of Seattle's local growth management and housing policies.

2. In order to do so, the City Council will adopt a residential framework bill and then one or more subsequent bills to address various geographic areas and/or zones. Council Bill 118736 is the residential framework legislation. This framework legislation neither increases residential development capacity, nor contains substantive performance or payment requirements, the amounts of which will be determined in subsequent bills.

3. There is a need for increased residential development in Seattle. The City's Comprehensive Plan recognizes that, over the next 20 years, the City will need to accommodate at least 70,000 additional housing units.

4. While the Council is not, in this ordinance, determining the particular areas where the affordable housing incentive program addressed by this ordinance will be applied, there are land use designations and geographical areas where increased residential development will assist in achieving the City's growth management and housing policies.

5. The City's comprehensive planning efforts call for the bulk of Seattle's future growth to take place in areas designated as urban centers and urban villages. The City's planning efforts similarly recognize the importance of focusing growth in areas well-served by transit. The City's Downtown and South Lake Union Urban Centers, the University Community Urban Center, as well as Commercial, Multifamily and Seattle Mixed zones, offer substantial locations where increased residential development is appropriate and where additional affordable housing will be critical to achieving the City's planning objectives.

6. In subsequent legislation, the City Council intends to:

    a. Identify certain land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies.

    b. Provide increased residential development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives.

c. Determine that increased residential development capacity or other incentives can be achieved within the identified area, subject to consideration of other regulatory controls on development; and

d. Establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations, consistent with the requirements of RCW 36.70A.540, including, but not limited to, an appropriate amount of payment allowed in lieu of providing low-income housing units.

RCW 36.70A.540 Background

7. In 2006, the Washington State Legislature found that as new market-rate housing developments are constructed and housing costs rise, there is a significant and growing number of low-income households that cannot afford market-rate housing in Washington State.

8. The Washington State Legislature also found that, absent incentives to provide low-income housing, market conditions would result in housing developments in many areas that lack units affordable to low-income households, and this would lead to adverse socioeconomic effects.

9. Municipal governments have an interest in ensuring affordable housing for households of all income levels, because households that pay more than 30 percent of their income for housing costs ("cost burdened households") may have difficulty affording necessities such as food, clothing, transportation, and medical care.

10. Shelter is a basic human need. Housing supports health and general welfare and is essential for the public good.

11. Households paying more than 50 percent of their household income for housing costs ("severely cost burdened households") may have even greater difficulty affording necessities. Thus, while shelter is itself a basic need, lack of affordable shelter jeopardizes other basic needs.

12. The Washington State Legislature sought to address these public concerns, characterized as "a serious, statewide problem," by enacting RCW 36.70A.540. This tool allows the City to "establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations."

Need to Increase Affordable Housing

13. The City of Seattle is facing increasing affordability concerns emblematic of the concerns raised by the Washington State Legislature in 2006.

14. There is insufficient supply of housing in the City of Seattle affordable to households at or below 80% of Area Median Income ("AMI"). As explained in the Housing

Appendix to the Comprehensive Plan, there are shortages of affordable and available rental units at the 0-30, 0-50, and 0-80% of AMI levels.

15. The Housing Appendix to the Comprehensive Plan determined that, assuming an income distribution for new households that is the same as for existing households, 26% of the new households expected in the next twenty years would have incomes under 50% of AMI and 40% would have incomes under 80% of AMI.

16. The Housing Appendix further determined that addressing the affordability needs of the 70,000 new households would require production of roughly 27,500 to 36,500 housing units affordable at or below 80% of AMI, in addition to existing unmet need.

17. New market-rate housing is generally not affordable to lower-income households. At the same time, new market-rate housing creates an increased need for affordable housing.

18. The affordability challenges facing Seattle, and the insufficiency of existing programs to meet the need for affordable housing, are further described in the findings accompanying Ordinance 124895, and those findings are incorporated herein by reference.

19. Additional evidence of affordability concerns are present based on recent data. One–bedroom apartments are the most common size of apartment unit in Seattle. Between 2005 and 2014, the average rent for one–bedroom apartments increased an estimated 35%, and further increases have subsequently occurred.

20. A vacancy rate of 5% is commonly recognized as the equilibrium point signalizing relative balance between supply and demand. As of fall 2014, market vacancy rates were averaging between 0.4% and 3.8% of units in complexes with 20 or more units. In Seattle's 3 most affordable rental market areas – Beacon Hill, Rainier Valley, and North Seattle – vacancy rates were averaging an estimated 2.2%.

21. Under the authority provided to the City of Seattle by RCW 36.70A.540, and its police power, the City Council seeks to prevent the public harm that stems from residential development that fails to help meet the housing needs of households of all income levels.

22. As described in the incorporated findings accompanying Ordinance 124895, the lack of affordable housing for those making less than 80% of AMI disproportionally impacts Seattle's communities of color.

23. The City Council also seeks to further the City's fair housing objectives including the provision of affordable housing to Seattle's communities of color.

24. The City of Seattle has an obligation under the Growth Management Act to plan for affordable housing. RCW 36.70A.070 requires counties and cities, in the housing element of their comprehensive plans, to make "adequate provisions for existing and

projected needs of all economic segments of the community." The City of Seattle intends to advance its efforts to plan and provide for affordable housing for all segments of society by utilizing RCW 36.70A.540.

25. Moreover, the King County Countywide Planning Policies, as ratified by the King County Council, provide that jurisdictions may consider a full range of programs, from optional to mandatory, which will assist in meeting the jurisdiction's share of the countywide need for affordable housing.

Council Work Program, HALA Recommendation and Grand Bargain

26. In May 2013 the Council adopted Resolution 31444, which established a work program for reviewing and potentially modifying the City's affordable housing incentive zoning and other affordable housing programs.

27. In accordance with Resolution 31444, the Council commissioned reports to identify new strategies for Seattle, including:

    a. Cornerstone Partnership produced reports dated February 4, 2014, entitled "Seattle Incentive Zoning Analysis of data relating to the historical production under Seattle's Incentive Zoning System," and July, 2014, entitled "Policy Options for Refining Seattle's Incentive Zoning Program," as well as a memo dated September 12, 2014, entitled "Recommendations for Implementation of an Affordable Housing Linkage Fee."

    b. Otak, Inc., in partnership with Paul Peninger, produced a report dated May 2014 entitled "Seattle Workforce Housing / Programs and Policies Related to Meeting Workforce Housing Needs in Seattle: A Survey and Analysis of Best Practices in Comparative Jurisdictions."

    c. David Paul Rosen & Associates (DRA) produced a report dated October 10, 2014, entitled "Seattle Affordable Housing Incentive Program Economic Analysis," later supplemented by a memo dated May 18, 2015, containing economic impact analysis for additional prototypes.

28. The Department of Planning and Development issued a Determination of Non-Significance under SEPA, dated June 8, 2015, for a proposal for legislation requiring new development to provide affordable housing and related comprehensive plan amendments. The DNS was appealed but the appeal was withdrawn.

29. In July 2015, a 28-member Housing Affordability and Livability Agenda ("HALA") Advisory Committee comprised of a cross section of interested community members, after 10 months of research, community meetings, and discussions with experts, forwarded a report to Mayor Murray and City Council with 65 recommended strategies.

30. Among the highest-profile recommendations, the HALA Advisory Committee recommended that the City boost market capacity by extensive citywide upzoning of residential and commercial zones and, in connection with such upzones, implement a mandatory inclusionary housing program for new residential

development and a commercial linkage fee program for development of new commercial floor area.

31. The HALA Committee's recommendation to increase development capacity and require mandatory affordable housing was further developed in the Statement of Intent for Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee, July 13, 2015 (commonly referred to as the "Grand Bargain"), signed by Mayor Murray, Councilmember O'Brien, the Co-Chairs of the HALA Committee, and representatives of the for-profit and non-profit development sectors.

32. The Grand Bargain identifies a goal of producing 6,000 units of affordable housing for households with incomes equal to or less than 60% of AMI through mandatory affordable housing strategies over 10 years.

33. In November of 2015, the Council adopted Ordinance 124895, which established the framework for an Affordable Housing Impact Mitigation Program for commercial development.

Previous RCW 36.70A.540 Efforts

34. The City of Seattle has utilized other approaches under RCW 36.70A.540 in the past. For instance, the City has administered a voluntary residential incentive zoning (IZ) program both in downtown, under SMC Chapter 23.49, and in selected other areas under SMC Chapter 23.58A.

35. Generally, residential developers opting to seek additional floor area above base height in IZ-eligible zones with maximum height limits of 85 feet or less can obtain such floor area by providing units affordable to households with incomes up to 80% of AMI for rental apartments or 100% of AMI for owner-occupied condominiums. At higher heights, developers can either include affordable housing units as part of their projects or make a contribution to the City to fund affordable housing.

36. The City engaged Cornerstone Partnership to make recommendations for improvements to Seattle's IZ program. Cornerstone Partnership found that, while a number of refinements could strengthen the program, even with the refinements, it appears unlikely that the voluntary incentive program will produce dramatically more affordable housing units in the future. One of the bases for this conclusion was that the incentive program only applies to projects where the developer chooses to build above the "base" level permitted by zoning.

Income Level to be Served

37. The program set forth in Council Bill 118736 establishes standards for affordable housing, including income levels consistent with local housing needs.

38. After a public hearing, the Council has determined that the 60% of AMI income level for rental housing set forth in Council Bill 118736 is needed to address local housing market conditions consistent with RCW 36.70A.540(2)(b)(iii).

39. Average rents for apartments in Seattle are not affordable to households with incomes at the 30%, 60%, and (except for studios) 80% of AMI levels, and the gap is even greater for apartments in newer buildings.

40. Over 80% of Seattle renter households with incomes 0-80% of AMI are in the 0-30% of AMI and 30-60% of AMI categories, which supports the Council's decision to address affordable housing needs for rental housing up to the 60% of AMI level.

Payment in Lieu of Performance

41. RCW 36.70A.540 provides that affordable housing incentive programs may allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site, as long as the payment does not exceed the approximate cost of developing the same number and quality of housing units that would otherwise be developed.

42. The program set forth in Council Bill 118736 provides developers with the alternatives of either providing affordable units as part of the units being developed (the "performance option") or making a cash contribution to the City to be used for purposes authorized by RCW 36.70A.540 (the "payment option"). While Council Bill 118736 does not set the amounts of performance or payment requirements for any areas, the Council finds that it is appropriate to provide both options.

43. Unlike with affordable housing produced on-site, the investment of payment funds allows the flexibility to create housing affordable to households with incomes even lower than 60% of AMI. While this may create tradeoffs with the amount of housing produced, the City has in many cases made the policy choice to support housing for individuals and families with incomes lower than the maximum target income level, due to compelling cases that can be made for addressing the greatest needs.

44. Tenant households of Office of Housing-funded rental affordable housing are 42.9 percent White, 29.2 percent Black/African American, 12.2 percent Asian, 7.2 percent two-or-more-races, 5.7 percent Hispanic/Latino, and 2.9 percent Native American.

45. The Office of Housing has a history of promoting fair housing choice and opportunity by investing in housing throughout the city. Council Bill 118736 provides that the City will invest payment proceeds in locations that advance the following factors: (a) affirmatively furthering fair housing choice, (b) locating within an urban center or urban village, (c) locating in proximity to frequent bus service or current or planned light rail or streetcar stops, (d) furthering City policies to promote economic opportunity and community development and addressing the needs of communities vulnerable to displacement, and (e) locating near developments that generate cash contributions.

46. These locational factors support the recommended equitable development strategies identified in the Growth and Equity report prepared in connection with the proposed

Seattle 2035 Comprehensive Plan. The analysis in the Growth and Equity report confirms that the City has been successful in targeting affordable housing investments in areas with high access to opportunity, and high risk of displacement.

47. In general, the amount of payments received would yield a greater number of affordable housing units than otherwise would be produced on-site, due to the other public and private financing that these funds can leverage, a significant amount of which remains untapped by developers of rent/income-restricted housing. Among projects that utilize 4% Low Income Housing Tax Credits and tax exempt bonds, the City has leveraged approximately $3 in non-City funding for every $1 of City funding invested. Using an even more conservative estimate of $2.25 in leverage for every $1 of City funding in the future, payment will still produce substantially more affordable housing than would be achieved through on-site performance.

48. A number of prototype models have been constructed and reviewed by the City Council. These models support the conclusion that payment will yield significantly more units of affordable housing than performance.

49. Funds invested in affordable housing can result in a range of other community benefits. For instance, public investment can stimulate economic development in areas of the City that lack private investment; preserve historic buildings that would otherwise be lost to deterioration or demolition; and help stabilize rents in areas where residents are at risk of displacement. On the whole, funds can be strategically invested to maximize housing choice throughout the city. In addition to leveraging other investment in housing, public funds can also leverage investments for spaces for a wide range of non-residential purposes such as affordable childcare, small business space, and social service facilities. Finally, affordable housing projects often include resident service programs and other connections to social services that help individuals and families to thrive.

50. Thus, the Council finds that payment in lieu of performance achieves a result equal to or better than providing the affordable housing on-site.

Payments in Lieu of Continuing Affordability

51. Council Bill 118736 provides that, where an applicant complies through the performance option, the performance obligation lasts, for rental units, for a period of seventy-five years or until such earlier time when (a) the structure is demolished, or its use is changed, so as to eliminate all of the units to whose development Chapter 23.58C applies and a payment in lieu of continuing affordability is made for each rental unit provided through the performance option that is eliminated; (b) all of the units to whose development Chapter 23.58C applies in the structure are converted to ownership housing and a payment in lieu of continuing affordability is made or the rental units provided through the performance option are converted to ownership units provided through the performance option.

52. In the case of demolition or change of use, the payment in lieu of continuing affordability is based on the difference between the monthly restricted rent of the performance unit and the average monthly rent of a comparable unit that is not subject to rent and income restrictions, multiplied by the typical number of months between demolition of multifamily housing and completion of redevelopment of property in the zone, not to exceed 30 months. This approach reflects the fact that the City expects, and is drafting its Mandatory Housing Affordability programs to provide, that applicable subsequent redevelopment or use of the property will be subject to affordability requirements.

53. In the case of conversion to ownership housing, the payment in lieu of continuing affordability is equal to the inflation-adjusted amount of the cash contribution that would have been required at the time of permit issuance if the applicant had elected the payment option, reduced to reflect the portion of the performance term during which performance units were provided. The rate of reduction reflects the fact that delayed, smaller payments make it more difficult for the Office of Housing to effectively and efficiently deploy payment proceeds for construction of affordable housing.

Conclusions

54. The City will monitor progress on key issues addressed by the program set forth in Council Bill 118736, including the number of affordable housing units developed through performance and cash contributions. This monitoring allows the City to keep this program responsive to the needs of Seattle.

55. The residential framework bill creates a program reasonably related to the public harms identified above and to the City's legitimate public goals to fulfill its planning obligations under State law and to ensure access to affordable housing for all communities and households in Seattle, utilizing the tool of RCW 36.70A.540 provided by the Washington State Legislature.