

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to land use and zoning; adding a new Chapter 23.58B of the Seattle Municipal Code (SMC) to establish the framework for an Affordable Housing Impact Mitigation Program for commercial development; and amending subsection 23.40.020.A, subsection 23.76.006.B, subsection 23.76.006.C, and subsection 25.05.675.I of the SMC.

..body

WHEREAS, development of new commercial floor area accommodates new employees,

including lower-wage employees, and creates a demand for affordable housing; and

WHEREAS, in May 2013 the Council adopted Resolution 31444, which established a work

program for reviewing and potentially modifying the City’s affordable housing incentive

programs; and

WHEREAS, in accordance with Resolution 31444, the 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 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 Mayor to evaluate potential

housing strategies; and

WHEREAS, in October 2014 the Council adopted Resolution 31551, which established the

Council’s intent to adopt and implement a program to mitigate demand for affordable

housing caused by development of new commercial floor area; and

WHEREAS, the HALA Advisory Committee issued final recommendations to the Mayor and

City Council on July 13, 2015; and

1 WHEREAS, the HALA Advisory Committee recommended that the City boost market capacity
2 by extensive citywide upzoning of residential and commercial zones and, in connection
3 with such upzones, implement a mandatory inclusionary housing program for new
4 construction residential development and a commercial linkage fee program for new
5 construction commercial development; and

6 WHEREAS, the HALA Advisory Committee recommended that the program offer the
7 alternatives of payment of a per-square-foot fee to fund preservation and production of
8 affordable housing, or construction of affordable housing on-site or off-site, and that the
9 program be implemented upon approval of additional commercial development capacity
10 through rezones of specified areas or Land Use Code changes; and

11 WHEREAS, the City has the authority to adopt an affordable housing impact mitigation program
12 in accordance with its police power; and

13 WHEREAS, the City also has authority to mitigate impacts on the need for affordable housing in
14 accordance with the State Environmental Policy Act (SEPA) upon adoption of
15 appropriate substantive SEPA policies; and

16 WHEREAS, an affordable housing impact mitigation program for development of new
17 commercial floor area is one of many actions the City intends to undertake to implement
18 the Comprehensive Plan's goals and policies for affordable housing; and

19 WHEREAS, one of the City's planning goals under the Growth Management Act, Chapter
20 36.70A RCW, is to make adequate provision for the housing needs of all economic
21 segments of the city; and

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

1 WHEREAS, the Affordable Housing Incentives Program Act set minimum standards for cities
2 choosing to implement or expand upon an affordable housing incentive program, but
3 encouraged programs that address local circumstances and conditions while
4 simultaneously contributing to the statewide need for additional low-income housing; and

5 WHEREAS, to facilitate implementation of an affordable housing impact mitigation program for
6 commercial development recommended by the HALA Advisory Committee, the Council
7 deems it advisable to promptly adopt the governing framework for such a program; and

8 WHEREAS, in setting the initial payment and performance levels, the City has set levels that are
9 lower than those that would be necessary to fully mitigate the housing impacts disclosed
10 in a study by David Paul Rosen & Associates commissioned by the City Council; and

11 WHEREAS, the July 13, 2015 Statement of Intent for Basic Framework for Mandatory
12 Inclusionary Housing and Commercial Linkage Fee states that the mandatory
13 inclusionary housing and commercial linkage fee programs should be developed to
14 achieve a projected production level of no fewer than 6,000 affordable units for
15 households with incomes no higher than 60 percent of median income over ten years, and
16 that if the projected production levels fall below the target, all parties agree to develop
17 and consider options to achieve the agreed upon production target; and

18 WHEREAS, the Council also deems it advisable to adopt amendments to the City's substantive
19 SEPA policies to allow for mitigation of certain affordable housing impacts under SEPA;

20 NOW, THEREFORE,

21 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

1 Section 1. A new Chapter 23.58B is added to Division 2, Authorized Uses and
2 Development Standards, within Subtitle III, Land Use Regulations, of Title 23 of the Seattle
3 Municipal Code as follows:

4 **Chapter 23.58B Affordable Housing Impact Mitigation Program for Commercial**
5 **Development**

6 **23.58B.005 Purpose**

7 The purpose of this Chapter 23.58B is to mitigate certain adverse impacts of development
8 of new commercial floor area on the need for affordable housing for the households of new
9 workers having lower-wage jobs. Chapter 23.58B provides for voluntary agreements for
10 mitigation of affordable housing impacts associated with new commercial floor area. The
11 mitigation provided in this Chapter 23.58B is not intended to eliminate all affordable housing
12 impacts of new commercial floor area.

13 **23.58B.010 Intent for implementation**

14 A. Application of this Chapter 23.58B

15 1. The provisions of this Chapter 23.58B apply in areas for which the provisions
16 of the zone specifically refer to this Chapter 23.58B, or through the terms of a contract rezone in
17 accordance with Section 23.34.004. The Council intends that references to this Chapter 23.58B
18 be made in the provisions of zones in conjunction with:

19 a. Land Use Code amendments increasing commercial development
20 capacity in the zone through increases in allowable FAR and/or height or other measures;

21 b. Land Use Map amendments increasing commercial development
22 capacity in an area; or

1 c. A combination of Land Use Code and Land Use Map amendments
2 increasing commercial development capacity in an area.

3 2. The Council intends that the initial implementation phase of enacting
4 amendments described in subsection 23.58B.010.A.1 will consist of:

5 a. An increase in FAR and/or height for all zones in the Downtown and
6 South Lake Union Urban Centers except the Downtown Harborfront 1 (DH-1), Pike Market
7 Mixed (PMM), Seattle Mixed 85/65-160 (SM 85/65-160), Seattle Mixed 85-240 (SM 85-240),
8 and Commercial 2-40 (C2-40) zones;

9 b. Zone-wide increases in development capacity in all Neighborhood
10 Commercial (NC), Commercial (C), Seattle Mixed (SM), and Industrial Commercial (IC) zones
11 outside the Downtown and South Lake Union Urban Centers; and

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

15 B. Amendment of payment and performance amounts

16 1. Initial implementation phase review. The Council recognizes that amendments
17 to the payment and performance amounts provided in this Chapter 23.58B may be needed during
18 the initial implementation phase described in subsection 23.58B.010.A.2 to further the target
19 production level of no fewer than 6,000 affordable units for households with incomes no higher
20 than 60 percent of median income over a ten-year period described in the July 13, 2015
21 Statement of Intent for Basic Framework for Mandatory Inclusionary Housing and Commercial
22 Linkage Fee. Such amendments could include changes to the payment and performance amounts
23 in Table A for 23.58B.040, Table B for 23.58B.040, Table A for 23.58B.050, and Table B for

1 23.58B.050, and adding amounts for additional zones or portions of zones in connection with
2 rezones of specific subareas such as portions of the University District. The Council intends that
3 amendments during the initial implementation phase be preceded by a robust stakeholder
4 engagement process including representatives of the for-profit and non-profit development
5 sectors who participated in the July 13, 2015 Statement of Intent for Basic Framework for
6 Mandatory Inclusionary Housing and Commercial Linkage Fee.

7 2. Ongoing review. The Council directs that, during the first six months of 2018
8 and every two years after July 1, 2018, the Director prepare a report on the performance of the
9 mandatory inclusionary housing program described in the July 13, 2015 Statement of Intent for
10 Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee, and the
11 affordable housing impact mitigation program provided in this Chapter 23.58B, including the
12 amount of payments collected under the payment option, the number of affordable housing units
13 produced and preserved with such payments, and the number of affordable housing units
14 constructed under the performance option.

15 3. Post-initial implementation phase review. Except as provided in subsection
16 23.58B.010.B.4, the Council intends that, after the completion of the initial implementation
17 phase described in subsection 23.58B.010.A.2, amendments to the payment and performance
18 amounts in Tables A and B for 23.58B.040 and Tables A and B for 23.58B.050 shall be
19 consistent with the following provisions:

20 a. Amendments may be considered if:

21 1) After five years from the effective date of the ordinance
22 introduced as Council Bill _____, there is a failure to meet expectations for program
23 performance;

1 C. Process for modifications of development standards

2 1. The Council intends that, at the time reference to this Chapter 23.58B is made
3 in the provisions of a zone consistent with subsection 23.58B.010.A.1, Land Use Code changes
4 will be adopted providing a process by which the Director would be authorized to modify certain
5 dimensional development standards to ensure that, in most cases, utilization of the increased
6 commercial development capacity is not prohibited by development standards.

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

11 3. The Council intends that any development standard modification process will
12 also provide for a reduction of the payment and/or performance amounts in a limited number of
13 cases where a portion of the increased development capacity cannot be used because of a
14 development standard from which a modification is not available or is not granted, and not
15 because of decisions of the applicant.

16 **23.58B.015 Scope of Chapter**

17 This Chapter 23.58B contains provisions that apply only in areas for which the provisions
18 of the zone specifically refer to this Chapter 23.58B, or through the terms of a contract rezone in
19 accordance with Section 23.34.004.

20 **23.58B.020 Voluntary agreements for affordable housing**

21 A. General. If an applicant elects to seek approval of a permit for a development as
22 described in subsection 23.58B.020.B, the applicant shall enter into a voluntary agreement with

1 the City to mitigate impacts on the need for affordable housing in accordance with this Chapter
2 23.58B.

3 B. Applicability. Except as provided in subsection 23.58B.020.C, Table B for
4 23.58B.040, or Table B for 23.58B.050, this Chapter 23.58B shall apply to development of either
5 a new structure, or an addition to an existing structure, that contains more than 4,000 square feet
6 of new chargeable floor area devoted to commercial uses.

7 C. Exemptions

8 The following commercial uses are exempt from the requirements of this Chapter
9 23.58B in a structure with at least 50 percent of its above-grade gross floor area in residential
10 use:

11 1. Up to a total of 4,000 square feet of street-level floor area containing the
12 following uses:

- 13 a. Arts facilities;
- 14 b. Eating and drinking establishments;
- 15 c. Entertainment uses other than adult cabarets, adult motion picture
16 theaters, and adult panorams; and
- 17 d. Sales and services, general.

18 2. Street-level uses along a designated pedestrian street that are required to meet
19 the street-level use standards of a Pedestrian designation.

20 3. Commercial uses within a development with rent- or income-restricted housing
21 if, for at least 75 percent of the units, a regulatory agreement, housing covenant, or other legal
22 document on the property title limits the income of households that may rent the units to no

1 higher than 60 percent of median income and controls the rents that may be charged for at least
2 50 years.

3 D. Options for mitigating affordable housing impacts. The applicant shall enter into a
4 voluntary agreement with the City to mitigate affordable housing impacts either by providing
5 affordable housing through the payment option in accordance with Section 23.58B.040, the
6 performance option in accordance with Section 23.58B.050, or a combination thereof.

7 E. Relationship to incentive zoning. In areas for which the provisions of the zone
8 specifically refer to this Chapter 23.58B and for which the provisions of the zone also allow
9 additional chargeable floor area to be achieved in accordance with Section 23.49.012, or extra
10 non-residential floor area to be achieved in accordance with Chapter 23.58A, beyond a base
11 height and/or base FAR, the following provisions apply:

12 1. The base FAR and maximum FAR and base height and maximum height shall
13 be in accordance with the provisions of the zone.

14 2. To exceed the base FAR and/or base height, the requirements of the provisions
15 of the zone and/or Chapter 23.58A for achieving chargeable floor area or extra non-residential
16 floor area above the base height and/or base FAR shall be met, provided that:

17 a. Affordable housing provided through the payment option in accordance
18 with Section 23.58B.040 or the performance option in accordance with Section 23.58B.050 may
19 also be counted toward:

20 1) The low-income housing requirements for achieving chargeable
21 floor area above the base FAR in accordance with Section 23.49.012; and

1 3. If an applicant does not seek to exceed the base FAR or base height, the
2 applicant shall provide the amount of performance or payment required in accordance with this
3 Chapter 23.58B for the applicable chargeable floor area in accordance with subsection
4 23.58B.020.B.

5 **23.58B.025 Permit application and decision**

6 A. Permit application. The Master Use Permit application or, if no Master Use Permit is
7 required, the application for the permit described in subsection 23.58B.035.A shall meet the
8 following requirements:

9 1. The permit application shall describe the amount of affordable housing impact
10 mitigation to be provided, expressed on a per-square-foot basis for performance and/or payment,
11 in accordance with Section 23.58B.040 and/or Section 23.58B.050.

12 2. The permit application shall indicate whether the payment option in accordance
13 with Section 23.58B.040, performance option in accordance with Section 23.58B.050, or a
14 combination of the payment and performance options will be pursued. The applicant shall
15 include the following information:

16 a. If providing affordable housing impact mitigation through a
17 combination of the payment and performance options, the applicant shall identify the portions of
18 chargeable floor area for which the payment option and performance option shall be used.

19 b. If providing affordable housing impact mitigation through the
20 performance option, the applicant shall submit to the Director of Housing for review and
21 approval a proposal for provision of affordable housing and a draft housing covenant ensuring
22 the affordable housing shall meet the standards of subsection 23.58B.050.B.

1 c. If the applicant requests a modification in accordance with Section
2 23.58B.030, the applicant shall request such a modification, explain the basis on which the
3 applicant believes the modification should be granted, and provide such supporting
4 documentation as is necessary for review of the request.

5 B. Permit decision. The Master Use Permit decision or, if no Master Use Permit is
6 required, the decision on the permit described in subsection 23.58B.035.A shall meet the
7 following requirements:

8 1. Subject to subsection 23.58B.025.B.2 and subsection 23.58B.025.B.3, the
9 permit decision shall include approval of the type of mitigation to be provided, whether by
10 payment, performance, or a combination of payment and performance, and specify the amount of
11 mitigation to be provided, expressed on a per-square-foot basis, for performance and/or payment
12 in accordance with Section 23.58B.040 and/or Section 23.58B.050.

13 2. If a modification is requested in accordance with subsection 23.58B.030.C, the
14 permit decision shall, as a Type I decision, include approval or disapproval of such a
15 modification and specify the amount of mitigation to be provided, expressed on a per-square-foot
16 basis, for performance and/or payment.

17 3. If a modification is requested in accordance with subsection 23.58B.030.B or
18 subsection 23.58B.030.D, the permit decision shall, as a Type II decision, include approval or
19 disapproval of such a modification and specify the amount of mitigation to be provided,
20 expressed on a per-square-foot basis, for performance and/or payment.

21 4. In the absence of a signed voluntary agreement, acceptance of the permit shall
22 constitute a voluntary agreement for the purposes of this Chapter 23.58B.

1 **23.58B.030 Modification of amount of payment or performance**

2 A. General. An applicant may request from the Director a modification of the amount
3 of mitigation required by Section 23.58B.040 or Section 23.58B.050. A request shall comply
4 with the following:

5 1. Prior to requesting a modification in accordance with subsection 23.58B.030.C
6 or subsection 23.58B.030.D, the applicant shall have applied for any available modifications of
7 development standards that would allow the applicant to utilize the increased commercial
8 development capacity provided by amendments described in subsection 23.58B.010.A.1.

9 2. The request for modification shall be submitted as a part of the relevant permit
10 application.

11 3. The request shall describe the scope and extent of the proposed modification.
12 The applicant shall provide such additional information as may be required by the Director
13 to make a determination on the request.

14 4. The Director shall consult with the Director of Housing in considering
15 modification requests.

16 5. The applicant has the burden of proving that a modification is justified.

17 B. Mitigation greater than impact. The Director shall modify the amount of mitigation
18 required in accordance with Section 23.58B.040 or Section 23.58B.050 if the applicant
19 demonstrates that the required amount of mitigation exceeds the amount that would be needed
20 to mitigate the actual demand for affordable housing created by the development. A request for
21 such a modification shall include information showing the affordable housing impacts created by
22 the development, based on the actual characteristics of the development, including for example,
23 the unique characteristics and space utilization of the workforce that will use the development

1 and the demand of that workforce for affordable housing expressed in terms of the number
2 of employees in households with income at or below 60 percent of median income, and the
3 number of employees in households with income higher than 60 percent of median income but
4 not higher than 80 percent of median income, and such other factors the applicant believes justify
5 a modification.

6 C. Mitigation in zones with height limits exceeding 85 feet. The Director shall modify
7 the amount of mitigation if the development is in a zone with a height limit greater than 85 feet
8 and the Director finds that applicable development standards prohibit the development
9 from exceeding a height of 85 feet. The reduced mitigation shall be the payment or performance
10 required in accordance with Section 23.58B.040 or Section 23.58B.050 for the same
11 zone classification as the zone in which the development is located that has a height limit of 85
12 feet, or if that zone classification does not exist, the most comparable zone classification that has
13 a height limit of 85 feet or less, as determined by the Director.

14 D. Financial hardship

15 1. The Director may modify the amount of mitigation required in accordance
16 with Section 23.58B.040 or Section 23.58B.050 if the amount of mitigation, after any
17 modification to which the applicant would be entitled in accordance with the standards of
18 subsection 23.58B.030.B and subsection 23.58B.030.C, would cause a severe and
19 unexpected financial hardship that outweighs the requirement's benefits in mitigating affordable
20 housing impacts.

21 2. The request for a modification authorized by subsection 23.58B.030.D.1 shall
22 include, at a minimum, all of the following:

23 a. The use of the site before the request;

1 b. How application of the requirements for which the modification is being
2 requested restricts the proposed use of the site compared to the restrictions that existed prior to
3 the adoption of this Chapter 23.58B;

4 c. The possible remaining uses of the site if the modification were not
5 granted;

6 d. The uses of the site that would have been allowed prior to the adoption
7 of this Chapter 23.58B;

8 e. A comparison of the estimated amount and percentage of value lost as a
9 result of the requirements versus the estimated amount and percentage of value lost as a result of
10 requirements that existed prior to adoption of the requirements of this Chapter 23.58B; and

11 f. The feasibility of altering the project to apply the requirements of this
12 Chapter 23.58B.

13 3. The Director may grant a modification authorized by subsection
14 23.58B.030.D.1 only after considering the following factors:

15 a. The severity of the financial hardship caused by the mitigation and the
16 degree to which the mitigation requirement could have been anticipated;

17 b. The extent to which alternative designs and uses of the property would
18 remedy any severe and unexpected financial hardship associated with the required mitigation;
19 and

20 c. The extent to which the qualities of the particular property, its zoning,
21 and other factors are such that the required mitigation creates a unique burden that imposes a
22 severe impact on the ability to utilize the property.

1 4. The Director may grant a modification authorized by subsection
2 23.58B.030.D.1 only to the extent necessary to provide relief from the identified financial
3 hardship.

4 5. When the Director grants a modification authorized by subsection
5 23.58B.030.D.1, the Director may impose alternative requirements, implemented through a
6 voluntary agreement, to offset or mitigate a portion of any remaining adverse impacts of the
7 development on the need for affordable housing.

8 **23.58B.035 Documentation and timing**

9 A. The documentation required by subsection 23.58B.035.B shall be provided prior to
10 issuance of the first construction permit other than a demolition, excavation, or shoring permit
11 or, if the Director has approved a phased building permit application, prior to issuance of the
12 portion of the building permit that includes the structural frame for the entire building.

13 B. Required documentation

14 1. The applicant shall execute and record a declaration in a form acceptable to the
15 Director that shall commit the applicant to mitigating affordable housing impacts consistent with
16 the permit decision.

17 2. The applicant shall provide to the Director of Housing any cash contributions
18 for affordable housing to be provided through the payment option in accordance with Section
19 23.58B.040.

20 3. The owner of affordable housing provided through the performance option in
21 accordance with Section 23.58B.050 shall execute and record housing covenants approved by the
22 Director of Housing.

1 **23.58B.040 Affordable housing impact mitigation – payment option**

2 A. Amount of cash contributions

3 1. Initial payment amounts inside the Downtown and South Lake Union Urban
 4 Centers. Inside the Downtown or South Lake Union Urban Centers, an applicant using the
 5 payment option shall provide a cash contribution to the City, calculated by multiplying the per-
 6 square-foot amount shown in Table A for 23.58B.040 by the total square footage of new
 7 chargeable floor area devoted to the uses set forth in subsection 23.58B.020.B.

Table A for 23.58B.040	
Cash contribution to be provided for affordable housing (payment requirement): inside Downtown and South Lake Union Urban Centers	
Zone	Dollars per square foot of new chargeable floor area according to subsection 23.58B.020.B
All DH1 zones	\$0.00
DH2/55	\$14.25
DH2/65	\$15.00
DH2/85	\$15.25
DMC-65	\$8.25
DMC-85	\$8.00
DMC 85/65-150	\$11.75
DMC-125	\$10.00
DMC-160	\$8.00
DMC 240/290-400	\$10.00
DMC 340/290-400	\$12.50
DOC1 U/450/U	\$14.75
DOC2 500/300-500	\$14.25
DRC 85-150	\$13.50
DMR/C 65/65-85	\$9.75
DMR/C 65/65-150	\$9.75
DMR/C 85/65	\$17.50
DMR/C 125/65	\$17.50
DMR/C 240/125	\$14.25
DMR/R 85/65	\$14.00
DMR/R 125/65	\$16.00
DMR/R 240/65	\$16.00
All IDM zones	\$8.00
IDR 45/125-240	\$10.00
IDR 150	\$10.00

Table A for 23.58B.040	
Cash contribution to be provided for affordable housing (payment requirement): inside Downtown and South Lake Union Urban Centers	
Zone	Dollars per square foot of new chargeable floor area according to subsection 23.58B.020.B
IDR/C 125/150-240	\$8.00
PMM-85	\$0.00
PSM 100/100-120	\$11.00
PSM 100/100-130	\$11.00
PSM 100/120-150	\$11.00
PSM-100	\$11.00
PSM-245	\$10.25
PSM-85-120	\$12.25
SM 85/65-125	\$8.00
SM 85/65-160	\$0.00
SM 85-240	\$0.00
SM 160/85-240	\$11.25
SM 240/125-400	\$10.00
SM/R 55/85	\$8.25
SM-85	\$8.00
SM-125	\$8.00
IC-45	\$8.00
IC-65	\$8.00
C2-40	\$0.00

1 2. Initial payment amounts outside the Downtown and South Lake Union Urban
 2 Centers. Outside the Downtown or South Lake Union Urban Centers, an applicant using the
 3 payment option shall provide a cash contribution to the City, calculated by multiplying the per-
 4 square-foot amount shown in Table B for 23.58B.040, based on the location of the development
 5 as shown on Map A for 23.58B.050, by the total square footage of new chargeable floor area
 6 devoted to the uses set forth in subsection 23.58B.020.B.

Table B for 23.58B.040			
Cash contribution to be provided for affordable housing (payment requirement): outside Downtown and South Lake Union Urban Centers			
Zone	Dollars per square foot of new chargeable floor area according to subsection 23.58B.020.B		
	Low	Medium	High
IC 85-160	\$10.00	\$10.00	\$10.00
All other zones ⁽¹⁾	\$5.00	\$7.00	\$8.00

Footnotes to Table B for 23.58.B.040
⁽¹⁾ Except that the requirements of this Chapter 23.58B are not applicable in Lowrise Multifamily (LR), Midrise Multifamily (MR), Highrise Multifamily (HR), Residential Small Lot (RSL), Single-family (SF), Industrial Buffer (IB), Industrial General (IG), and Master Planned Community – Yesler Terrace (MPC-YT) zones.

1 3. Automatic adjustments to initial payment amounts. On March 1, 2016, and on
 2 the same day each year thereafter, the payment amounts in Table A for 23.58B.040 and Table B
 3 for 23.58B.040 shall automatically adjust in proportion to the annual change for the previous
 4 calendar year (January 1 through December 31) in the Consumer Price Index, All Urban
 5 Consumers, Seattle-Tacoma-Bremerton, WA, All Items (1982-84 = 100), as determined by the
 6 U.S. Department of Labor, Bureau of Labor Statistics or successor index.

7 B. Deposit and use of cash contributions

8 1. Cash contributions shall be deposited in a special account established solely for
 9 preserving and producing housing for renter households with incomes no higher than 60 percent
 10 of median income and owner households with incomes no higher than 80 percent of median
 11 income. Earnings on balances in the special account shall accrue to that account.

12 2. Use of cash contributions shall support the preservation and production of
 13 renter-occupied housing within the city of Seattle. Rental housing supported by the cash
 14 contributions shall be rent- and income-restricted to serve households with incomes no higher
 15 than 60 percent of median income for a minimum period of 50 years. Monthly rent, including
 16 basic utilities, shall not exceed 30 percent of 60 percent of median income, all as determined by
 17 the Director of Housing. Use of cash contributions may also include capital expenditures for

1 development of owner-occupied housing within the city of Seattle. Owner-occupied housing
2 supported by the cash contributions shall be priced to serve households with incomes no higher
3 than 80 percent of median income, with resale restrictions for a minimum period of 50 years. For
4 purposes of determining the location for use of funds, the City shall consider the extent to which
5 the housing advances the following factors:

- 6 a. Affirmatively furthering fair housing choice.
- 7 b. Locating within an urban center or urban village.
- 8 c. Locating in proximity to frequent bus service or current or planned light
9 rail or street car stops.
- 10 d. Furthering the City policies to promote economic opportunity and
11 community development and addressing the needs of communities vulnerable to displacement.

12 3. Each cash contribution shall be expended within five years of collection. Any
13 cash contribution not so expended shall be refunded with any interest required by law.

14 **23.58B.050 Affordable housing impact mitigation – performance option**

15 A. Amount of affordable housing

16 1. Inside Downtown and South Lake Union Urban Centers. Inside the Downtown
17 or South Lake Union Urban Centers, an applicant using the performance option shall provide net
18 rentable floor area of affordable housing meeting the standards of subsection 23.58B.050.B,
19 calculated by multiplying the applicable percentage shown in Table A for 23.58B.050 by the
20 square footage of new chargeable floor area devoted to the uses set forth in subsection
21 23.58B.020.B, unless such amount totals fewer than three dwelling units, using a conversion
22 factor for unit size as determined by the Director, in which case the applicant shall make a cash
23 contribution using the payment option in accordance with Section 23.58B.040.

Table A for 23.58B.050
Affordable housing to be provided (performance requirement):
inside Downtown and South Lake Union Urban Centers

Zone	Percentage of new chargeable floor area according to subsection 23.58B.020.B
All DH1 zones	0.0%
DH2/55	8.6%
DH2/65	9.1%
DH2/85	9.2%
DMC-65	5.0%
DMC-85	5.0%
DMC 85/65-150	7.1%
DMC-125	6.1%
DMC-160	5.0%
DMC 240/290-400	6.1%
DMC 340/290-400	7.6%
DOC1 U/450/U	8.9%
DOC2 500/300-500	8.6%
DRC 85-150	8.2%
DMR/C 65/65-85	5.9%
DMR/C 65/65-150	5.9%
DMR/C 85/65	10.6%
DMR/C 125/65	10.6%
DMR/C 240/125	8.6%
DMR/R 85/65	8.5%
DMR/R 125/65	9.7%
DMR/R 240/65	9.7%
All IDM zones	5.0%
IDR 45/125-240	6.1%
IDR 150	6.1%
IDR/C 125/150-240	5.0%
All PMM zones	0.0%
PSM 100/100-120	6.7%
PSM 100/100-130	6.7%
PSM 100/120-150	6.7%
PSM-100	6.7%
PSM-245	6.2%
PSM-85-120	7.4%
SM 85/65-125	5.0%
SM 85/65-160	0.0%
SM 85-240	0.0%
SM 160/85-240	6.8%
SM 240/125-400	6.1%
SM/R 55/85	5.0%
SM-85	5.0%

Table A for 23.58B.050	
Affordable housing to be provided (performance requirement): inside Downtown and South Lake Union Urban Centers	
Zone	Percentage of new chargeable floor area according to subsection 23.58B.020.B
SM-125	5.0%
IC-45	5.0%
IC-65	5.0%
C2-40	0.0%

1 2. Outside the Downtown and South Lake Union Urban Centers. Outside the
 2 Downtown or South Lake Union Urban Centers, an applicant using the performance option shall
 3 provide net rentable floor area of affordable housing meeting the standards of subsection
 4 23.58.B.050.B, calculated by multiplying the applicable percentage shown in Table B for
 5 23.58B.050, based on the location of the development as shown on Map A for 23.58B.050, by
 6 the square footage of new chargeable floor area devoted to uses set forth in subsection
 7 23.58B.020.B, unless such amount totals fewer than three dwelling units, using a conversion
 8 factor for unit size as determined by the Director, in which case the applicant shall make a cash
 9 contribution for affordable housing using the payment option in accordance with Section
 10 23.58A.040.
 11

Table B for 23.58B.050	
Affordable housing to be provided (performance requirement): outside Downtown and South Lake Union Urban Centers	
Zone	Percentage of new chargeable floor area according to subsection 23.58B.020.B
IC 85-160	6.1%
All other zones ⁽¹⁾	5.0%

Footnotes to Table B for 23.58.B.050
⁽¹⁾ Except that the requirements of this Chapter 23.58B are not applicable in Lowrise Multifamily (LR), Midrise Multifamily (MR), Highrise Multifamily (HR), Residential Small Lot (RSL), Single-family (SF), Industrial Buffer (IB), Industrial General (IG), Master Planned Community – Yesler Terrace (MPC-YT) zones.

1 B. Performance standards. Affordable housing provided through the performance option
2 shall meet the following standards:

3 1. General performance standards

4 a. Duration. Affordable housing provided through the performance option
5 shall be for a minimum period of 50 years from the date of issuance of the final certificate of
6 occupancy for the affordable housing.

7 b. Rent limits. Monthly rent, including basic utilities, shall not exceed 30
8 percent of 60 percent of median income except that, for rental housing units of 400 square feet or
9 fewer of net rentable floor area, monthly rent, including basic utilities, shall not exceed 30
10 percent of 40 percent of median income. Affordable housing provided through the performance
11 option shall be for rental, not ownership.

12 c. Unit size, type, and distribution. The average size and type of the
13 affordable housing units provided through performance, regardless of whether provided on-site
14 or off-site, shall generally be comparable to the dwelling units in the residential portion, if any,
15 of the development required to mitigate affordable housing impacts in accordance with this
16 Chapter 23.58B. The affordable units shall have substantially the same functionality as the other
17 residential units, if any, in the development in which they are located and shall be generally
18 distributed throughout the residential portion of the development.

19 d. Eligible households. Affordable housing provided through the
20 performance option shall serve only:

21 1) For rental housing units of 400 square feet or fewer of net
22 rentable floor area, households with incomes no higher than 40 percent of median income; or

1 performance option shall submit to the Director of Housing a written report demonstrating
2 compliance. The written report shall state, at a minimum, the occupancy and vacancy of the
3 affordable housing, the monthly rents charged for each affordable housing unit, and the income
4 and size of each household occupying the affordable housing. The Director of Housing may
5 require other documentation to ensure compliance with this subsection 23.58B.050.B and any
6 housing covenant approved by the Director of Housing, including but not limited to
7 documentation of rents, copies of tenant certifications, and documentation supporting
8 determinations of tenant income (e.g., employer's verification or check stubs). The Director of
9 Housing may require other documentation necessary to track program outcomes and the
10 demographics of households served. The first annual report shall include documentation of
11 issuance of the final certificate of occupancy for the affordable housing.

12 2. Off-site performance standards. In addition to meeting the standards in
13 subsection 23.58B.050.B.1, affordable housing provided through the performance option but not
14 located on the same lot as the development required to mitigate affordable housing impacts in
15 accordance with this Chapter 23.58B shall meet the following additional standards:

16 a. The applicant shall demonstrate to the satisfaction of the Director of
17 Housing that affordable housing impact mitigation provided through the performance option on a
18 site other than the same lot as the development required to mitigate affordable housing impacts
19 in accordance with this Chapter 23.58B is equal to that provided by the on-site performance
20 option.

21 b. Affordable housing not located on the same lot as the development
22 required to mitigate affordable housing impacts in accordance with this Chapter 23.58B shall be
23 located:

1 23.58A, and Chapter 23.58B. Applications for prohibited variances shall not be accepted for
2 filing.

3 * * *

4 Section 3. Subsection 23.76.006.B and subsection 23.76.006.C of the Seattle Municipal
5 Code, which section was last amended by Ordinance 124843, are amended as follows:

6 **23.76.006 Master Use Permits required**

7 * * *

8 B. The following decisions are Type I:

- 9 1. Determination that a proposal complies with development standards;
- 10 2. Establishment or change of use for uses permitted outright, interim use
11 parking under subsection 23.42.040.G, uses allowed under Section 23.42.038, temporary
12 relocation of police and fire stations for 24 months or less, transitional encampment interim
13 use, and temporary uses for four weeks or less not otherwise permitted in the zone, and
14 renewals of temporary uses for up to six months, except temporary uses and facilities for light
15 rail transit facility construction and transitional encampments;
- 16 3. The following street use approvals:
- 17 a. Curb cut for access to parking whether associated with a development
18 proposal or not;
- 19 b. Concept approval of street improvements associated with a
20 development proposal, such as additional on-street parking, street landscaping, curbs and
21 gutters, street drainage, sidewalks, and paving;
- 22 c. Structural building overhangs associated with a development
23 proposal;

- 1 d. Areaways associated with a development proposal;
- 2 4. Lot boundary adjustments;
- 3 5. Modification of the following features bonused under Title 24:
 - 4 a. Plazas;
 - 5 b. Shopping plazas;
 - 6 c. Arcades;
 - 7 d. Shopping arcades;
 - 8 e. Voluntary building setbacks;
- 9 6. Determinations of Significance (determination that an environmental impact
10 statement is required) for Master Use Permits and for building, demolition, grading, and other
11 construction permits (supplemental procedures for environmental review are established in
12 Chapter 25.05, Environmental Policies and Procedures), except for Determinations of
13 Significance based solely on historic and cultural preservation;
- 14 7. Discretionary exceptions for certain business signs authorized by subsection
15 23.55.042.D;
- 16 8. Waiver or modification of required right-of-way improvements;
- 17 9. Special accommodation pursuant to Section 23.44.015;
- 18 10. Reasonable accommodation;
- 19 11. Minor amendment to Major Phased Development Permit;
- 20 12. Determination of public benefit for combined lot development;
- 21 13. Streamlined design review decisions pursuant to Section 23.41.018 if no
22 development standard departures are requested pursuant to Section 23.41.012, and design

1 review decisions in an MPC zone if no development standard departures are requested

2 pursuant to Section 23.41.012;

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

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

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

9 17. Modification of mitigation amounts under Section 23.58B.040 or Section
10 23.58B.050 pursuant to subsection 23.58B.025.B.2; and

11 18. Other Type I decisions.

12 C. The following are Type II decisions:

13 1. The following procedural environmental decisions for Master Use Permits
14 and for building, demolition, grading, and other construction permits are subject to appeal to
15 the Hearing Examiner and are not subject to further appeal to the City Council (supplemental
16 procedures for environmental review are established in Chapter 25.05, Environmental Policies
17 and Procedures):

18 a. Determination of Non-significance (DNS), including mitigated DNS;

19 b. Determination that a final environmental impact statement (EIS) is
20 adequate; and

21 c. Determination of Significance based solely on historic and cultural
22 preservation.

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

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

9 b. Short subdivisions;

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

12 d. Special exceptions; provided that the decision on special exceptions
13 sought as part of a Council land use decision shall be made by the Council pursuant to Section
14 23.76.036;

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

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

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

5 1) Shoreline substantial development permits;

6 2) Shoreline variances; and

7 3) Shoreline conditional uses;

8 h. Major Phased Developments;

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

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

13 k. Downtown planned community developments;

14 l. Establishment of temporary uses for transitional encampments, except
15 transitional encampment interim uses provided for in subsection 23.76.006.B.2; ~~((and))~~

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

18 ~~((n))~~n. Except for projects determined to be consistent with a planned
19 action ordinance, decisions to approve, condition, or deny based on SEPA policies if such
20 decisions are integrated with the decisions listed in subsections 23.76.006.C.2.a. through
21 23.76.006.C.2.1; provided that, for decisions listed in subsections 23.76.006.C.2.c,
22 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

1 decisions to approve, condition, or deny based on SEPA policies are made by the Council
2 pursuant to Section 23.76.036.

3 * * *

4 Section 4. Subsection 25.05.675.I of the Seattle Municipal Code, which section was last
5 amended by Ordinance 124378, is amended as follows:

6 **25.05.675 Specific environmental policies**

7 * * *

8 I. Housing((:))

9 1. Demolition, rehabilitation, or conversion

10 a. Policy ((B))background. Demolition or rehabilitation of low-rent
11 housing units or conversion of housing for other uses can cause both displacement of low-
12 income persons and reduction in the supply of housing.

13 ((2))b. Policies((:))

14 ((a:))1) It is the City's policy to encourage preservation of housing
15 opportunities, especially for low-income persons, and to ensure that persons displaced by
16 redevelopment are relocated.

17 ((b:))2) Proponents of projects shall disclose the on-site and off-
18 site impacts of the proposed projects upon existing housing, with particular attention to low-
19 income housing.

20 ((e:))3) Compliance with legally valid City ordinance provisions
21 relating to housing relocation, demolition, and conversion shall constitute compliance with this
22 housing policy.

1 ~~((d-))~~4) Housing preservation shall be an important consideration
2 in the development of the City’s public projects and programs. The City shall give high priority
3 to limiting demolition of low-income housing in the development of its own facilities.

4 2. Commercial development - Policy background

5 a. The housing goal of the Growth Management Act, Chapter 36.70A
6 RCW, encourages the availability of housing to all economic segments of the population. In
7 accordance with the Growth Management Act, the housing element of the City’s Comprehensive
8 Plan shall, among other things, make adequate provision for existing and projected needs of all
9 economic segments of the community.

10 b. SEPA provides that each person has a fundamental and inalienable right
11 to a healthful environment. Affordable housing is a critical component of a healthful
12 environment.

13 c. Development of new commercial floor area is accompanied by
14 employment growth, including lower-wage jobs. An increase in lower-wage jobs associated with
15 new commercial floor area correlates with an increase in the need for affordable housing.

16 d. The impact correlated with commercial development on the need for
17 affordable housing falls disproportionately on persons of certain incomes and certain races and
18 ethnicities. The City has a strong interest in mitigating the impacts of development of new
19 commercial floor area in creating a need for affordable housing, particularly to ensure housing
20 for those households earning no higher than 60 percent of median income.

21 e. Because affordable housing is in short supply in the City and newly
22 constructed housing is generally not affordable, lower-wage employees may be forced to live in
23 less than adequate housing within the City, pay a disproportionate share of their incomes to live

1 in adequate housing in the City, or commute ever increasing distances to their jobs from housing
2 located outside the City when they are unable to locate adequate housing within the City.

3 f. It is the City's policy that all people have the right to safe, healthy, and
4 affordable housing.

5 3. Commercial development - Policies

6 a. The following policies apply to the development of a new structure, or
7 an addition to an existing structure, that is not categorically exempt and contains more than 4,000
8 square feet of new chargeable floor area devoted to commercial uses as defined in Section
9 23.84A.006 in areas for which the provisions of the zone specifically refer to Chapter 23.58B:

10 1) It is the City's policy to mitigate a portion of the affordable
11 housing impacts of commercial development on low-income people, including people of color.

12 2) In determining the necessary affordable housing impact
13 mitigation, the decision maker shall consider the need for affordable housing created by the
14 development due to employment growth, including lower-wage jobs, associated with the
15 development.

16 3) Mitigation measures may include, but are not limited to:

17 a) Production of affordable housing units on-site or off-site;
18 and

19 b) Payment to fund affordable housing.

20 4) Subject to the Overview Policy set forth in Section 25.05.665,
21 the decision maker may condition or deny a commercial development project described in this
22 subsection 25.05.675.I.3.a to mitigate adverse impacts on the need for affordable housing.

1 Compliance with Chapter 23.58B shall constitute compliance with the policies set forth in this
2 subsection 25.05.675.I.3.a.

3 * * *

4 Section 5. The provisions of this ordinance are declared to be separate and severable and
5 the invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this
6 ordinance, or the invalidity of the application thereof to any person or circumstance shall not
7 affect the validity of the remainder of this subtitle or the validity of its application to other
8 persons or circumstances.

9

