

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to land use and zoning, expressing City Council's intent for implementation of Chapter 23.58B; amending Sections 23.41.012, 23.58B.010, 23.58B.015, 23.58B.020, 23.58B.025, 23.58B.030, 23.58B.040, 23.58B.050, 23.58B.060, 23.76.006, and 25.05.675 of the Seattle Municipal Code; and repealing Section 23.58B.035 of the Seattle Municipal Code.

..body

WHEREAS, in August 2015, the Mayor transmitted legislation to provide a framework for mandatory housing affordability for commercial development (MHA-C) and City Council passed Ordinance 124895 on November 9, 2015; and

WHEREAS, the City Council passed Ordinance 125108 to provide a framework for mandatory housing affordability for residential development (MHA-R) on August 15, 2016; and

WHEREAS, this bill provides consistency with Ordinance 125108 approving the MHA-R framework, ensures clear regulatory requirements and implements best practices for the administration of mandatory affordable housing programs, and includes technical corrections;

WHEREAS, the Council recognizes the need to reinforce local neighborhood and cultural identity by preserving locally owned business at risk of displacement by new commercial development and intends to explore regulatory incentives, such as those recommended in the Seattle *Commercial Affordability Advisory Committee Recommendations Report*, which include providing incentives for developers to provide lower rents or tenant improvements to qualifying small businesses; additionally the Council may consider other development standards, based on area characteristics, such as requirements for smaller commercial spaces to encourage business diversity and lower market rents;

1 NOW, THEREFORE,

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

3 Section 1. The Council expresses the following intent as to implementation of Seattle
4 Municipal Code Chapter 23.58B:

5 A. Initial implementation. The Council intends that the initial implementation phase of
6 Seattle Municipal Code Chapter 23.58B will consist of:

7 1. An increase in commercial development capacity for all zones in the
8 Downtown and South Lake Union Urban Centers except Downtown Harborfront 1/45 (DH1/45),
9 Downtown Harborfront 2/55 (DH2/55), Downtown Harborfront 2/85 (DH2/85), International
10 District Mixed-65-150 (IDM-65-150), International District Mixed 75-85 (IDM 75-85), Pike
11 Market Mixed-85 (PMM-85), Pioneer Square Mixed (PSM), Seattle Mixed-South Lake Union
12 85/65-160 (SM-SLU 85/65-160), Seattle Mixed-South Lake Union 85-240 (SM-SLU 85-240),
13 and Commercial 2-40 (C2-40) zones to be enacted no later than 2016;

14 2. Zone-wide increases in commercial development capacity in all Neighborhood
15 Commercial (NC), Commercial (C), Seattle Mixed (SM), and Industrial Commercial (IC) zones
16 outside the Downtown and South Lake Union Urban Centers to be enacted no later than 2017;
17 and

18 3. Increases in development capacity through rezones of any portions of the
19 University District that are upzoned in accordance with the University District urban design
20 framework process.

21 B. Amendment of payment and performance amounts

22 1. Initial implementation phase review. The Council recognizes that amendments
23 to the payment and performance amounts provided in Chapter 23.58B may be needed during the

1 initial implementation phase described in subsection A of this section to further the target
2 production level of no fewer than 6,000 net new rent and income restricted units affordable for
3 households with incomes no higher than 60 percent of median income over a ten-year period
4 described in the July 13, 2015 *Statement of Intent for Basic Framework for Mandatory*
5 *Inclusionary Housing and Commercial Linkage Fee*. Such amendments could include changes to
6 the payment and performance amounts in Table A and Table B for 23.58B.040 and Table A and
7 Table B for 23.58B.050, and adding amounts for additional zones or portions of zones in
8 connection with rezones of specific subareas such as portions of the University District. The
9 Council intends that amendments during the initial implementation phase be preceded by a
10 robust stakeholder engagement process including representatives of the for-profit and non-profit
11 development sectors who participated in the July 13, 2015 *Statement of Intent for Basic*
12 *Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee*. The Council
13 intends to consider whether to include higher performance and payment amounts, subject to
14 statutory limits, for those areas where the increase in development capacity would be likely to
15 increase displacement risk. Factors to consider are (a) areas that have been identified in *Seattle*
16 *2035, Growth and Equity, Analyzing Impacts on Displacement and Opportunity Related to*
17 *Seattle's Growth Strategy*, May 2016, as having a high displacement risk; (b) areas where the
18 increment of increased development capacity is greater than the standard MHA-implementing
19 zone change; and (c) areas where planning processes, including, but not limited to, the SEPA
20 process for MHA-C implementation have identified affordable units at risk of demolition, the
21 Council will consider whether to implement additional or alternate MHA program measures to
22 increase affordable units sufficient to offset the affordable units at risk of demolition as a result
23 of the increase in development capacity due to MHA.

1 2. Ongoing review. The Council directs that, during the first six months of 2018
2 and every two years after July 1, 2018, the Director of the Seattle Department of Construction
3 and Inspections (SDCI) and the Director of Housing shall report on the performance of the
4 mandatory inclusionary housing program described in the July 13, 2015 *Statement of Intent for*
5 *Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee*, and the
6 impact mitigation program provided in Chapter 23.58B, including the amount of payments
7 collected under the payment option, the number of affordable units produced and preserved with
8 such payments, and the number of affordable units constructed under the performance option.
9 The July 1, 2018 report shall compare changes in the Consumer Price Index, All Urban
10 Consumers, Seattle-Tacoma-Bremerton, WA, All Items (1982-1984 = 100), with changes in
11 multifamily residential rents and other housing market variables used to determine initial
12 payment amounts since passage of Ordinance 124895. If the Consumer Price Index has lagged or
13 exceeded rents or other housing market variables, the Director of Housing shall propose an
14 alternative measure or index upon which to base changes in program requirements. The July 1,
15 2019 report should include an assessment of past and anticipated program performance,
16 including an assessment of whether a developer building outside of the Downtown and South
17 Lake Union Urban Centers would be economically indifferent between performance and
18 payment given market conditions at that time. If the Council determines that developers of
19 projects, other than smaller projects and projects inside of the Downtown and South Lake Union
20 Urban Centers, favor the payment option, the Council will consider raising payment amounts to
21 avoid a bias towards payment, consistent with statutory authority. Units produced under the
22 mandatory inclusionary housing program described in the July 13, 2015 *Statement of Intent for*
23 *Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee*, and the

1 impact mitigation program provided in Chapter 23.58B, shall be measured as net new units.

2 Existing rent and income restricted units demolished for development subject to the programs
3 shall be subtracted from the target production.

4 3. Post-initial implementation phase review. Except as provided in subsection B.4
5 of this section, the Council intends that, after the completion of the initial implementation phase
6 described in subsection A of this section, amendments to the payment and performance amounts
7 in Tables A and B for 23.58B.040 and Tables A and B for 23.58B.050 shall be consistent with
8 the following provisions:

9 a. Amendments may be considered if:

10 1) After November 17, 2020, there is a failure to meet expectations
11 for program performance;

12 2) There are significant positive or negative changes in real estate
13 development market conditions; or

14 3) Neither of the preceding criteria is met and ten years have
15 elapsed since the completion of the initial implementation phase described in section A of this
16 section.

17 b. If amendments are considered in accordance with a criterion in
18 subsection B.3.a of this section, the Mayor and Council shall appoint a Technical Review
19 Committee whose membership includes appropriate stakeholder representation, including
20 representatives of the for-profit and non-profit development sectors and members of community-
21 based groups, and shall provide the Committee with clear objectives to be accomplished by a
22 revision of the payment and performance amounts in Chapter 23.58B.

1 c. If appointed, the Technical Review Committee shall prepare a report
2 and recommendation regarding amendments to the payment and performance amounts in Table
3 A and Table B for 23.58B.040 and Table A and Table B for 23.58B.050. The Mayor shall
4 consider the Technical Review Committee's report and recommendations and shall transmit
5 them to the Council along with any recommendation by the Mayor for amendments.

6 4. Amendments concurrent with increased capacity. In conjunction with any
7 increase in commercial development capacity other than those identified in section A of this
8 section, the Council will apply Chapter 23.58B to the zones or areas in which capacity is
9 increased and may amend Table A and Table B for 23.58B.040 and Table A and Table B for
10 23.58B.050 for those zones or areas in which capacity is increased.

11 C. Process for modifications of development standards

12 1. The Council intends that, at the time reference to Chapter 23.58B is made in the
13 provisions of a zone, Land Use Code changes will be adopted providing a process by which the
14 Director would be authorized to modify certain dimensional development standards to ensure
15 that, in most cases, utilization of the increased commercial development capacity is not
16 prohibited by development standards.

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

21 3. The Council intends that any development standard modification process will
22 also provide for a reduction of the payment and/or performance amounts in a limited number of
23 cases where a portion of the increased development capacity cannot be used because of a

1 development standard from which a modification is not available or is not granted, and not
2 because of decisions of the applicant.

3 Section 2. Section 23.41.012 of the Seattle Municipal Code, last amended by Ordinance
4 125163, is amended as follows:

5 **23.41.012 Development standard departures**

6 A. Departure from Land Use Code requirements may be permitted for new multifamily,
7 commercial, and Major Institution development as part of a design review process. Departures
8 may be allowed if an applicant demonstrates that departures from Land Use Code requirements
9 would result in a development that better meets the intent of adopted design guidelines.

10 B. Departures may be granted from any Land Use Code standard or requirement, except
11 for the following:

12 1. Procedures;

13 2. Permitted, prohibited, or conditional use provisions, except that departures may
14 be granted from development standards for required street-level uses;

15 3. Residential density limits;

16 4. In Downtown zones, provisions for exceeding the base FAR or achieving bonus
17 development as provided in Chapter 23.49, Downtown Zoning;

18 5. In Downtown zones, the minimum size for Planned Community Developments
19 as provided in Section 23.49.036;

20 6. In Downtown zones, the average floor area limit for stories in residential use in
21 Table B for 23.49.058;

22 7. In Downtown zones, the provisions for combined lot developments as provided
23 in Section 23.49.041;

1 8. In Downtown Mixed Commercial zones, tower spacing requirements as
2 provided in subsection 23.49.058.F;

3 9. In the Downtown Mixed Commercial 160 zone, minimum floor-to-floor height
4 for street-level uses required as a condition of the additional height allowed by subsection
5 23.49.008.E;

6 10. Downtown view corridor requirements, provided that departures may be
7 granted to allow open railings on upper-level roof decks or rooftop open space to project into the
8 required view corridor, provided such railings are determined to have a minimal impact on views
9 and meet the requirements of the Building Code;

10 11. In SM-SLU (~~zones in the South Lake Union Urban Center~~), floor area limits
11 for all uses provided in subsections 23.48.245.A, 23.48.245.B.1, 23.48.245.B.2, and
12 23.48.245.B.3, except that departures of up to a ~~((5))~~ five percent increase in floor area limit for
13 each story may be granted for structures with non-residential uses meeting the requirements of
14 subsections 23.48.245.B.1.d.1 and 23.48.245.B.1.d.2;

15 12. ~~((In SM, SM-D, SM-SLU, and SM-NR zones provisions for gaining extra
16 floor area provided for in Section 23.48.021, 23.48.221 and))~~ The provisions of Chapter 23.58A,
17 except that departures may be granted from the requirements of subsections 23.48.021.C.1.b.2,
18 23.48.021.C.1.b.3.a, 23.48.021.C.1.b.4, and 23.48.021.C.1.b.5, if the applicant demonstrates that
19 the amenity to be provided according to Section 23.58A.040 better achieves the intent of the
20 Downtown Amenity Standards for that amenity feature~~((:));~~

21 13. In SM-SLU zones (~~in the South Lake Union Urban Center~~), provisions
22 limiting the number of towers permitted per block provided for in Section 23.48.245;

1 14. In the SM-SLU zones (~~(in the South Lake Union Urban Center)~~), provisions
2 for upper-level setbacks provided for in Section 23.48.245;

3 15. (~~(Floor Area Ratios)~~) FAR; except that in the Pike/Pine Conservation Overlay
4 District shown on Map A for 23.73.004, departures from the development standards for allowing
5 floor area exemptions from FAR calculations in subsection 23.73.009.C and for retaining a
6 character structure on a lot in Section 23.73.015 are not considered departures from FAR limits;

7 16. Maximum size of use;

8 17. Structure height, except that:

9 a. Within the Roosevelt Commercial Core building height departures up to
10 an additional 3 feet may be granted for properties zoned NC3-65, (Map A for 23.41.012,
11 Roosevelt Commercial Core);

12 b. Within the Ballard Municipal Center Master Plan area building height
13 departures may be granted for properties zoned NC3-65, (Map B for 23.41.012, Ballard
14 Municipal Center Master Plan Area). The additional height may not exceed 9 feet, and may be
15 granted only for townhouses that front a mid-block pedestrian connection or a park identified in
16 the Ballard Municipal Center Master Plan;

17 c. In Downtown zones building height departures may be granted for
18 minor communication utilities as set forth in subsection 23.57.013.B;

19 d. Within the Uptown Urban Center building height departures up to 3 feet
20 of additional height may be granted if the top floor of the structure is set back at least 6 feet from
21 all lot lines abutting streets;

22 e. Within the Queen Anne Residential Urban Village and Neighborhood
23 Commercial zones as shown on Map C for 23.41.012, Upper Queen Anne Commercial Areas,

1 building height departures up to 3 feet of additional height may be granted if the top floor of the
2 structure is set back at least 6 feet from all lot lines abutting streets;

3 f. Within the PSM 85-120 zone in the area shown on Map A for
4 23.49.180, departures may be granted from development standards that apply as conditions to
5 additional height, except for ~~((floor area ratios))~~ FAR and provisions for adding bonus floor area
6 above the base FAR; and

7 g. Within the Pike/Pine Conservation Overlay District shown on Map A
8 for 23.73.004, departures may be granted from development standards that apply as conditions to
9 additional height in subsections 23.73.014.A and 23.73.014.B, and the provision for receiving
10 sites for ~~((transfer of development potential))~~ TDP in subsection 23.73.024.B.5((-));

11 18. Quantity of parking required, minimum and maximum parking limits, and
12 minimum and maximum number of drive-in lanes, except that within the Ballard Municipal
13 Center Master Plan area departures may be granted from the minimum parking requirement up to
14 a 30 percent maximum reduction for ground-level retail uses that abut established mid-block
15 pedestrian connections through private property as identified in the "Ballard Municipal Center
16 Master Plan Design Guidelines, 2013";

17 19. Provisions of the Shoreline District, Chapter 23.60A;

18 20. Standards for storage of solid-waste containers;

19 21. The quantity of open space required for major office projects in Downtown
20 zones as provided in subsection 23.49.016.B;

21 22. Noise and odor standards;

22 23. Standards for the location of access to parking in Downtown zones;

1 24. Provisions of Chapter 23.52, Transportation Concurrency and Transportation
2 Impact Mitigation;

3 25. Provisions of Chapter 23.53, Requirements for Streets, Alleys, and Easements,
4 except that departures may be granted from the access easement standards in Section 23.53.025;

5 26. Affordable housing production conditions within the MPC-YT zone, pursuant
6 to Section 23.75.085;

7 27. Limits on floor area for uses within the MPC-YT zone, as provided in
8 Sections 23.75.085 and 23.75.090 or as applicable under Section 23.75.040;

9 28. Limits on number, distribution, and gross floor area per story for highrise
10 structures within the MPC-YT zone, as provided in Section 23.75.120 or as applicable under
11 Section 23.75.040;

12 29. Definitions;

13 30. Measurements;

14 31. Lot configuration standards in subsections 23.22.100.C.3, 23.24.040.A.9, and
15 23.28.030.A.3, which may be modified as authorized in those provisions;

16 32. Standards for structural building overhangs in Section 23.53.035 and
17 structural encroachments permitted in setbacks provided in lieu of dedication of right-of-way
18 under subsection 23.53.015.D.1.b;

19 33. Within the Pike/Pine Conservation Overlay District shown on Map A for
20 23.73.004, the requirement that all character structures on a lot be retained in order to qualify as
21 a TDP receiving site in subsection 23.73.024.B, the exception allowing additional FAR for non-
22 residential uses in subsection 23.73.009.B, the FAR exemption for residential uses in subsection
23 23.73.009.C.3, the exception to floor area limits in subsections 23.73.010.B.1 and 23.73.010.B.2,

1 the exception for width and depth measurements in subsection 23.73.012.B, or the exception for
2 an additional 10 feet in height as provided for in subsection 23.73.014.B((-));

3 a. Departures may, however, be granted under the following
4 circumstances:

5 1) The character structure is neither a designated Seattle
6 ~~((landmark))~~ Landmark nor listed in a rule promulgated by the Director according to Section
7 23.73.005; and

8 2) The departure is for demolishing a wood-frame character
9 structure originally built as a single-family residence or single-family accessory structure; or

10 3) The departure is for demolishing a character structure that is
11 determined to have insufficient value to warrant retention when the following applies:

12 a) The structure lacks a high degree of architectural
13 integrity as evidenced by extensive irreversible exterior remodeling; or

14 b) The structure does not represent the Pike/Pine
15 neighborhood's building typology that is characterized by the use of exterior materials and design
16 elements such as masonry, brick, and timber; multi-use loft spaces; very high and ~~((fully-glazed-~~
17 ~~ground-floor))~~ fully-glazed ground-floor storefront windows; and decorative details including
18 cornices, emblems, and embossed building names; or

19 c) Demolishing the character structure would allow for
20 more substantial retention of other, more significant character structures on the lot, such as a
21 structure listed in a rule promulgated by the Director according to Section 23.73.005; or would
22 allow for other key neighborhood development objectives to be achieved, such as improving

1 pedestrian circulation by providing through-block connections, developing arts and cultural
2 facilities, or siting (~~(publically)~~) publicly-accessible open space at key neighborhood locations.

3 b. In addition to the provisions of subsection 23.41.012.B.32.a, the
4 following provisions apply:

5 1) At least one character structure shall be retained on the lot if:
6 subsection 23.73.009.C.3 regarding the FAR exemption for residential uses, subsection
7 23.73.010.B.2 regarding increases in the floor area limits, subsection 23.73.012.B regarding the
8 exception from width and depth measurements, or subsection 23.73.014.B regarding the
9 exception allowing for an additional 10 feet in height are being used by the development
10 proposal.

11 2) No character structures are required to be retained on the lot if:
12 subsection 23.73.009.B regarding the exception to allow additional FAR for non-residential uses,
13 subsection 23.73.010.B.1 regarding increases in the floor area limits, or Section 23.73.024 for the
14 use of TDP on a lot that is an eligible TDP receiving site under the provisions of subsection
15 23.73.024.B are the only provisions being used by the development proposal(~~(-)~~);

16 34. In pedestrian-designated zones, provisions for residential uses at street level,
17 as provided in subsection 23.47A.005.C.1, except that a departure may be granted to allow
18 residential uses at street level to occupy, in the aggregate, no more than 50 percent of the street-
19 level street-facing facade;

20 35. In pedestrian-designated zones, provisions for transparency requirements, as
21 provided in subsection 23.47A.008.B, except that departures may be granted to reduce the
22 required transparency from 60 percent to no less than 40 percent of the street-facing facade;
23 (~~(and)~~)

- 1 a. ~~Land Use Code amendments increasing commercial development~~
2 ~~capacity in the zone through increases in allowable FAR and/or height or other measures;~~
3 b. ~~Land Use Map amendments increasing commercial development~~
4 ~~capacity in an area; or~~
5 c. ~~A combination of Land Use Code and Land Use Map amendments~~
6 ~~increasing commercial development capacity in an area.~~

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

9 a. ~~An increase in FAR and/or height for all zones in the Downtown and~~
10 ~~South Lake Union Urban Centers except the Downtown Harborfront 1 (DH 1), Pike Market~~
11 ~~Mixed (PMM), Seattle Mixed 85/65-160 (SM 85/65-160), Seattle Mixed 85-240 (SM 85-240),~~
12 ~~and Commercial 2-40 (C2-40) zones to be enacted no later than September 2016;~~

13 b. ~~Zone wide increases in development capacity in all Neighborhood~~
14 ~~Commercial (NC), Commercial (C), Seattle Mixed (SM), and Industrial Commercial (IC) zones~~
15 ~~outside the Downtown and South Lake Union Urban Centers to be enacted no later than~~
16 ~~September 2017; and~~

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

20 B. ~~Amendment of payment and performance amounts~~

21 1. ~~Initial implementation phase review. The Council recognizes that amendments~~
22 ~~to the payment and performance amounts provided in this Chapter 23.58B may be needed during~~
23 ~~the initial implementation phase described in subsection 23.58B.010.A.2 to further the target~~

1 ~~production level of no fewer than 6,000 net new rent and income restricted affordable units for~~
2 ~~households with incomes no higher than 60 percent of median income over a ten year period~~
3 ~~described in the July 13, 2015 Statement of Intent for Basic Framework for Mandatory~~
4 ~~Inclusionary Housing and Commercial Linkage Fee. Such amendments could include changes to~~
5 ~~the payment and performance amounts in Table A for 23.58B.040, Table B for 23.58B.040,~~
6 ~~Table A for 23.58B.050, and Table B for 23.58B.050, and adding amounts for additional zones~~
7 ~~or portions of zones in connection with rezones of specific subareas such as portions of the~~
8 ~~University District. The Council intends that amendments during the initial implementation~~
9 ~~phase be preceded by a robust stakeholder engagement process including representatives of the~~
10 ~~for profit and non profit development sectors who participated in the July 13, 2015 Statement of~~
11 ~~Intent for Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee.~~

12 2. Ongoing review. The Council directs that, during the first six months of 2018
13 and every two years after July 1, 2018, the Director prepare a report on the performance of the
14 mandatory inclusionary housing program described in the July 13, 2015 Statement of Intent for
15 Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee, and the
16 affordable housing impact mitigation program provided in this Chapter 23.58B, including the
17 amount of payments collected under the payment option, the number of affordable housing units
18 produced and preserved with such payments, and the number of affordable housing units
19 constructed under the performance option. Units produced under the mandatory inclusionary
20 housing program described in the July 13, 2015 Statement of Intent for Basic Framework for
21 Mandatory Inclusionary Housing and Commercial Linkage Fee, and the affordable housing
22 impact mitigation program provided in this Chapter 23.58B, shall be measured as net new units.

1 Existing rent and income restricted affordable units demolished for development subject to the
2 programs are subtracted from the target production.

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

8 a. ~~Amendments may be considered if:~~

9 1) ~~After five years from the effective date of the ordinance~~
10 ~~introduced as Council Bill 118498, there is a failure to meet expectations for program~~
11 ~~performance;~~

12 2) ~~There are significant positive or negative changes in real estate~~
13 ~~development market conditions; or~~

14 3) ~~Neither of the preceding criteria is met and ten years have~~
15 ~~elapsed since the completion of the initial implementation phase described in subsection~~
16 ~~23.58B.010.A.2.~~

17 b. ~~If amendments are considered in accordance with a criterion in~~
18 ~~subsection 23.58B.010.B.3.a, the Mayor and Council shall appoint a Technical Review~~
19 ~~Committee whose membership includes appropriate stakeholder representation, including~~
20 ~~representatives of the for profit and non profit development sectors and members of community-~~
21 ~~based groups, and shall provide the Committee with clear objectives to be accomplished by a~~
22 ~~revision of the payment and performance amounts in this Chapter 23.58B.~~

1 e. ~~If appointed, the Technical Review Committee shall prepare a report~~
2 ~~and recommendation regarding amendments to the payment and performance amounts in Table~~
3 ~~A for 23.58B.040, Table B for 23.58B.040, Table A for 23.58B.050, and Table B for~~
4 ~~23.58B.050. The Mayor shall consider the Technical Review Committee's report and~~
5 ~~recommendations and shall transmit them to the Council along with any recommendation by the~~
6 ~~Mayor for amendments.~~

7 4. ~~Amendments concurrent with increased capacity. In conjunction with any~~
8 ~~increase in commercial development capacity other than those identified in subsection~~
9 ~~23.58B.010.A.2, the Council will apply Chapter 23.58B to the zones or areas in which capacity~~
10 ~~is increased and may amend Table A for 23.58B.040, Table B for 23.58B.040, Table A for~~
11 ~~23.58B.050, and Table B for 23.58B.050 for those zones or areas in which capacity is increased.~~

12 C. ~~Process for modifications of development standards~~

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

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

22 3. ~~The Council intends that any development standard modification process will~~
23 ~~also provide for a reduction of the payment and/or performance amounts in a limited number of~~

1 ~~cases where a portion of the increased development capacity cannot be used because of a~~
2 ~~development standard from which a modification is not available or is not granted, and not~~
3 ~~because of decisions of the applicant.))~~

4 Section 4. Section 23.58B.015 of the Seattle Municipal Code, enacted by Ordinance
5 124895, is amended as follows:

6 **23.58B.015 Scope of ~~((Chapter))~~ provisions**

7 This Chapter 23.58B contains provisions that apply ~~((only in areas for which))~~ where the
8 provisions of the zone ~~((specifically))~~ refer to this Chapter 23.58B, or through the terms of a
9 contract rezone ~~((in accordance with))~~ according to Section 23.34.004.

10 Section 5. Section 23.58B.020 of the Seattle Municipal Code, enacted by Ordinance
11 124895, is amended as follows:

12 **23.58B.020 ~~((Voluntary agreements for affordable housing))~~ Applicability and general**
13 **requirements**

14 A. ~~((General))~~ Voluntary agreement; impact mitigation options. If an applicant elects to
15 seek approval of a permit for a development as described ~~((in))~~ according to subsection
16 23.58B.020.B, the applicant shall:

17 1. ~~((enter))~~ Enter into a voluntary agreement with the City to mitigate impacts on
18 the need for affordable housing ~~((in accordance with))~~ according to this Chapter 23.58B.

19 2. The applicant shall mitigate impacts on the need for housing affordable to
20 households of new lower wage workers either through the payment option according to Section
21 23.58B.040 or through the performance option according to Section 23.58B.050, or a
22 combination thereof.

1 3. In the absence of a signed voluntary agreement, acceptance of the permit by the
2 applicant shall constitute a voluntary agreement for the purpose of this Chapter 23.58B.

3 B. Applicability. Except as provided ~~((in))~~ according to subsection 23.58B.020.C, ~~((Table~~
4 ~~B for 23.58B.040, or Table B for 23.58B.050,))~~ this Chapter 23.58B shall apply to development
5 ~~((of either a new structure, or an addition to an existing structure, that contains))~~ that includes
6 more than 4,000 square feet of ~~((new chargeable))~~ gross floor area ~~((devoted to))~~ in commercial
7 ~~((uses.))~~ use through one of the following:

8 1. Construction of a new structure;

9 2. Construction of an addition; or

10 3. Change of use from residential use to commercial use.

11 C. ~~((Exemptions~~

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

14 ~~1. Up to a total of 4,000 square feet of street level floor area containing the~~
15 ~~following uses:~~

16 ~~a. Arts facilities;~~

17 ~~b. Eating and drinking establishments;~~

18 ~~c. Entertainment uses other than adult cabarets, adult motion picture~~
19 ~~theaters, and adult panorams; and~~

20 ~~d. Sales and services, general.~~

21 ~~2. Street level uses along a designated pedestrian street that are required to meet~~
22 ~~the street level use standards of a Pedestrian designation.~~

1 3-)) Commercial (~~((uses within a))~~) development (~~((with rent or income restricted~~
2 ~~housing if, for))~~) is exempt from the requirements according to this Chapter 23.58B if the
3 structure containing commercial uses also contains floor area in residential use that is publicly
4 funded and/or has received an allocation of federal low-income housing tax credits, and is
5 subject to a regulatory agreement, covenant or other legal instrument recorded on the property
6 title and enforceable by The City of Seattle, Washington State Housing Finance Commission,
7 State of Washington, King County, U.S. Department of Housing and Urban Development, or
8 other similar entity as approved by the Director of Housing, which restricts at least ((75)) 40
9 percent of the residential units(~~(, a regulatory agreement, housing covenant, or other legal~~
10 ~~document on the property title limits the income of))~~ to occupancy by households ((that may rent
11 ~~the units to))~~ earning no ((higher)) greater than 60 percent of median income, and controls the
12 rents that may be charged, for ((at least 50)) a minimum period of 40 years.

13 D. (~~((Options for mitigating affordable housing impacts. The applicant shall enter into a~~
14 ~~voluntary agreement with the City to mitigate affordable housing impacts either by providing~~
15 ~~affordable housing through the payment option in accordance with Section 23.58B.040, the~~
16 ~~performance option in accordance with Section 23.58B.050, or a combination thereof.~~

17 E.)) Relationship to incentive zoning. (~~((In areas for which))~~) Where the provisions of the
18 zone (~~((specifically))~~) refer to this Chapter 23.58B and (~~((for which the provisions of the zone also~~
19 ~~allow additional chargeable floor area to be achieved in accordance with Section 23.49.012, or~~
20 ~~extra non-residential floor area to be achieved in accordance with))~~) where bonus non-residential
21 floor area or extra non-residential floor area may be achieved according to the provisions of the
22 zone and/or Chapter 23.58A, ((beyond a base height and/or base FAR,))) the following provisions
23 apply:

1 1. ~~((The base FAR and maximum FAR and base height and maximum height shall~~
2 ~~be in accordance with the provisions of the zone.~~

3 2. ~~To exceed the base FAR and/or base height, the))~~ All requirements ~~((of the~~
4 ~~provisions of the zone and/or))~~ to provide low-income housing, or affordable housing as defined
5 in Chapter 23.58A₂ for achieving ~~((chargeable))~~ bonus non-residential floor area or extra non-
6 residential floor area ~~((above the base height and/or base FAR shall be met.))~~ according to the
7 provisions of the zone and/or Chapter 23.58A shall be satisfied solely by compliance with this
8 Chapter 23.58B. ~~((provided that:~~

9 a. ~~Affordable housing provided through the payment option in accordance~~
10 ~~with Section 23.58B.040 or the performance option in accordance with Section 23.58B.050 may~~
11 ~~also be counted toward:~~

12 1) ~~The low income housing requirements for achieving chargeable~~
13 ~~floor area above the base FAR in accordance with Section 23.49.012; and~~

14 2) ~~The affordable housing, as defined in subsection 23.58A.004.B,~~
15 ~~requirements for achieving extra non-residential floor area in accordance with Chapter 23.58A,~~
16 ~~whichever applies;~~

17 b. ~~If the applicant uses the performance option in accordance with Section~~
18 ~~23.58B.050, the applicant shall provide the greater of the following:~~

19 1) ~~The performance amount required by this Chapter 23.58B for~~
20 ~~the applicable chargeable floor area in accordance with subsection 23.58B.020.B; or~~

21 2) ~~The low income housing performance amount required by~~
22 ~~Section 23.49.012 for achieving chargeable floor area above the base FAR, or the affordable~~

1 ~~housing, as defined in subsection 23.58A.004.B, performance amount required by Chapter~~
2 ~~23.58A for achieving extra non-residential floor area, whichever applies;~~

3 ~~c. If the applicant uses the payment option in accordance with Section~~
4 ~~23.58B.040, the applicant shall provide the greater of the following:~~

5 ~~1) The payment amount required by this Chapter 23.58B for the~~
6 ~~applicable chargeable floor area in accordance with subsection 23.58B.020.B; or~~

7 ~~2) The low income housing payment amount required by Section~~
8 ~~23.49.012 for achieving chargeable floor area above the base FAR, or the affordable housing, as~~
9 ~~defined in 23.58A.004.B, payment amount required by Chapter 23.58A for achieving extra non-~~
10 ~~residential floor area, whichever applies; and~~

11 ~~d. The applicant shall also satisfy all other))~~

12 ~~2. Any non-housing requirements ((of the provisions of the zone and/or Chapter~~
13 ~~23.58A)) for achieving ((chargeable)) bonus non-residential floor area or extra non-residential~~
14 ~~floor area ((above the base height or base FAR, including but not limited to any requirements for~~
15 ~~child care, open space, regional development credits, and TDR)) shall be satisfied according to~~
16 ~~the provisions of the zone and/or Chapter 23.58A.~~

17 ~~((3. If an applicant does not seek to exceed the base FAR or base height, the~~
18 ~~applicant shall provide the amount of performance or payment required in accordance with this~~
19 ~~Chapter 23.58B for the applicable chargeable floor area in accordance with subsection~~
20 ~~23.58B.020.B.))~~

21 Section 6. Section 23.58B.025 of the Seattle Municipal Code, enacted by Ordinance
22 124895, is amended as follows:

23 **23.58B.025 Permit ((~~application and decision~~)) documentation**

1 A. ~~((Permit application. The))~~ General

2 1. For any development to which this Chapter 23.58B applies, the Master Use
3 Permit application ((or, if no Master Use Permit is required, the application for the permit
4 described in subsection 23.58B.035.A shall meet the following requirements)) and the first
5 building permit application that includes the structural frame for the structure shall include the
6 following:

7 ~~((1))~~ a. The ((permit application shall describe the)) amount of the cash
8 contribution to be provided for affordable housing impact mitigation, ((to be provided, expressed
9 on a per-square-foot basis for performance and/or payment, in accordance with)) if the applicant
10 elects the payment option according to Section 23.58B.040 ((and/or Section 23.58B.050)).

11 ~~((2))~~ b. ((The permit application shall indicate whether the payment option
12 in accordance with Section 23.58B.040, performance option in accordance with Section
13 23.58B.050, or a combination of the payment and performance options will be pursued. The
14 applicant shall include the following information:)) The total square feet of housing required to
15 be provided according to subsection 23.58B.050.A, measured as net unit area, and a proposal for
16 MHA-C housing meeting the requirements according to subsection 23.58B.050.B, if the
17 applicant elects the performance option according to Section 23.58B.050.

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

21 ~~b. If providing affordable housing impact mitigation through the~~
22 ~~performance option, the applicant shall submit to the Director of Housing for review and~~

1 ~~approval a proposal for provision of affordable housing and a draft housing covenant ensuring~~
2 ~~the affordable housing shall meet the standards of subsection 23.58B.050.B.~~

3 ~~e. If the applicant requests a modification in accordance with Section~~
4 ~~23.58B.030, the applicant shall))~~

5 2. Any ((request)) requests for ((such a modification)) modifications according to
6 Section 23.58B.030, ((explain the basis on which the applicant believes the modification should
7 be granted, and provide such supporting documentation as is necessary for review of the
8 request)) including all supporting materials required for a decision on such requests, shall be
9 included in the Master Use Permit application, or in the first building permit application that
10 includes the structural frame for the structure if no Master Use Permit is required.

11 ~~((B. Permit decision. The Master Use Permit decision or, if no Master Use Permit is~~
12 ~~required, the decision on the permit described in subsection 23.58B.035.A shall meet the~~
13 ~~following requirements:~~

14 ~~1. Subject to subsection 23.58B.025.B.2 and subsection 23.58B.025.B.3, the~~
15 ~~permit decision shall include approval of the type of mitigation to be provided, whether by~~
16 ~~payment, performance, or a combination of payment and performance, and specify the amount of~~
17 ~~mitigation to be provided, expressed on a per-square-foot basis, for performance and/or payment~~
18 ~~in accordance with Section 23.58B.040 and/or Section 23.58B.050.))~~

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

21 a. The amount of the cash contribution according to subsection
22 23.58B.040.A, if the applicant elects the payment option according to Section 23.58B.040;

1 b. The total square feet of housing required to be provided according to
2 subsection 23.58B.050.A, measured as net unit area, and compliance of the proposal for MHA-C
3 housing with the requirements according to subsection 23.58B.050.B, if the applicant elects the
4 performance option according to Section 23.58B.050; and

5 ~~((2)) c. ((If a))~~ Any modification ((is requested in accordance with))
6 according to subsection 23.58B.030.B. ((C, the permit decision shall, as a Type I decision,
7 include approval or disapproval of such a modification and specify the amount of mitigation to
8 be provided, expressed on a per square foot basis, for performance and/or payment.

9 ~~3. If a))~~ 4. The Director shall, as a special exception according to Chapter 23.76,
10 Procedures for Master Use Permits and Council Land Use Decisions, in consultation with the
11 Director of Housing, determine any modification ((is requested in accordance with)) according to
12 subsection 23.58B.030.((B))C or subsection 23.58B.030.D((, the permit decision shall, as a Type
13 H decision, include approval or disapproval of such a modification and specify the amount of
14 mitigation to be provided, expressed on a per square foot basis, for performance and/or payment.

15 ~~4. In the absence of a signed voluntary agreement, acceptance of the permit shall~~
16 ~~constitute a voluntary agreement for the purposes of this Chapter 23.58B.))~~

17 5. Substitution of units of MHA-C housing according to subsection
18 23.58B.050.B.1.o shall require a separate review and approval by the Director in consultation
19 with the Director of Housing.

20 B. Timing

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

1 a. The amount of the cash contribution required according to subsection
2 23.58B.040.A, if the applicant elects the payment option according to Section 23.58B.040;

3 b. If the applicant elects the performance option according to Section
4 23.58B.050:

5 1) The total square feet of housing required to be provided
6 according to subsection 23.58B.050.A, measured as net unit area;

7 2) A proposal for MHA-C housing meeting the requirements
8 according to subsection 23.58B.050.B;

9 3) A draft agreement according to subsection 23.58B.050.B.1.q;
10 and

11 4) A draft developer’s agreement according to subsection
12 23.58B.050.B.2.c, if applicable.

13 2. Building permit. Prior to issuance of the first building permit that includes the
14 structural frame for the structure containing the development to which this Chapter 23.58B
15 applies, the applicant shall provide the following:

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

18 1) Final plans that include the structural frame for the structure
19 showing the calculation of the amount of the cash contribution required according to subsection
20 23.58B.040.A; and

21 2) Documentation from the Director of Housing of receipt of
22 payment of the cash contribution required according to subsection 23.58B.040.A.

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

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

5 a) Include the calculation of total square feet of housing
6 required to be provided according to subsection 23.58B.050.A and actual square feet of MHA-C
7 housing to be provided, measured as net unit area; and

8 b) Demonstrate compliance of the proposal for MHA-C
9 housing with the requirements according to subsection 23.58B.050.B;

10 2) The executed and recorded agreement required according to
11 subsection 23.58B.050.B.1.q;

12 3) Documentation of issuance of the first building permit that
13 includes the structural frame for the structure that includes the MHA-C housing, if the MHA-C
14 housing is located in a different structure than the structure containing the development to which
15 this Chapter 23.58B applies;

16 4) The executed developer's agreement required according to
17 subsection 23.58B.050.B.2.c, if applicable; and

18 5) Documentation from the Director of Housing of receipt of the
19 letter of credit required according to subsection 23.58B.050.B.2.d, if applicable.

20 c. The applicant may change its election between performance and
21 payment prior to issuance of the first building permit that includes the structural frame for the
22 structure, provided the applicant changing its election shall obtain any necessary approvals
23 affected by the change in election. Review and approval of a change in election between

1 performance and payment is a Type I decision, unless the requested change affects a
2 modification according to subsection 23.58B.030.C or subsection 23.58B.030.D.

3 Section 7. Section 23.58B.030 of the Seattle Municipal Code, enacted by Ordinance
4 124895, is amended as follows:

5 **23.58B.030 Modification of ~~((amount of))~~ payment~~((or))~~/performance amounts**

6 A. General~~((:))~~

7 1. An applicant may request ~~((from the Director))~~ a modification, according to
8 this Section 23.58B.030, of the amount of mitigation ~~((required by Section))~~ calculated
9 according to subsection 23.58B.040.A or ~~((Section))~~ subsection 23.58B.050.A. ~~((A request shall~~
10 comply with the following:

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

15 ~~2. The request for modification shall be submitted as a part of the relevant permit~~
16 ~~application. An applicant requesting a modification in accordance with subsection 23.58B.030.D~~
17 ~~shall also request any available modification under subsection 23.58B.030.B or subsection~~
18 ~~23.58B.030.C.~~

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

22 ~~4. The Director shall consult with the Director of Housing in considering~~
23 ~~modification requests.~~

1 ~~5. The applicant has the burden of proving that a modification is justified.))~~

2 2. An applicant requesting a modification according to subsection 23.58B.030.C
3 or subsection 23.58B.030.D shall have requested a modification according to subsection
4 23.58B.030.B, if applicable, and an applicant requesting a modification according to subsection
5 23.58B.030.D shall have requested a modification according to subsection 23.58B.030.C, if
6 applicable. The Director shall evaluate modification requests in the following order: subsection
7 23.58B.030.B, subsection 23.58B.030.C, and subsection 23.58B.030.D.

8 3. The decision on any modification according to subsection 23.58B.030.B,
9 subsection 23.58B.030.C, or subsection 23.58B.030.D shall specify a mitigation amount
10 expressed as dollars per square foot according to subsection 23.58B.040.A for the payment
11 option and/or percentage per square foot according to subsection 23.58B.050.A for the
12 performance option that shall be applied based on the final plans for the development or, in the
13 case of a modification according to subsection 23.58B.030.D, may be expressed as an absolute
14 payment amount for the payment option or square footage amount for the performance option
15 along with a limitation in the degree of change in the final plans that is permissible without a
16 redetermination of the modification.

17 B. Modification in zones with height limits exceeding 85 feet. The Director shall modify
18 the amount of mitigation if the development is in a zone with a height limit greater than 85 feet
19 and the Director finds that applicable development standards prohibit the development from
20 exceeding a height of 85 feet. The reduced mitigation shall be the payment calculation amount or
21 performance calculation amount according to subsection 23.58B.040.A or subsection
22 23.58B.050.A for the zone that has a height limit of 85 feet or less that is most comparable to the

1 zone in which the development required to mitigate affordable housing impacts according to this
2 Chapter 23.58B is located.

3 ~~((B. Mitigation))~~ C. Modification based on mitigation greater than impact. The Director
4 shall, as a special exception according to Chapter 23.76, modify the amount of mitigation
5 required ~~((in accordance with Section))~~ according to subsection 23.58B.040.A or ~~((Section))~~
6 subsection 23.58B.050.A if the applicant demonstrates that the required amount of mitigation
7 exceeds the amount that would be needed to mitigate the actual demand for affordable housing
8 created by the development. A request for such a modification shall include information showing
9 the affordable housing impacts created by the development, based on the actual characteristics of
10 the development, including, for example, the unique characteristics and space utilization of the
11 future workforce ~~((that will use))~~ of the development and the demand of that workforce for
12 ~~((affordable))~~ housing expressed in terms of the number of employees in households with
13 ~~((income))~~ incomes at or below 60 percent of median income, and the number of employees in
14 households with ~~((income))~~ incomes higher than 60 percent of median income but not higher
15 than 80 percent of median income, and such other factors the applicant believes justify a
16 modification.

17 ~~((C. Mitigation in zones with height limits exceeding 85 feet. The Director shall modify~~
18 ~~the amount of mitigation if the development is in a zone with a height limit greater than 85 feet~~
19 ~~and the Director finds that applicable development standards prohibit the development from~~
20 ~~exceeding a height of 85 feet. The reduced mitigation shall be the payment or performance~~
21 ~~required in accordance with Section 23.58B.040 or Section 23.58B.050 for the same zone~~
22 ~~classification as the zone in which the development is located that has a height limit of 85 feet, or~~

1 ~~if that zone classification does not exist, the most comparable zone classification that has a~~
2 ~~height limit of 85 feet or less, as determined by the Director.~~

3 ~~D. Financial hardship~~

4 ~~1. The Director may modify the amount of mitigation required in accordance with~~
5 ~~Section 23.58B.040 or Section 23.58B.050 if the amount of mitigation, after any modification to~~
6 ~~which the applicant would be entitled in accordance with the standards of subsection~~
7 ~~23.58B.030.B and subsection 23.58B.030.C, would cause a severe and unexpected financial~~
8 ~~hardship that outweighs the affordable housing impacts.~~

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

- 11 ~~a. The use of the site before the request;~~
- 12 ~~b. How application of the requirements for which the modification is being~~
13 ~~requested restricts the proposed use of the site compared to the restrictions that existed prior to~~
14 ~~the adoption of this Chapter 23.58B;~~
- 15 ~~c. The possible remaining uses of the site if the modification were not~~
16 ~~granted;~~
- 17 ~~d. The uses of the site that would have been allowed prior to the adoption~~
18 ~~of this Chapter 23.58B;~~
- 19 ~~e. An appraisal prepared by a competent appraiser with a valuation date~~
20 ~~within thirty days of the modification request that (1) values the property taking into account the~~
21 ~~requirements of this Chapter 23.58B as well as any increase in commercial development capacity~~
22 ~~provided at the time reference to this Chapter 23.58B is made in the provisions of the zone in~~

1 ~~which the property is located or at the time of a contract rezone, and (2) values the property~~
2 ~~absent those requirements and absent any such increase in development capacity; and~~

3 ~~f. The feasibility of altering the project to apply the requirements of this~~
4 ~~Chapter 23.58B.~~

5 ~~3. The Director may grant a modification authorized by subsection~~
6 ~~23.58B.030.D.1 only after considering the following factors:~~

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

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

11 ~~and~~

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

15 ~~4. The Director may grant a modification authorized by subsection~~
16 ~~23.58B.030.D.1 only to the extent necessary to provide relief from the identified financial~~
17 ~~hardship.~~

18 ~~5. When the Director grants a modification authorized by subsection~~
19 ~~23.58B.030.D.1, the Director may impose alternative requirements, implemented through a~~
20 ~~voluntary agreement, to offset or mitigate a portion of any remaining adverse impacts of the~~
21 ~~development on the need for affordable housing.))~~

22 D. Modification based on severe economic impact

1 1. The purpose of this subsection 23.58B.030.D is to allow the Director, as a
2 special exception according to Chapter 23.76, to modify the amount of payment according to
3 subsection 23.58B.040.A or the amount of performance according to subsection 23.58B.050.A if
4 the applicant can demonstrate facts supporting a determination of severe economic impact at
5 such a level that a property owner’s constitutional rights may be at risk.

6 2. For purposes of this subsection 23.58B.030.D, the Director is not making a
7 determination of the constitutional rights of a property owner, but instead is reviewing the
8 credibility and strength of facts demonstrating severe economic impact.

9 3. The Director may waive or reduce the amount of payment required according
10 to subsection 23.58B.040.A or the amount of housing required to be provided according to
11 subsection 23.58B.050.A if the applicant shows that application of the requirements according to
12 this Chapter 23.58B would:

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

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

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

21 a. The severity of the economic impact caused by the application of the
22 requirements according to this Chapter 23.58B;

1 b. The degree to which the requirements according to this Chapter 23.58B
2 were or could have been anticipated;

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

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

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

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

11 6. A request to the Director for a modification according to this subsection
12 23.58B.030.D shall include, at a minimum, all of the following:

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

15 b. Documentation showing that any relief available according to
16 subsection 23.58B.030.B or subsection 23.58B.030.C would not eliminate the need for the
17 requested waiver or reduction;

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

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

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

3 f. Documentation showing that a different development configuration that
4 satisfied the requirements according to this Chapter 23.58B would not alleviate the need for the
5 requested waiver or reduction.

6 7. The applicant shall provide any additional information as may be required by
7 the Director to make a determination on the request. The applicant shall have the burden of
8 proving by a preponderance of the evidence that a waiver or reduction authorized according to
9 this subsection 23.58B.030.D is justified.

10 8. None of the following, standing alone and without consideration of the full
11 range of relevant factors including those according to subsection 23.58B.030.D.4, shall be a
12 sufficient basis for the Director to grant a waiver or reduction authorized according to this
13 subsection 23.58B.030.D:

14 a. The fact of a decrease in property value;

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

18 c. The fact that any such increase in non-residential development capacity,
19 combined with the requirements according to this Chapter 23.58B, did not leave the property
20 owner in a better financial position than would have been the case with no increase in non-
21 residential development capacity and no application of the requirements according to this
22 Chapter 23.58B.

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

3 Section 8. Section 23.58B.035 of the Seattle Municipal Code, enacted by Ordinance
4 124895, is repealed:

5 ~~((23.58B.035 Documentation and timing~~

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

10 ~~B. Required documentation~~

11 ~~1. The applicant shall execute and record a declaration in a form acceptable to the~~
12 ~~Director that shall commit the applicant to mitigating affordable housing impacts consistent with~~
13 ~~the permit decision.~~

14 ~~2. The applicant shall provide to the Director of Housing any cash contributions~~
15 ~~for affordable housing to be provided through the payment option in accordance with Section~~
16 ~~23.58B.040.~~

17 ~~3. The owner of affordable housing provided through the performance option in~~
18 ~~accordance with Section 23.58B.050 shall execute and record housing covenants approved by the~~
19 ~~Director of Housing.))~~

20 Section 9. Section 23.58B.040 of the Seattle Municipal Code, enacted by Ordinance
21 124895, is amended as follows:

22 **23.58B.040 ((Affordable housing impact mitigation)) Mitigation of impacts - payment**
23 **option**

1 A. Amount of cash contributions

2 1. ~~((Initial payment amounts inside the Downtown and South Lake Union Urban~~
3 ~~Centers. Inside the Downtown or South Lake Union Urban Centers, an))~~ An applicant ((using))
4 complying with this Chapter 23.58B through the payment option shall provide a cash
5 contribution to the City, calculated by multiplying the ~~((per square foot amount shown in))~~
6 payment calculation amount per square foot according to Table A or Table B for 23.58B.040 and
7 Map A for 23.58B.050, as applicable, by the total square ~~((footage))~~ feet of ((new)) chargeable
8 floor area ~~((devoted to the uses set forth in subsection 23.58B.020.B.))~~ in commercial use, as
9 follows:

10 a. Including chargeable floor area in commercial use in the following:

- 11 1) A new structure;
12 2) An addition to a structure;
13 3) A change of use from residential use to commercial use; or
14 4) Any combination of the above; and

15 b. Excluding chargeable floor area in commercial use as follows:

- 16 1) The first 4,000 gross square feet of street-level commercial uses;
17 and
18 2) Street-level commercial uses along a designated principal
19 pedestrian street in a Pedestrian designated zone.

Table A for 23.58B.040
 ((~~Cash contribution to be provided for affordable housing (payment requirement)~~))
Payment calculation amounts:
 ((~~inside~~)) **In Downtown and ((South Lake Union Urban Centers)) SM-SLU zones**

Zone	((Dollars per square foot of new chargeable floor area according to subsection 23.58B.020.B)) <u>Payment calculation amount per square foot</u>
((AH)) DH1/45 ((zones))	(((\$0.00)) <u>Not applicable</u>)
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
IDR/C 125/150-240	\$8.00

Table B for 23.58B.040
 ((Cash contribution to be provided for affordable housing (payment requirement)))
Payment calculation amounts:
 ((outside)) Outside Downtown and ((South Lake Union Urban Centers)) SM-SLU zones

Zone	((Dollars per square foot of new chargeable floor area according to subsection 23.58B.020.B)) <u>Payment calculation amount per square foot</u>		
	Low	Medium	High
<u>All industrial buffer zones (IB)</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>All industrial general zones (IG)</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>All master planned communities – Yesler Terrace zones (MPC-YT)</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
IC 85-160	\$10.00	\$10.00	\$10.00
((All other)) <u>Other zones where provisions refer to Chapter 23.58B((⁽⁺⁾))</u>	\$5.00	\$7.00	\$8.00

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

8 B. Deposit and use of cash contributions

1 1. Cash contributions shall be deposited by the Director of Housing in a special
2 account established solely for ~~((preserving and producing))~~ preservation and production of
3 housing affordable for renter households with incomes no higher than 60 percent of median
4 income and for owner households with incomes no higher than 80 percent of median income.
5 Earnings on balances in the special account shall accrue to that account.

6 2. Use of cash contributions shall support the preservation and production of
7 renter-occupied housing within the city of Seattle. Rental housing supported by the cash
8 contributions shall be rent- and income-restricted to serve households with incomes no higher
9 than 60 percent of median income for a minimum period of 50 years, with an expectation of
10 ongoing affordability. ~~((Monthly rent, including basic utilities, shall not exceed 30 percent of 60~~
11 ~~percent of median income, all as determined by the Director of Housing.))~~ Use of cash
12 contributions may also include capital expenditures for development of owner-occupied housing
13 within the city of Seattle. Owner-occupied housing supported by the cash contributions shall be
14 priced to serve and sold to households with incomes no higher than 80 percent of median
15 income, with resale restrictions for a minimum period of 50 years, with an expectation of
16 ongoing affordability.

17 3. For purposes of determining the location for use of ~~((funds))~~ cash contributions,
18 the City shall consider the extent to which the housing advances the following factors:
19 a. Affirmatively furthering fair housing choice~~((-))~~;
20 b. Locating within an urban center or urban village~~((-))~~;
21 c. Locating in proximity to frequent bus service or current or planned light
22 rail or ~~((street car))~~ streetcar stops~~((-))~~;

1 d. Furthering ~~((the))~~ City policies to promote economic opportunity and
2 community development and addressing the needs of communities vulnerable to displacement;
3 and

4 e. Locating near developments that generate cash contributions.

5 ~~((3))~~4. Each cash contribution shall be expended within five years of collection.
6 Any cash contribution not so expended shall be refunded with any interest required by law.

7 Section 10. Section 23.58B.050 of the Seattle Municipal Code, enacted by Ordinance
8 124895, is amended as follows:

9 **23.58B.050 (~~(Affordable housing impact mitigation))~~ Mitigation of impacts - performance**
10 **option**

11 A. Amount of ~~((affordable))~~ MHA-C housing

12 1. ~~((Inside Downtown and South Lake Union Urban Centers. Inside the~~
13 ~~Downtown or South Lake Union Urban Centers, an))~~ An applicant (~~((using))~~ complying with this
14 Chapter 23.58B through the performance option shall provide ~~((net rentable floor area))~~ total
15 square feet of ~~((affordable))~~ housing meeting the standards of subsection 23.58B.050.B,
16 measured as net unit area, calculated by multiplying the ~~((applicable))~~ percentage ~~((shown in))~~
17 calculation amount per square foot according to Table A or Table B for 23.58B.050 and Map A
18 for 23.58B.050, as applicable, by the total square (~~((footage))~~ feet of (~~((new))~~ chargeable floor area
19 ~~((devoted to the uses set forth in subsection 23.58B.020.B, unless such))~~ in commercial use, as
20 follows:

21 a. Including chargeable floor area in commercial use in the following:

22 1) A new structure;

23 2) An addition to a structure;

1 3) A change of use from residential use to commercial use; or

2 4) Any combination of the above; and

3 b. Excluding chargeable floor area in commercial use as follows:

4 1) The first 4,000 gross square feet of street-level commercial uses;

5 and

6 2) Street-level commercial uses along a designated principal
 7 pedestrian street in a Pedestrian designated zone.

8 2. If the calculation according to subsection 23.58B.050.A.1 yields ((amount
 9 totals)) fewer than three ((dwelling)) units of housing required to meet the standards of
 10 subsection 23.58B.050.B, using a conversion factor for unit size as determined by the Director,
 11 ((in which case)) the applicant shall ((make)) provide a cash contribution using the payment
 12 option ((in accordance with Section 23.58B.040)) according to subsection 23.58B.040.A.

Table A for 23.58B.050
~~((Affordable housing to be provided (performance requirement)))~~ Performance
~~((inside))~~ In Downtown and ((South Lake Union Urban Centers)) SM-SLU zones

Zone	((Percentage of new chargeable floor area according to subsection 23.58B.020.B)) <u>Performance calculation amount per square foot</u>
((AH)) DH1/45 ((zones))	((0.0%)) <u>Not applicable</u>
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%

Table A for 23.58B.050
~~((Affordable housing to be provided (performance requirement)))~~ Performance calculation amounts:
~~((inside))~~ In Downtown and ((South Lake Union Urban Centers)) SM-SLU zones

Zone	((Percentage of new chargeable floor area according to subsection 23.58B.020.B)) <u>Performance calculation amount per square foot</u>
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%
((AH)) <u>PMM-85 ((zones))</u>	((0.0%)) <u>Not applicable</u>
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%
<u>SM-SLU</u> 85/65-125	5.0%
<u>SM-SLU</u> 85/65-160	((0.0%)) <u>Not applicable</u>

Table A for 23.58B.050
~~((Affordable housing to be provided (performance requirement)))~~ Performance calculation amounts:
~~((inside))~~ In Downtown and ((South Lake Union Urban Centers)) SM-SLU zones

Zone	((Percentage of new chargeable floor area according to subsection 23.58B.020.B)) <u>Performance calculation amount per square foot</u>
SM-SLU 85-240	((0.0%)) <u>Not applicable</u>
SM-SLU 160/85-240	6.8%
SM-SLU 240/125-400	6.1%
SM-SLU/R 55/85	5.0%
SM-85	5.0%
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.))~~

Table B for 23.58B.050
 ((Affordable housing to be provided (performance requirement))) Performance calculation amounts:
 ((outside)) Outside Downtown and ((South Lake Union Urban Centers)) SM-SLU zones

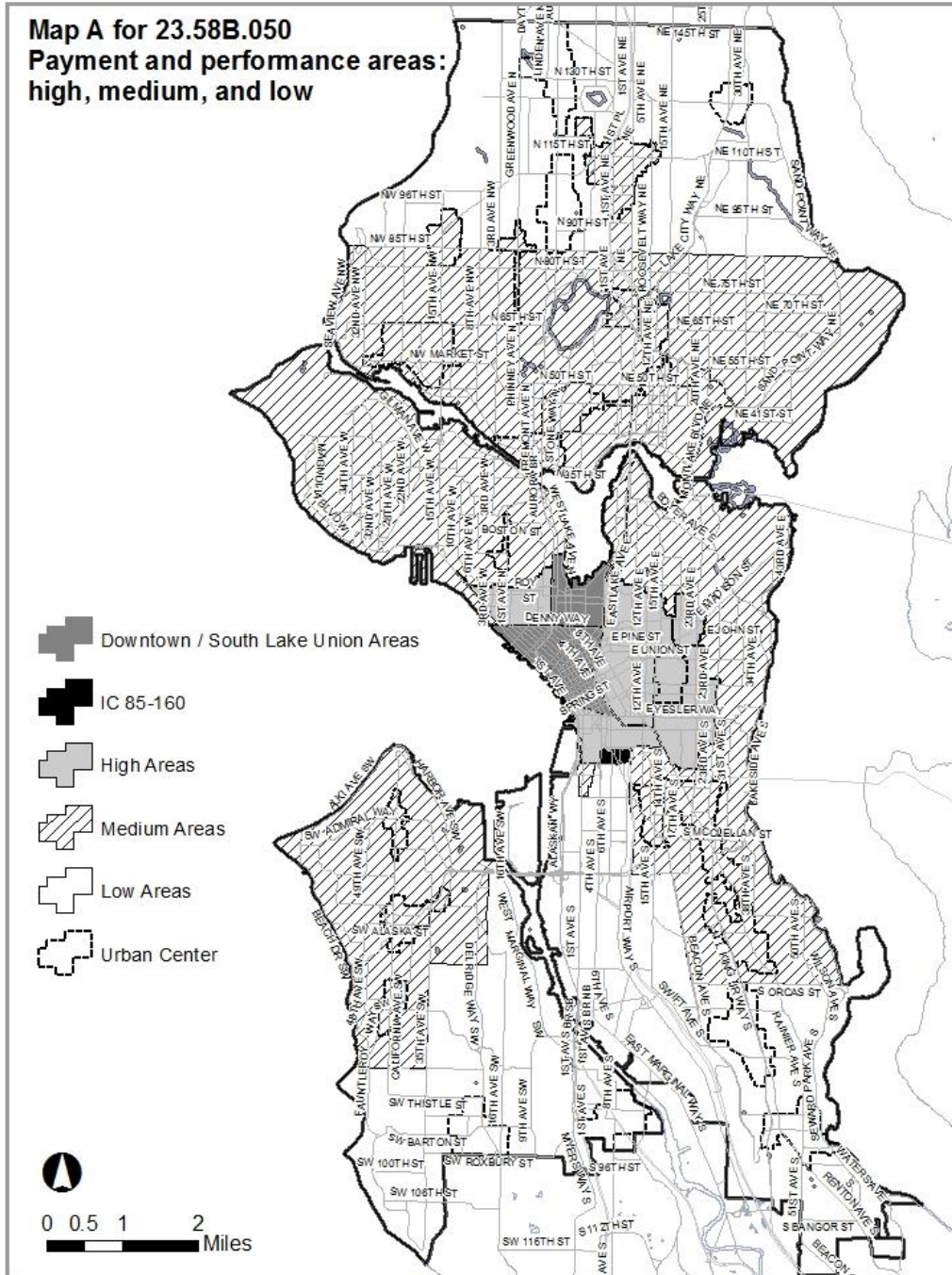
Zone	((Percentage of new chargeable floor area according to subsection 23.58B.020.B)) <u>Performance calculation amount per square foot</u>
<u>All industrial buffer zones (IB)</u>	<u>Not applicable</u>
<u>All industrial general zones (IG)</u>	<u>Not applicable</u>
<u>All master planned communities – Yesler Terrace zones (MPC-YT)</u>	<u>Not applicable</u>
IC 85-160	6.1%
((All other)) <u>Other zones where provisions refer to Chapter 23.58B((⁽⁺⁾))</u>	5.0%

((Footnotes to Table B for 23.58.B.050
 (⁽⁺⁾ 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
 2

1 **Map A for 23.58B.050**
2 **Payment and performance areas: high, medium, and low**

3



4

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

3 1. General performance standards. All MHA-C housing shall meet the following
4 standards:

5 a. Duration. (~~(Affordable)~~) The obligation to provide MHA-C housing
6 ~~((provided through the performance option))~~ shall be for a minimum period of ~~((50))~~ 75 years
7 from the date of issuance of the final ~~((certificate))~~ Certificate of ~~((occupancy))~~ Occupancy, or if
8 a Certificate of Occupancy is not required, from the date of the final building permit inspection,
9 for the ~~((affordable))~~ MHA-C housing; provided that, in the case of demolition of a structure
10 containing both MHA-C housing provided according to this Section 23.58B.050 and units
11 provided to comply with Chapter 23.58C through the performance option according to Section
12 23.58C.050, the obligation to provide MHA-C housing shall last no longer than the time
13 specified according to subsection 23.58C.050.B.1.b.1.

14 b. Tenure. MHA-C housing shall be rental housing for eligible households
15 according to subsection 23.58B.050.B.1.f.

16 c. Rent limits. Monthly rent(~~(, including basic utilities,))~~ for MHA-C
17 housing shall not exceed 30 percent of 60 percent of median income ~~((except that, for rental~~
18 ~~housing units of))~~ or, in the case of any unit with net unit area of 400 square feet or ~~((fewer of net~~
19 ~~rentable floor area, monthly rent, including basic utilities, shall not exceed))~~ less, 30 percent of
20 40 percent of median income. ~~((Affordable housing provided through the performance option~~
21 ~~shall be for rental, not ownership.))~~ For purposes of this subsection 23.58B.050.B.1.c, “monthly
22 rent” includes a utility allowance for heat, gas, electricity, water, sewer, and refuse collection, to

1 the extent such items are not paid for tenants by the owner, and also includes any recurring fees
2 that are required as a condition of tenancy.

3 d. Type. MHA-C housing shall be dwelling units, except for accessory
4 dwelling units or detached accessory dwelling units.

5 ~~((e. Unit size, type, and distribution. The average size and type of the~~
6 ~~affordable housing units provided through performance, regardless of whether provided on-site~~
7 ~~or off-site, shall generally be comparable to the dwelling units in the residential portion, if any,~~
8 ~~of the development required to mitigate affordable housing impacts in accordance with this~~
9 ~~Chapter 23.58B. The affordable units shall have substantially the same functionality as the other~~
10 ~~residential units, if any, in the development in which they are located and shall be generally~~
11 ~~distributed throughout the residential portion of the development.))~~

12 e. Comparability. MHA-C housing shall be comparable to the other
13 dwelling units to be developed in terms of the following:

14 1) Number and size of bedrooms and bathrooms;

15 2) Net unit area measured as square feet;

16 3) Access to amenity areas;

17 4) Functionality; and

18 5) Term of the lease.

19 ~~((d))~~f. Eligible households. ((Affordable)) MHA-C housing ((provided
20 through the performance option)) shall serve only:

21 1) At initial occupancy by a household:

1 a) For ~~((rental housing units))~~ a unit with net unit area of
2 400 square feet or ~~((fewer of net rentable floor area))~~ less, households with incomes no higher
3 than 40 percent of median income; or

4 ~~((2))b) For ~~((rental housing units))~~ a unit with net unit area~~
5 of greater than 400 square feet ~~((of net rentable floor area))~~, households with incomes no higher
6 than 60 percent of median income.

7 2) At the time of annual certification according to subsection
8 23.58B.050.B.1.m:

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

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

13 ~~((e. Prohibition on public))~~ g. Public subsidy. ~~((Affordable housing~~
14 ~~provided through the performance option shall not use any public subsidy or tax incentive,~~
15 ~~except the following:~~

16 1) Washington State 4% Low Income Housing Tax Credit with
17 Multifamily Housing Bonds; and/or

18 2) Property tax exemptions in accordance with Chapter 5.73 or any
19 other program implemented in accordance with Chapter 84.14 RCW, provided the affordable
20 housing provided through the performance option to mitigate affordable housing impacts is in
21 addition to any dwelling units provided to satisfy conditions for a property tax exemption in
22 accordance with Chapter 5.73, unless the rent and income limits for dwelling units provided to
23 satisfy requirements for purposes of both this Chapter 23.58B and Chapter 5.73 provide

1 ~~measurably greater public benefit than providing affordable housing through the performance~~
2 ~~option to mitigate affordable housing impacts in addition to any dwelling units provided to~~
3 ~~satisfy conditions for a property tax exemption in accordance with Chapter 5.73.)~~ If any public
4 subsidy, including the Multifamily Housing Property Tax Exemption authorized by Chapter 5.73
5 and chapter 84.14 RCW, is used for a development containing MHA-C housing, and as a
6 condition of the public subsidy income levels of occupants and the rents that may be charged for
7 any units in the development are restricted, the units provided to comply with this Chapter
8 23.58B shall be different units than the units that are subject to such restrictions as a condition of
9 the public subsidy.

10 ((f))h. Time of completion. ((Any affordable)) Except as provided
11 according to subsection 23.58B.050.B.2.d, MHA-C housing ((provided through the performance
12 option)) shall be completed and ready for occupancy at or before the time when a final
13 ((certificate)) Certificate of ((occupancy)) Occupancy is issued for the development ((required to
14 mitigate affordable housing)) mitigating impacts ((in accordance with)) according to this Chapter
15 23.58B, and shall be a condition to any right of the applicant to such ((certificate)) Certificate of
16 ((occupancy)) Occupancy.

17 i. Age of construction; distribution. MHA-C housing shall be newly
18 constructed and shall be generally distributed throughout the residential portion of the
19 development.

20 j. Affirmative marketing. MHA-C housing shall be affirmatively marketed
21 to attract eligible households from all racial, ethnic, and gender groups in the housing market
22 area of the property, particularly to inform and solicit applications from households who are
23 otherwise unlikely to apply for housing in the development. Proposed marketing efforts shall be

1 submitted to the Office of Housing for review and approval. Records documenting affirmative
2 marketing efforts shall be maintained and submitted to the Office of Housing upon request.

3 ((g))k. Reporting. At such times as may be authorized by the Director of
4 Housing, but no less than annually, and for as long as the ((housing covenant approved by the
5 Director of Housing)) agreement according to subsection 23.58B.050.B.1.q remains in effect, the
6 owner of the ((affordable)) MHA-C housing ((provided through the performance option)) shall
7 submit to the Director of Housing a written report, verified upon oath or affirmation by the
8 owner, demonstrating compliance with this Chapter 23.58B. The written report shall state, at a
9 minimum, the occupancy and vacancy of ((the affordable)) each unit of MHA-C housing, the
10 monthly rents charged for each ((affordable)) MHA-C housing unit, and the income and size of
11 each household occupying the ((affordable)) MHA-C housing. The Director of Housing may
12 require other documentation to ensure compliance with this subsection 23.58B.050.B and any
13 ((housing covenant approved by the Director of Housing)) agreement according to subsection
14 23.58B.050.B.1.q, including but not limited to documentation of rents, copies of tenant
15 certifications, and documentation supporting determinations of tenant income (((e.g.,)) including
16 employer's verification or check stubs)((-The Director of Housing may require)) , and other
17 documentation necessary to track program outcomes and the demographics of households
18 served. The first annual report shall include documentation of issuance of the final ((certificate))
19 Certificate of ((occupancy)) Occupancy for the ((affordable)) MHA-C housing. The Director of
20 Housing is authorized to assess a late fee of \$50 per day, to accrue starting 14 days from the date
21 the Office of Housing notifies the owner of the MHA-C housing that the report is overdue, until
22 the report is submitted.

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

5 m. Annual certification, third party verification

6 1) The owner of the MHA-C housing shall obtain from each
7 tenant, no less than annually, a certification of household size and annual income in a form
8 acceptable to the City. The owner shall examine the income of each tenant household according
9 to 24 CFR 5.609, with guidance from the HUD Occupancy Handbook 4350.3, Chapter 5. The
10 owner also shall examine the income and household size of any tenant at any time when there is
11 evidence that the tenant’s written statement was not complete or accurate. If so requested by the
12 City, the owner shall obtain such certifications and/or examine incomes and household sizes at
13 any other times upon reasonable advance notice from the City. The owner shall maintain all
14 certifications and documentation obtained according to this subsection 23.58B.050.B.1.m on file
15 for at least six years after they are obtained, and shall make them available to the City for
16 inspection and copying promptly upon request.

17 2) The owner of the MHA-C housing shall attempt to obtain third
18 party verification whenever possible to substantiate income at each certification, which shall
19 include contacting the individual income source(s) supplied by the household. The verification
20 documents shall be supplied directly to the independent source by the owner and returned
21 directly to the owner from the independent source. In the event that the independent source does
22 not respond to the owner’s faxed, mailed, or emailed request for information, the owner may
23 pursue oral third party verification. If written or oral third party documentation is not available,

1 the owner may accept original documents (pay stubs, W-2, etc.) at the discretion of the Director
2 of Housing and shall document why third party verification was not available. At the discretion
3 of the Director of Housing, the owner may accept tenant self-certifications after the initial
4 income verification and first annual recertification.

5 n. Annual fee. The owner of the MHA-C housing shall pay the Office of
6 Housing an annual fee of \$150 per unit of MHA-C housing for the purposes of monitoring
7 compliance with the requirements according to this Section 23.58B.050. On March 1, 2017, and
8 on the same day each year thereafter, the annual fee shall automatically adjust in proportion to
9 the annual change for the previous calendar year (January 1 through December 31) in the
10 Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, WA, All Items (1982-
11 84 = 100), as determined by the U.S. Department of Labor, Bureau of Labor Statistics or
12 successor index.

13 o. Over-income households; unit substitution. If, based on any
14 certification, a previously eligible household occupying a unit of MHA-C housing is determined
15 to be ineligible due to exceeding the income limits according to subsection 23.58B.050.B.1.f, the
16 owner of the development containing the MHA-C housing shall, through the process according
17 to subsection 23.58B.025.A.5, designate a comparable substitute unit of MHA-C housing within
18 the development, as approved by the Director of Housing, as soon as such a unit becomes
19 available, and upon such designation the requirements according to this subsection 23.58B.050.B
20 shall transfer to the substitute unit. All of the comparable rental units in the development that
21 contains the MHA-C housing shall be considered potential comparable substitute replacement
22 units. Upon such determination that a previously eligible household is ineligible, the owner shall
23 promptly give the ineligible household notice of such determination and notice that the

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

4 p. Maintenance, insurance. MHA-C housing, and the development in
5 which the MHA-C housing is located, shall be maintained by the owner in decent and habitable
6 condition, including the provision of adequate basic appliances. The owner shall keep the MHA-
7 C housing, and the development in which the MHA-C housing is located, insured by an
8 insurance company licensed to do business in the state of Washington and reasonably acceptable
9 to the City, against loss by fire and other hazards included with broad form coverage, in the
10 amount of 100 percent of the replacement value.

11 q. Agreement. The City and the owner of the MHA-C housing shall enter
12 into an agreement specifying the requirements according to this Section 23.58B.050. The
13 agreement shall be recorded on the title of the property on which the MHA-C housing is located.
14 The requirements specified in the agreement shall be consistent with final plans for the MHA-C
15 housing.

16 r. Casualty

17 1) If a unit of MHA-C housing is destroyed or rendered unfit for
18 occupancy by casualty, the owner of the MHA-C housing shall, through the process according to
19 subsection 23.58B.025.A.5, designate a comparable substitute unit of MHA-C housing within the
20 development, as approved by the Director of Housing, as soon as such unit becomes available,
21 which the tenant household of the unit of MHA-C housing affected by casualty shall be allowed
22 to move into, and upon such designation the requirements according to subsection 23.58B.050.B
23 shall transfer to the substitute unit.

1 1) Within the same urban center or urban village ((~~if~~) as the
2 development required to mitigate affordable housing impacts ((~~in accordance with~~)) according to
3 this Chapter 23.58B ((~~is located within an urban center or urban village~~)); or

4 2) Within one mile of the development required to mitigate
5 affordable housing impacts ((~~in accordance with~~)) according to this Chapter 23.58B if such
6 development is located outside of an urban center or urban village.

7 c. Developer’s agreement. If the owner of the development required to
8 mitigate affordable housing impacts according to this Chapter 23.58B is not the owner of the
9 MHA-C housing, then in addition to the agreement required according to subsection
10 23.58B.050.B.1.q, the owner of the development required to mitigate affordable housing impacts
11 according to this Chapter 23.58B and the owner of the MHA-C housing shall execute a
12 developer’s agreement, acceptable to the Director of Housing, allowing the exclusive use of the
13 MHA-C housing to satisfy the requirements according to this Chapter 23.58B in return for
14 necessary and adequate financial support to the development of that MHA-C housing.

15 d. Letter of credit

16 1) If the MHA-C housing is located on a site other than the same
17 lot as the development required to mitigate affordable housing impacts according to this Chapter
18 23.58B, the owner of the development required to mitigate affordable housing impacts according
19 to this Chapter 23.58B shall provide to the Director of Housing an irrevocable bank letter of
20 credit, approved by the Director of Housing, in the amount according to subsection
21 23.58B.040.A.

22 2) The Director of Housing may draw on the letter of credit one
23 year after the date of issuance of the Certificate of Occupancy for the development required to

1 mitigate affordable housing impacts according to this Chapter 23.58B if the Certificate of
2 Occupancy for the MHA-C housing has not been issued on or before that date. The owner of the
3 development required to mitigate affordable housing impacts according to this Chapter 23.58B
4 shall also pay an amount equal to the interest on the cash contribution, at the rate equal to the
5 prime rate quoted by Bank of America, or its successor, plus three percent per annum, from the
6 date of issuance of the first building permit that includes the structural frame for the development
7 required to mitigate affordable housing impacts according to this Chapter 23.58B.

8 3) If and when the City becomes entitled to draw on any letter of
9 credit, the Director of Housing may take appropriate steps to do so, and the amounts realized, net
10 of any costs to the City, shall be used in the same manner as cash contributions according to
11 subsection 23.58B.040.B.

12 Section 11. Section 23.58B.060 of the Seattle Municipal Code, enacted by Ordinance
13 124895, is amended as follows:

14 **23.58B.060 Definitions**

15 Definitions in this Chapter 23.58B supersede any definitions of the same terms in Chapter
16 23.84A and Section 23.58A.004 for the purposes of provisions of this Chapter 23.58B, unless
17 otherwise specified in this Chapter 23.58B.

18 "Affordable housing" means dwelling units affordable to households with a range of
19 incomes no higher than 80 percent of median income.

20 "MHA-C housing" means housing provided to comply with Chapter 23.58B through the
21 performance option according to Section 23.58B.050.

22 ~~("Net rentable floor area" means total square feet of floor area as measured between the~~
23 ~~interior walls of each dwelling unit.))~~

1 Section 12. Section 23.76.006 of the Seattle Municipal Code, which section was last
2 amended by Ordinance 125108, is amended as follows:

3 **23.76.006 Master Use Permits required**

4 A. Type I, II, and III decisions are components of Master Use Permits. Master Use
5 Permits are required for all projects requiring one or more of these decisions.

6 B. The following decisions are Type I:

7 1. Determination that a proposal complies with development standards;

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

14 3. The following street use approvals:

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

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

20 c. Structural building overhangs associated with a development proposal;

21 d. Areaways associated with a development proposal;

22 4. Lot boundary adjustments;

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

- 1 a. Plazas;
- 2 b. Shopping plazas;
- 3 c. Arcades;
- 4 d. Shopping arcades; and
- 5 e. Voluntary building setbacks;
- 6 6. Determinations of Significance (determination that an (~~environmental impact~~
7 ~~statement~~)) Environmental Impact Statement is required) for Master Use Permits and for
8 building, demolition, grading, and other construction permits (supplemental procedures for
9 environmental review are established in Chapter 25.05, Environmental Policies and Procedures),
10 except for Determinations of Significance based solely on historic and cultural preservation;
- 11 7. Discretionary exceptions for certain business signs authorized by subsection
12 23.55.042.D;
- 13 8. Waiver or modification of required right-of-way improvements;
- 14 9. Special accommodation pursuant to Section 23.44.015;
- 15 10. Reasonable accommodation;
- 16 11. Minor amendment to Major Phased Development Permit;
- 17 12. Determination of public benefit for combined lot development;
- 18 13. Streamlined design review decisions pursuant to Section 23.41.018 if no
19 development standard departures are requested pursuant to Section 23.41.012, and design review
20 decisions in an MPC zone if no development standard departures are requested pursuant to
21 Section 23.41.012;
- 22 14. Shoreline special use approvals that are not part of a shoreline substantial
23 development permit;

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

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

5 17. ~~((Modification of mitigation amounts under Section 23.58B.040 or Section
6 23.58B.050 pursuant to subsection 23.58B.025.B.2;~~

7 ~~18.))~~ Determination of requirements according to subsections 23.58B.025.A.3.a,
8 23.58B.025.A.3.b, 23.58B.025.A.3.c, 23.58C.030.A.2.a, and 23.58C.030.A.2.b; and

9 ~~((19))~~ 18. Other Type I decisions.

10 C. The following are Type II decisions:

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

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

17 b. Determination that a final ~~((environmental impact statement))~~

18 Environmental Impact Statement (EIS) is adequate; and

19 c. Determination of Significance based solely on historic and cultural
20 preservation.

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

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

6 b. Short subdivisions;

7 c. Variances ((§)) 2 provided that the decision on variances sought as part
8 of a Council land use decision shall be made by the Council pursuant to Section 23.76.036;

9 d. Special exceptions ((§)) 2 provided that the decision on special
10 exceptions sought as part of a Council land use decision shall be made by the Council pursuant
11 to Section 23.76.036;

12 e. Design review decisions, except for streamlined design review decisions
13 pursuant to Section 23.41.018 if no development standard departures are requested pursuant to
14 Section 23.41.012, and except for design review decisions in ((~~an~~)) a MPC zone pursuant to
15 Section 23.41.020 if no development standard departures are requested pursuant to Section
16 23.41.012;

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

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

- 1 1) Shoreline substantial development permits;
- 2 2) Shoreline variances; and
- 3 3) Shoreline conditional uses;
- 4 h. Major Phased Developments;
- 5 i. Determination of project consistency with a planned action ordinance,
- 6 only if the project requires another Type II decision;
- 7 j. Establishment of light rail transit facilities necessary to operate and
- 8 maintain a light rail transit system, in accordance with the provisions of Section 23.80.004;
- 9 k. Downtown planned community developments;
- 10 l. Establishment of temporary uses for transitional encampments, except
- 11 transitional encampment interim uses provided for in subsection 23.76.006.B.2;
- 12 m. (~~Modification of mitigation amounts under Section 23.58B.040 or~~
- 13 ~~Section 23.58B.050 pursuant to subsection 23.58B.025.B.3;)) Determination of requirements~~
- 14 according to subsections 23.58B.025.A.4 and 23.58C.030.A.3; and
- 15 n. (~~Modification of payment or performance amounts under subsection~~
- 16 ~~23.58C.040.A or subsection 23.58C.050.A pursuant to section 23.58C.035; and~~
- 17 ~~o~~)) Except for projects determined to be consistent with a planned action
- 18 ordinance, decisions to approve, condition, or deny based on SEPA policies if such decisions are
- 19 integrated with the decisions listed in subsections 23.76.006.C.2.a. through 23.76.006.C.2.i;
- 20 provided that, for decisions listed in subsections 23.76.006.C.2.c, 23.76.006.C.2.d,
- 21 23.76.006.C.2.f, and 23.76.006.C.2.g that are made by the Council, integrated decisions to
- 22 approve, condition, or deny based on SEPA policies are made by the Council pursuant to Section
- 23 23.76.036.

1 * * *

2 Section 13. Subsection 25.05.675.I of the Seattle Municipal Code, which section was last
3 amended by Ordinance 124895, is amended as follows:

4 **25.05.675 Specific environmental policies**

5 * * *

6 I. Housing

7 1. Demolition, rehabilitation, or conversion

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

11 b. Policies

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

15 2) Proponents of projects shall disclose the on-site and off-site
16 impacts of the proposed projects upon existing housing, with particular attention to low-income
17 housing.

18 3) Compliance with legally valid City ordinance provisions
19 relating to housing relocation, demolition, and conversion shall constitute compliance with this
20 housing policy.

21 4) Housing preservation shall be an important consideration in the
22 development of the City's public projects and programs. The City shall give high priority to
23 limiting demolition of low-income housing in the development of its own facilities.

1 2. Commercial development - Policy background

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

7 b. SEPA provides that each person has a fundamental and inalienable right
8 to a healthful environment. Affordable housing is a critical component of a healthful
9 environment.

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

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

18 e. Because affordable housing is in short supply in the City and newly
19 constructed housing is generally not affordable, lower-wage employees may be forced to live in
20 less than adequate housing within the City, pay a disproportionate share of their incomes to live
21 in adequate housing in the City, or commute ever increasing distances to their jobs from housing
22 located outside the City when they are unable to locate adequate housing within the City.

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

3 3. Commercial development - Policies

4 a. The following policies apply to ~~((the))~~ development ~~((of a new~~
5 ~~structure, or an addition to an existing structure,))~~ that is not categorically exempt and
6 ~~((contains))~~ that includes more than 4,000 square feet of ~~((new chargeable))~~ gross floor area
7 ~~((devoted to))~~ in commercial ~~((uses))~~ use, as defined in Section 23.84A.006, through
8 construction of a new structure, construction of an addition, or change of use from residential use
9 to commercial use, in areas for which the provisions of the zone specifically refer to Chapter
10 23.58B:

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

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

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

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

20 b) Payment to fund affordable housing.

21 4) Subject to the Overview Policy set forth in Section 25.05.665,
22 the decision maker may condition or deny a commercial development project described in this
23 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

