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The City of Seattle

Ordinance _____

Council Bill _____

..title
An ordinance relating to land use and zoning; allowing certain applicants to elect to use, as an alternative to standard mandatory housing affordability payment calculation amounts under Chapter 23.58C of the Seattle Municipal Code, a discounted payment calculation amount conditioned on meeting a foundation inspection deadline; amending Sections 22.900G.015, 23.58C.030, 23.58C.035, 23.58C.040, 23.58C.050, and 23.76.006 of the Seattle Municipal Code; and adding a new Section 23.58C.060 to the Seattle Municipal Code.

..body
Recitals:

In August 2016, the City Council adopted Ordinance 125108, establishing Seattle Municipal Code (SMC) Chapter 23.58C, which provides a mandatory housing affordability (MHA) framework for residential development.

MHA requirements of SMC Chapter 23.58C were implemented in 2017 and 2019 concurrent with City Council approval of extensive legislative upzones of Seattle's multifamily areas.

As authorized by RCW 36.70A.540, SMC Chapter 23.58C establishes a minimum amount of affordable housing to be provided by residential developers in areas

where increased residential development capacity has been provided or, at the option of the developer, a payment amount in lieu of performance. Therefore,

Be it ordained by The City of Seattle as follows:

Section 1. Section 22.900G.015 of the Seattle Municipal Code, last amended by Ordinance 126855, is amended as follows:

22.900G.015 Fees for review by the Office of Housing

((~~At application for a Master Use Permit, or for the first building permit that includes the structural frame for the structure if no Master Use Permit is required, where the application includes~~))

A. For projects that include a proposal to provide restricted units or make a financial contribution for restricted units required by Section 23.34.004, Section 23.49.014, Section 23.54.015, Chapter 23.58A, Chapter 23.58B, Chapter 23.58C, or Section 23.75.085, the applicant shall pay a housing review fee in the amount of $550 to the Office of Housing at application for the first building permit that includes the structural frame for the structure.

B. If an applicant requests amendment of a recorded agreement to provide restricted units required by Section 23.34.004, Section 23.49.014, Section 23.54.015, Chapter 23.58A, Chapter 23.58B, Chapter 23.58C, or Section 23.75.085, the applicant shall pay a housing review fee in the amount of $750 to the Office of Housing, plus an amount equal to the King County recording fee or delivery fees if required.

Section 2. Section 23.58C.030 of the Seattle Municipal Code, last amended by Ordinance 126855, is amended as follows:

23.58C.030 Permit documentation

A. General

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

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

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

~~c. If the applicant seeks relief according to Sections 23.48.231 or 23.49.039 or seeks a modification according to subsection 23.58C.035.B or subsection 23.58C.035.C, the earliest application according to this subsection 23.58C.030.A.1 shall include requests for such relief or modifications including all supporting materials required for a decision on the requests.~~

~~2.~~)) 1. The Director shall, as a Type I decision and in consultation with the Director of Housing, determine:

a. If the applicant elects to comply with this Chapter 23.58C through the payment option according to Section 23.58C.040 or, if applicable, Section 23.58C.060, the amount of the cash contribution;

b. If the applicant elects to comply with this Chapter 23.58C through the performance option according to Section 23.58C.050, the number of MHA-R units that shall meet the requirements of subsection 23.58C.050.C, the amount of any cash

contribution according to subsection 23.58C.050.A.3.b, and the compliance of the proposal for MHA-R units that satisfy requirements of subsection 23.58C.050.C; and

c. Any modification according to subsection 23.58C.035.B.

((~~3.~~)) 2. The Director shall, as a special exception according to Chapter 23.76, ((~~Procedures for Master Use Permits and Council Land Use Decisions,~~)) in consultation with the Director of Housing, determine any modification according to subsection 23.58C.035.C.

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

~~5. If the applicant elects to comply with this Chapter 23.58C through the performance option according to Section 23.58C.050, the~~)) 3. The requirements of Section 23.58C.050 and Section 23.58C.060, as applicable, shall be considered terms of the first building permit that includes the structural frame for the structure.

((~~6.~~)) 4. Unit substitution according to subsection 23.58C.050.C.6.f and conversion of rental housing to ownership housing according to subsection 23.58C.050.C.6.i shall require a separate review and approval by the Director in consultation with the Director of Housing.

((~~7.~~)) 5. The applicant for a project subject to this Chapter 23.58C shall pay housing review fees according to Section 22.900G.015.

B. ((~~Issuance of Master Use Permit. Prior to the issuance of a Type II Master Use Permit, the applicant shall provide the following:~~

~~1. If the applicant elects the payment option, the amount of the required cash contribution according to subsection 23.58C.040.A; or~~

~~2. If the applicant elects the performance option, the number of MHA-R units required to be provided according to subsection 23.58C.050.A, the amount of any cash contribution according to subsection 23.58C.050.A.3.b, a proposal for MHA-R units that meet the requirements of subsection 23.58C.050.C, and a draft agreement according to subsection 23.58C.050.E.~~

~~C.~~)) Issuance of building permit. Prior to issuance of the first building permit that includes the structural frame for the structure, the applicant shall provide the following:

1. If the applicant elects to comply with this Chapter 23.58C through the payment option according to Section 23.58C.040 or, if applicable, Section 23.58C.060:

a. Final plans that include the structural frame for the structure showing the calculation of the amount of the required cash contribution according to subsection 23.58C.040.A ((~~and~~)) or, if applicable, subsection 23.58C.060.B and, if subsection 23.58C.060.B is applicable, stating the requirements of subsections 23.58C.060.C.2, 23.58C.060.C.3, and 23.58C.060.C.4; provided that the Director is authorized to implement an alternative process for documenting requirements of subsections 23.58C.060.C.2, 23.58C.060.C.3, and 23.58C.060.C.4 in connection with the approved plans and building permit;

b. If subsection 23.58C.060.B is applicable, the executed and recorded agreement required according to subsection 23.58C.060.C.6; and

c. Documentation from the Director of Housing of receipt of payment of the required cash contribution according to subsection 23.58C.040.A or, if applicable, subsection 23.58C.060.B; or

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

a. Final plans that include the structural frame for the structure that:

1) Include the calculation of the number of MHA-R units required to be provided according to subsection 23.58C.050.A;

2) Demonstrate compliance with the requirements of Section 23.58C.050 and state the ongoing requirements of Section 23.58C.050; and

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

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

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

3. The applicant may not change its election between performance and payment ((~~prior to~~)) after issuance of the first building permit that includes the structural frame for the structure((~~, provided that an~~)) . A post-issuance building permit revision shall not change the election between performance and payment. An applicant changing its election prior to issuance of the first building permit that includes the structural frame for the structure shall obtain any necessary approvals affected by the change in election, except that a project that was exempted from design review based

on the applicant's compliance with Chapter 23.58C through the performance option does not require design review approval if the applicant's election changes from performance to payment. Review and approval of a change in election between performance and payment is a Type I decision, unless the requested change affects a modification according to subsection 23.58C.035.C.

Section 3. Section 23.58C.035 of the Seattle Municipal Code, last amended by Ordinance 127099, is amended as follows:

23.58C.035 Modification of payment and performance amounts

A. General

1. An applicant may request a modification, according to this Section 23.58C.035, of the amount of payment required according to subsection 23.58C.040.A or, if applicable, subsection 23.58C.060.B or the amount of performance required according to subsection 23.58C.050.A.

2. An applicant requesting a modification according to subsection 23.58C.035.B.2 shall have requested any available relief according to Sections 23.48.231 or 23.49.039, and the Director will evaluate relief according to Sections 23.48.231 or 23.49.039 before evaluating a modification according to subsection 23.58C.035.B.2. An applicant requesting a modification according to subsection 23.58C.035.C shall have requested any available relief according to Sections 23.48.231 or 23.49.039 and any available modification according to subsection 23.58C.035.B, and the Director will evaluate relief according to Sections 23.48.231 or 23.49.039 and a modification according to subsection 23.58C.035.B before evaluating a modification according to subsection 23.58C.035.C.

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

* * *

C. Modification based on severe economic impact

1. The purpose of this subsection 23.58C.035.C is to allow the Director to modify the amount of payment required according to subsection 23.58C.040.A or, if applicable, subsection 23.58C.060.B or the amount of performance required according to subsection 23.58C.050.A if the applicant can demonstrate facts supporting a determination of severe economic impact at such a level that a property owner's constitutional rights may be at risk.

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

3. The Director may, as a special exception according to Chapter 23.76, waive or reduce the amount of payment required according to subsection 23.58C.040.A or, if applicable, subsection 23.58C.060.B or the number of units required to meet the

requirements according to subsection 23.58C.050.C if the applicant shows that application of the requirements of this Chapter 23.58C would:

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

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

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

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

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

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

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

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

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

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

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

b. Documentation showing that any relief available according to Sections 23.48.231 and 23.49.039 or subsection 23.58C.035.B would not eliminate the need for the requested waiver or reduction;

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

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

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

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

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

8. None of the following, standing alone and without consideration of the full range of relevant factors including those according to subsection 23.58C.035.C.4,

shall be a sufficient basis for the Director to grant a waiver or reduction authorized according to this subsection 23.58C.035.C:

a. The fact of a decrease in property value;

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

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

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

Section 4. Section 23.58C.040 of the Seattle Municipal Code, last amended by Ordinance 127376, is amended as follows:

23.58C.040 Affordable housing – Payment option

A. Payment amount

1. ((~~An~~)) Except as authorized according to Section 23.58C.060, an applicant complying with this Chapter 23.58C through the payment option shall provide a cash contribution to the City, calculated by multiplying the payment calculation amount per square foot according to Table A or Table B for 23.58C.040 and Map A for 23.58C.050, as applicable, by the total gross floor area in the development, excluding

the floor area of parking located in stories, or portions of stories, that are underground, excluding the floor area contained in any accessory dwelling units, and excluding any floor area devoted to a domestic violence shelter, as follows:

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

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

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

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

e. Any combination of the above.

* * *

Section 5. Section 23.58C.050 of the Seattle Municipal Code, last amended by Ordinance 127375, is amended as follows:

23.58C.050 Affordable housing – Performance option

* * *

C. Performance requirements. MHA-R units provided to comply with this Chapter 23.58C through the performance option shall meet the following requirements:

1. Distribution. MHA-R units shall be generally distributed throughout each structure in the development containing units.

2. Comparability. MHA-R units shall be comparable to the other units to be developed in terms of the following:

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

b. Number and size of bedrooms and bathrooms;

c. Net unit area measured according to subsection 23.86.007.B;

d. Access to amenity areas;

e. Functionality; and

f. Term of the lease.

3. Eligible households. MHA-R units shall serve only:

a. At initial occupancy by a household:

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

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

3) For an ownership MHA-R unit, households with incomes no greater than 80 percent of median income, and that meet a reasonable limit on

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assets. The Director of Housing shall establish by rule the method to establish a reasonable limit on assets.

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

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

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

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

5. Affordable housing; no other restrictions. MHA-R units and restricted units provided for any other reason, including a property tax exemption or loans and grants, must be different units.

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

a. Rent levels. Monthly rent for MHA-R units shall not exceed 30 percent of 60 percent of median income or, in the case of rental units with net unit area

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

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

c. Annual certification, third party verification

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

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

d. Reporting. Periodically as may be required by the Director of Housing, but no less than annually, the owner of the structure that includes the MHA-R units shall submit to the Office of Housing a written report demonstrating compliance with and housing outcomes of this Chapter 23.58C. The report shall include required information and supporting documentation, verified upon the owner's oath or affirmation and in a form prescribed by the Office of Housing. The Director of Housing is authorized to assess a late fee of $50 per day, which shall accrue until the report is submitted, starting 14 days from the date of the Office of Housing's notice that the report is overdue.

e. Annual fee. The owner of the units shall pay the Office of Housing an annual fee of $190 per MHA-R unit for the purpose of monitoring

compliance with the requirements of this Section 23.58C.050. The fee shall automatically adjust annually on March 1, starting in 2024, by an amount in proportion to the increase, if any, for January 1 through December 31 of the prior calendar year, in the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bellevue, WA, All Items (1982-1984=100), as determined by the U.S. Department of Labor, Bureau of Labor Statistics or successor index.

f. Over-income households; unit substitution. If, based on any certification, a previously eligible household occupying a rental unit provided through the performance option is determined to be ineligible due to exceeding the income limits according to subsection 23.58C.050.C.3.b, the owner of the development to which this Chapter 23.58C applies shall, through the process according to subsection ((~~23.58C.030.A.6~~)) 23.58C.030.A.4, designate a comparable substitute rental unit within the development, as approved by the Director of Housing, as soon as such a unit becomes available, and upon such designation the requirements of this subsection 23.58C.050.C shall transfer to the substitute unit. Upon such determination that a previously eligible household is ineligible, the owner shall promptly give the ineligible household notice of such determination and notice that the requirements of this subsection 23.58C.050.C will transfer to a substitute unit when such unit becomes available. Upon the transfer of the requirements, the owner shall give the ineligible household six months' notice prior to any rent increase.

g. Maintenance, insurance. MHA-R units, and the structure in which they are located, shall be maintained by the owner in decent and habitable condition, including the provision of adequate basic appliances. The owner shall keep such units,

and the structure in which they are located, insured by an insurance company licensed to do business in the state of Washington and reasonably acceptable to the City, against loss by fire and other hazards included with broad form coverage, in the amount of 100 percent of the replacement value.

h. Casualty

1) If a rental unit provided through the performance option is destroyed or rendered unfit for occupancy by casualty that does not affect all of the other units in the development to which this Chapter 23.58C applies, the owner of the development shall, through the process according to subsection ((~~23.58C.030.A.6~~)) 23.58C.030.A.4, designate a comparable substitute rental unit within the development, as approved by the Director of Housing, as soon as such a unit becomes available, which the tenant household of the unit affected by casualty shall be allowed to move into, and upon such designation the requirements of this subsection 23.58C.050.C shall transfer to the substitute unit.

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

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

inspection, for the development to which this Chapter 23.58C applies according to subsection 23.58C.025.B:

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

a) Where a payment in lieu of continuing affordability is made, the amount of the payment shall be equal to the amount of the cash contribution according to subsection 23.58C.040.A that would have been required based on the payment amount in effect on the vesting date for the Master Use Permit under Section 23.76.026 or, if no Master Use Permit is required, on the filing date for the valid and fully complete permit application adjusted by an amount in proportion to the increase, if any, in the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bellevue, WA, Shelter (1982-1984=100), as determined by the U.S. Department of Labor, Bureau of Labor Statistics, or successor index, from the most recent month for which data are available on or before the vesting date for the Master Use Permit under Section ((~~23.76.126~~)) 23.76.026 or, if a Master Use Permit is not required, the filing date for the valid and fully complete permit application, to the most recent month for which data are available at the time of payment, multiplied by the percentage in Table C for 23.58C.050 that corresponds to the number of years that the rental MHA-R units satisfied the requirements of this subsection 23.58C.050.C. The City shall use the payment to support long-term housing affordability in The City of Seattle consistent with applicable statutory requirements.

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Table C for 23.58C.050

Payment in lieu of affordability calculation percentages for conversion to ownership housing

Number of years rental MHA-R units satisfied the requirements of subsection 23.58C.050.C	Percentage
Less than 7.5	100%
Between 7.5 and 15	95%
Between 15 and 22.5	90%
Between 22.5 and 30	85%
Between 30 and 37.5	80%
Between 37.5 and 45	75%
Between 45 and 52.5	65%
Between 52.5 and 60	55%
Between 60 and 67.5	40%
Between 67.5 and 75	20%

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

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

3) If a rental unit provided through the performance option is converted to a condominium, the owner shall comply with the requirements of Section 22.903.030 and Section 22.903.035, the requirement of RCW 64.34.440(2) to offer to

convey the unit to the tenant who leases the unit, and any other applicable requirements.

j. Demolition or change of use

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

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

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b) The City shall use the payment to support long-term housing affordability in The City of Seattle, including but not limited to providing rental assistance to the tenants of rental MHA-R units that were eliminated.

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

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

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

c) Demolition or change of use of an individual structure shall not be a basis for reducing the number of rental MHA-R units in the other

structures and any comparable substitute rental units shall be in addition to any existing rental MHA-R units in the other structures.

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

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

b. Affordable resale price. For an ownership unit provided through the performance option, the sale price for sales subsequent to the initial sale shall be calculated to allow modest growth in homeowner equity while maintaining long-term

affordability for income-eligible buyers. All buyers of an ownership unit subsequent to the initial sale shall be households with incomes no greater than 80 percent of median income at initial occupancy. The Director of Housing shall by rule:

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

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

3) Provide for recovery of reasonable administrative costs.

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

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

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

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d. Annual fee. The owner of the ownership unit shall pay the Office of Housing an annual fee, payable in 12 equal payments, for the purpose of monitoring compliance with the requirements of this Section 23.58C.050. The initial fee shall be established by the Director of Housing by rule. The annual fee shall automatically adjust annually on March 1, starting in 2024, by an amount in proportion to the increase, if any, for January 1 through December 31 of the prior calendar year, in the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bellevue, WA, All Items (1982-1984=100), as determined by the U.S. Department of Labor, Bureau of Labor Statistics or successor index.

e. Ongoing stewardship. Either before or after the initial sale, the Director of Housing is authorized to designate an agency or organization with sufficient capacity, as approved by the Director of Housing, to perform ongoing stewardship and management functions for ownership MHA-R units, including but not limited to the following:

1) Calculating maximum sale prices;

2) Marketing sales to eligible households;

3) Screening, educating, and selecting eligible households;

4) Approving buyer financing; and

5) Managing successive resales to eligible households.

f. Periodically as may be required by the Director of Housing, but no less than annually, the applicant or third-party stewardship entity, as applicable, shall submit to the Office of Housing a written report demonstrating compliance with and housing outcomes of this Section 23.58C.050. The report shall include required

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information and supporting documentation, verified upon the owner's oath or affirmation and in a form prescribed by the Office of Housing. The Director of Housing is authorized to assess a late fee of $50 per day, which shall accrue until the report is submitted, starting 14 days from the date of the Office of Housing's notice that the report is overdue.

8. Additional requirements for MHA-R units provided through the performance option on a site other than the same lot as the development required to comply with this Chapter 23.58C

a. Equal or better - comparability of units. The applicant shall demonstrate to the satisfaction of the Director of Housing that MHA-R units on a site other than the same lot as the development required to comply with this Chapter 23.58C are equal to or better than MHA-R units on the same lot.

b. Location. MHA-R units on a site other than the same lot as the development required to comply with this Chapter 23.58C shall be located in a Lowrise or RSL zone. In addition, units shall be located:

1) Within the same regional center or urban center as the development required to comply with this Chapter 23.58C; or

2) Within 1 mile of the development required to comply with this Chapter 23.58C if such development is located outside of a regional center or urban center.

c. Tenure. MHA-R units on a site other than the same lot as the development required to comply with this Chapter 23.58C shall be ownership units and

shall comply with all additional requirements for ownership units according to subsection 23.58C.050.C.7.

d. Public subsidy. If any public subsidy is used for a development, and the public subsidy operates through subjecting units in the development to restrictions on the income levels of occupants and the rents or sale prices that may be charged, the development shall not be eligible to provide units through the performance option according to this subsection 23.58C.050.C.8.

e. Developer's agreement. If the owner of the development required to comply with this Chapter 23.58C is not the owner of the MHA-R units, then in addition to the agreement required according to subsection 23.58C.050.E, the owner of the development required to comply with this Chapter 23.58C and the owner of the MHA-R units shall execute a developer's agreement, acceptable to the Director of Housing, allowing the exclusive use of the MHA-R units to satisfy the requirements of this Chapter 23.58C in return for necessary and adequate financial support to the development of those MHA-R units.

f. Letter of credit

1) If the MHA-R units are located on a site other than the same lot as the development required to comply with this Chapter 23.58C, the owner of the development required to comply with this Chapter 23.58C shall provide to the Director of Housing an irrevocable bank letter of credit, approved by the Director of Housing, in the amount according to subsection 23.58C.040.A.

2) The Director of Housing may draw on the letter of credit one year after the date of issuance of the certificate of occupancy, or, if a certificate of

occupancy is not required, the final building permit inspection, for the development required to comply with this Chapter 23.58C if the certificate of occupancy or final building permit inspection for the MHA-R units has not been issued on or before that date. The owner of the development required to comply with this Chapter 23.58C shall also pay an amount equal to the interest on the cash contribution, at the rate equal to the prime rate quoted by Bank of America, or its successor, plus three percent per annum, from the date of issuance of the first building permit that includes the structural frame for the development required to comply with this Chapter 23.58C.

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

D. Enforcement. The requirements of this Section 23.58C.050 shall be terms of the building permit according to subsection ((~~23.58C.030.A.5~~)) 23.58C.030.A.3. In addition to any other remedies available to the City, the City is authorized to enforce such permit terms using the procedures of Chapter 23.90.

* * *

Section 6. A new Section 23.58C.060 is added to the Seattle Municipal Code as follows:

23.58C.060 Affordable housing – Alternative provisions for payment calculation amounts for certain projects

A. Eligibility. In accordance with subsection 23.76.026.F, applicants for projects may elect to calculate the project's cash contribution under the payment option using

the payment calculation amount per square foot according to subsection 23.58C.060.B if:

1. An application vested according to Section 23.76.026 prior to the effective date of this ordinance, and the first building permit that includes the structural frame for the structure was not issued prior to the effective date of this ordinance; or

2. Subsection 23.58C.060.A.1 does not apply, at least 25 percent of the dwelling units in the project have two or more bedrooms, and a valid and fully complete building permit application, as determined under Section 106 of the Seattle Building Code or Section R105 of the Seattle Residential Code, is filed after the effective date of this ordinance and before January 1, 2028, provided that no portion of the project is located in the International Special Review District, Central District Urban Center, Central District South Urban Center, Mount Baker Urban Center, North Beacon Hill Urban Center, Columbia City Urban Center, Graham Urban Center, Othello Urban Center, or Rainier Beach Urban Center, unless the application is for development of a site for which a deed has not transferred title since January 1, 2006.

B. Payment amount. If an applicant elects to calculate the project's cash contribution according to this subsection 23.58C.060.B, the payment calculation amount per square foot shall be:

1. Twenty percent of the payment calculation amount according to Table A or Table B for 23.58C.040 in effect on the date the application vested according to Section 23.76.026 for projects that are eligible for a payment calculation under subsection 23.58C.060.A.1; or

2. Forty percent of the payment calculation amount according to Table A or Table B for 23.58C.040 in effect on the date the application vested according to Section 23.76.026 for projects that are eligible for a payment calculation under subsection 23.58C.060A.2.

C. Foundation inspection deadline; enforcement

1. If an applicant elects, according to subsection 23.58C.060.A, to calculate the project's cash contribution using the payment calculation amount per square foot according to subsection 23.58C.060.B, the requirements of this subsection 23.58C.060.C shall apply.

2. Foundation inspection deadline. Substantial progress toward construction of the project's foundation shall be documented according to subsection 23.58C.060.C.3 prior to the date that is:

a. Two years after the effective date of this ordinance if the applicant elected to use the payment calculation amount under subsection 23.58C.060.B according to subsection 23.58C.060.A.1;

b. Three years after the effective date of the filing date for a valid and fully complete building permit application, as determined under Section 106 of the Seattle Building Code or Section R105 of the Seattle Residential Code, if the applicant elected to use the payment calculation amount under subsection 23.58C.060.B according to subsection 23.58C.060.A.2; or

b. A later date approved by the Director if substantial progress toward construction of the project's foundation is not possible due to extreme weather,

acts of nature, terrorism, unforeseeable discoveries during excavation, or other factors that are beyond the control of the owner.

3. Substantial progress toward construction of the foundation for the project shall be documented by a pass or partial pass of the first foundation inspection that includes approval of one or more of the following elements:

a. Installation of footing forms;

b. Installation of underslab utilities and vapor barrier; or

c. Excavation and shoring to the depth of the lowest floor for a multi-level subterranean parking structure.

4. If a project does not meet the deadline according to subsection 23.58C.060.C.2, the property owner or permittee shall, within 60 days after notice given by the Department that the deadline was missed, pay to the City the difference between (a) the cash contribution that was paid to the City as a condition to building permit issuance and (b) a cash contribution calculated using the full payment calculation amount per square foot according to Table A or Table B for 23.58C.040 in effect on the date the application vested according to Section 23.76.026 or in effect on the deadline according to subsection 23.58C.060.C.2, whichever is less. For purposes of this subsection 23.58C.060.C, this difference is referred to as the contribution differential. The notice given by the Department under this subsection 23.58C.060.C.4 shall specify the amount of the contribution differential and the date on which payment of the contribution differential is due. It shall be a violation of Chapter 23.58C for the property owner or permittee to fail to pay the contribution differential to the City by the due date stated in the Department notice. For purposes of this subsection 23.58C.060.C, the

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party who holds control of the issued building permit for the development is referred to as the permittee.

5. The requirements of subsections 23.58C.060.C.2, 23.58C.060.C.3, and 23.58C.060.C.4 shall be terms of the first building permit that includes the structural frame for the structure.

6. The City and the property owner shall enter into an agreement specifying the requirements of subsections 23.58C.060.C.2, 23.58C.060.C.3, and 23.58C.060.C.4. The agreement shall be executed and recorded on the title of the property on which that development is located prior to issuance of the first building permit that includes the structural frame for the structure.

7. In addition to any other remedies available to the City, the City is authorized to enforce the requirement of subsection 23.58C.060.C.4 using the procedures of Chapter 23.90.

8. In addition to any other remedies available to the City, if a project does not meet the deadline according to subsection 23.58C.060.C.2 and the contribution differential has not been paid to the City, the City is authorized to withhold issuance of any certificate of occupancy for the project, or to withhold final building permit inspection for the project, until the contribution differential has been paid to the City.

* * *

Section 7. Section 23.76.006 of the Seattle Municipal Code, last amended by Ordinance 127228, is amended as follows:

23.76.006 Master Use Permits required

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

B. The following decisions are Type I:

1. Determination that a proposal complies with development standards;

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

3. The following street use approvals:

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

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

c. Structural building overhangs associated with a development proposal;

d. Areaways associated with a development proposal;

4. Lot boundary adjustments;

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

a. Plazas;

b. Shopping plazas;

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c. Arcades;

d. Shopping arcades; and

e. Voluntary building setbacks;

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

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

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

9. Reasonable accommodation;

10. Minor amendment to Major Phased Development Permit;

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

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

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

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

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15. Determination of requirements according to subsections 23.58B.025.A.3.a, 23.58B.025.A.3.b, 23.58B.025.A.3.c, ((~~23.58C.030.A.2.a, 23.58C.030.A.2.b, and 23.58C.030.A.2.c~~)) 23.58C.030.A.1.a, 23.58C.030.A.1.b, and 23.58C.030.A.1.c;

16. Determination that a light rail transit facility is consistent with the provisions of subsection 23.80.004.C;

17. Decision to increase the maximum height of a structure in the DOC2 500/300-550 zone according to subsection 23.49.008.F;

18. Decision to increase the maximum FAR of a structure in the DOC2 500/300-550 zone according to subsection 23.49.011.A.2.n;

19. Minor revisions to an issued and unexpired Master Use Permit that was subject to design review, pursuant to subsection 23.41.008.G;

20. Building height departures for minor communication facilities in downtown zones, pursuant to Section 23.57.013;

21. Application of tree provisions pursuant to Chapter 25.11;

22. Director's acceptance of an eligibility letter for proposals subject to temporary design review exemption provisions subject to the additional requirement to file a valid and complete Type I or II Master Use Permit application in subsection 23.41.004.E.3;

23. Director's application of development standards for decisions on Type I or II Master Use Permit applications subject to temporary design review exemption provisions in subsection 23.41.004.E.3;

24. Waiver or modification of development standards for development proposals subject to temporary design review exemption provisions in subsection 23.41.004.E.3;

25. Interim street activation uses pursuant to Section 23.42.041; and

26. Other Type I decisions.

C. The following are Type II decisions:

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

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

b. Determination that a final EIS is adequate; and

c. Determination of significance based solely on historic and cultural preservation.

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

a. Establishment or change of use for temporary uses more than four weeks not otherwise permitted in the zone or not meeting development standards, except the establishment of temporary use for light rail transit facility construction, and temporary relocation of police and fire stations for 24 months or less;

b. Short subdivisions;

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

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

e. Design review decisions, except for streamlined design review decisions pursuant to Section 23.41.018 if no development standard departures are requested pursuant to Section 23.41.012, and minor revisions to an issued and unexpired Master Use Permit that was subject to design review, building height increases for minor communication utilities in downtown zones, and design review decisions in an MPC zone pursuant to Section 23.41.020 if no development standard departures are requested pursuant to Section 23.41.012;

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

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

1) Shoreline substantial development permits;

2) Shoreline variances; and

3) Shoreline conditional uses;

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h. Major Phased Developments;

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

j. Reserved;

k. Downtown planned community developments;

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

m. Decision to waive or modify development standards relating to structure width or setbacks for a youth service center pursuant to subsection 23.51A.004.B.6;

n. Determination of requirements according to subsections 23.58B.025.A.4 and ((~~23.58C.030.A.3~~)) 23.58C.030.A.2;

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

p. Determination of public benefit for combined lot development; and

q. Major revisions to an issued and unexpired Master Use Permit that was subject to design review, pursuant to subsection 23.41.008.G.

Section 9. The Office of Housing and Department of Construction and Inspections is requested to report to the City Council the following information by June 30 of the years 2027 through 2030:

A. For projects with mandatory housing affordability (MHA) payments calculated according to Seattle Municipal Code Section 23.58C.060:

1. The number and status of projects;

2. Depending on available data, general profile of units;

3. MHA payment received from each project; and

4. Amount of MHA payment reduction for each project.

B. Progress toward MHA's ten-year 6,000-unit affordable housing production goal referenced in subsection 2.A.2.b of Ordinance 125108.

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This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by the City Council and signed in open session in authentication of its passage on _____.

_____

President _____ of the City Council

_____ on _____.

_____

Katie B. Wilson, Mayor

Attested on _____.

_____

Scheereen Dedman, City Clerk

Seal

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