Director's Report

Council Bill 118498

Mandatory Housing Affordability for Commercial Development ("MHA-Commercial") Legislation

September 2015

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Summary of Council Bill 118498

Council Bill 118498 would create a new Chapter 23.58B of the Seattle Municipal Code which provides the requirements for affordable housing impact mitigation for development of new commercial floor area (referred to now as Mandatory Housing Affordability through Commercial Development, or MHA-Commercial). This type of housing impact mitigation has also been referred to as commercial linkage fees. The purpose of MHA-Commercial is to mitigate a portion of the need for affordable housing among households with lower incomes created by development of new commercial floor area in Seattle. The MHA-Commercial framework is designed for future application in zones where commercial development capacity is increased. Under MHA-Commercial, developers of new commercial floor area would be required to provide for affordable housing to mitigate impacts by either providing affordable housing directly or contributing to a fund that would help fund production or preservation of affordable housing in Seattle. Council Bill 118498 by itself does not implement MHA-Commercial in any zone or area, but instead creates a MHA-Commercial framework that is proposed to be implemented through follow-up legislation in 2016 and 2017.

Background

The Housing Affordability and Livability Agenda (HALA) Advisory Committee was created in September 2014 when the Seattle City Council adopted Resolution 31546. In July 2015, the 28-member Advisory Committee forwarded a report to Mayor Murray and City Council with 65 recommendations focused on increasing housing supply, strategically preserving housing, providing protections for vulnerable tenants and homeowners, streamlining systems and implementing other reforms to reduce housing costs, growing resources for production and preservation of affordable housing, and building affordably as Seattle grows.

Council Bill 118498 responds in part to a key recommendation by the HALA Advisory Committee to "boost market-rate development capacity by extensive citywide upzoning of residential and commercial zones" tied to mandatory affordable housing requirements for commercial and residential development *(Seattle Housing Affordability and Livability Agenda, Final Advisory Committee Recommendations to Mayor Edward B. Murray and the Seattle City Council, July 13, 2015, p. 15).* MHA-Commercial is just one of the 65 strategies delivered by the HALA Advisory Committee in July 2015 (referred to in the HALA report as a commercial linkage fee). The HALA recommendation to increase development capacity and require mandatory housing affordability was further developed by the *Statement of Intent for Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee, July 13, 2015 (*referred to as the "*Statement of Intent*"*)*, signed by Mayor Murray, Councilmember O'Brien, the Co-Chairs of the HALA Advisory Committee, and six representatives of the for-profit and non-profit development sectors.

The following steps, in addition to adopting Council Bill 118498, would fully implement the MHA-Commercial as well as Mandatory Housing Affordability through Residential Development ("MHA-Residential"), as recommended by HALA:

- Legislation providing a framework for a mandatory housing affordability requirement for new residential development, for future application in zones where residential development capacity is increased;
- Legislation implementing MHA-Commercial and MHA-Residential in Downtown and South Lake Union, including changes to provide additional development capacity and update existing voluntary incentive zoning provisions.
- Legislation implementing MHA-Commercial and MHA-Residential outside of Downtown and South Lake Union, including changes to provide additional development capacity and update existing voluntary incentive zoning provisions.

The intent of the Council, based on a resolution being considered by the Select Committee on Housing Affordability, is to grant additional development capacity to zones in the Downtown and South Lake Union Urban Centers by 3rd quarter 2016 and to increase commercial development capacity citywide in Neighborhood Commercial (NC), Commercial (C), Seattle Mixed (SM), Industrial Commercial (IC) zones by 2nd quarter 2017. Therefore, by the end 2017, the land use code provisions for all commercial zones subject to MHA-Commercial (e.g. all except Master Planned Community-Yesler Terrace, MPC-YT; Industrial Buffer, IB; Industrial General, IG) would include requirements for mitigation of affordable housing impacts. (See page 7 for discussion of zones where the program is not applicable.)

MHA-Commercial also responds in part to Resolution 31551, adopted in October 2014, which established the City Council's intent to adopt and implement a commercial linkage fee. When new commercial floor area is developed, it increases the demand for housing among the employee households. For example, when a new hotel is built, housing demand increases incrementally among lower-wage hotel workers, but additional supply created by market-rate housing development is largely not affordable to these employees and their families. Council Bill 118498 seeks to mitigate some, but not all, of the affordable housing impact created by new commercial development. MHA-Commercial helps ensure that Seattle's existing need for affordable housing among low-income households will grow more slowly than it otherwise would were commercial growth to continue without mitigating the housing need it generates. It is only one piece of a multi-pronged comprehensive strategy to produce and preserve housing affordable to low-income households over the next 10-20 years.

The intent of the HALA recommendation to implement MHA-Commercial and MHA-Residential was further outlined by the *Statement of Intent*. This document represents a negotiated agreement between representatives of the for-profit and non-profit development sectors aimed at balancing the many goals and principles that the HALA Advisory Committee discussed, including the critical need for affordable housing generally, the additional need generated by new commercial development, the importance of housing supply in limiting future increases in housing cost, integration with existing voluntary incentive zoning, growth management objectives, and implementation issues.

The *Statement of Intent* identifies a target production level of 6,000 affordable housing units for households with incomes equal to or less than 60% of AMI over a 10-year period through a combination of the MHA-Commercial and MHA-Residential. (As noted above, framework legislation for the latter will be drafted in 2016.) The 6,000 units are part of Mayor Murray's goal of producing 20,000 net new income- and rent-restricted affordable housing units, which he announced in the course of the HALA process. The *Statement of Intent* includes a provision calling for “all parties to agree to develop and consider options to achieve the projected production target” in the event affordable housing levels are expected to fall below 6,000 units “in the course of program design” (*Statement of Intent…, July 2015, p. 1).*

The *Statement of Intent* meets multiple goals outlined in the HALA report by requiring provision for affordable housing in connection with increasing commercial and residential development capacity and spurring market-rate housing supply. Key elements of the *Statement of Intent* are codified in Section 23.58B.010 “Intent for Implementation” of Council Bill 118498, including:

- Commercial development capacity increases on which implementation of MHA-Commercial is conditioned and processes for future changes in payment and performance amounts;
- Modification of development standards to enable use of increased development capacity; and
- Reduction of the payment and/or performance amounts in a limited number of cases where a portion of the increased development capacity cannot be used because of a development standard from which a modification is not available or is not granted.

A [resolution being considered by the Select Committee on Housing Affordability] has been proposed for introduction and approval by the City Council that states the City Council’s intent to make changes to zoning and land use regulations to implement a mandatory inclusionary affordable housing program for residential development (MHA-Residential) and an affordable housing impact mitigation program for commercial development (MHA-Commercial) as recommended by the HALA Advisory Committee and the Mayor; clarifying the scope of changes to be considered; establishing minimum outreach, planning, and implementation requirements that must be met prior to Council consideration; and requesting regular reporting.

Affordable Housing Need

The population of the Puget Sound region is expected to exceed 5 million by 2040. King County Countywide Planning Policies (CPPs), adopted to comply with the State Growth Management Act (GMA) provide 20 year growth targets for all local governments in King County. Seattle is expected to accommodate residential growth for 70,000 households and employment growth for 115,000 jobs. The goals of the GMA include ensuring affordable housing for all economic segments of the community, reducing sprawl, protecting our agricultural and natural lands, and directing growth to areas that already have urban services. In accordance with State law, Seattle’s Comprehensive Plan includes a housing element outlining policies that provide for the existing and projected housing needs of all economic segments of the community.

GMA requires each local jurisdiction to include an inventory and analysis of existing and projected housing needs in its Comprehensive Plan. King County’s Countywide Planning Policies (CPPs) provide additional direction and guidance for the inventory and analysis of local housing supply and housing needs. As part of the 2014-2015 Comprehensive Plan amendments, an updated housing appendix is anticipated to be adopted (the "Appendix").

The Appendix estimates Seattle's existing shortage of affordable and available rental units at 23,500 units for households with incomes at or below 30% of AMI, 25,000 units for households with incomes at or below 50% of AMI, and 9,300 units for households with incomes at or below 80% of AMI. These shortages are in spite of robust affordable housing incentive and subsidy programs, including the nationally renowned Seattle Housing Levy. The total affordable housing need associated with 70,000 new Seattle households over 20 years, in large part due to anticipated employment growth totaling 115,000 jobs, is estimated to be an additional 27,500 to 36,500 units, including 10,500 rent- and income-restricted housing units for households with incomes at or below 30% of AMI.

Seattle rents, on average, are not affordable to households at the 30%, 60%, and in most cases 80% of AMI levels, and the gap is even greater for apartments in newer buildings. Average rents range from 75% of AMI to 107% of AMI in affordability, depending presumed household size for the type of unit. Average rents for newly constructed units range from 88% of AMI to 134% of AMI in affordability. Table 1 estimates the affordability of average apartment rents in 20-plus unit buildings located in Seattle, as a percent of area median income, adjusted for household size, as published for the Seattle-Bellevue U.S. Department of Housing and Urban Development (HUD) Metro Fair Market Rent Area: [1]

Table 1: Affordability of Seattle Average Rents

Unit Size (BR/B)	Average HH Size	Average Rent Citywide	Citywide Affordability	Average Rent New Constr.	New Constr. Affordability
0	1	$1,181	75%	$1,386	88%
1	1.5	$1,443	86%	$1,789	106%
2/1	3	$1,651	82%	$2,129	106%
2/2	3	$2,161	107%	$2,696	134%
3/2	4.5	$2,375	102%	$3,076	132%

Sources: Dupre+Scott Apartment Advisors, *Apartment Vacancy Report*, units within 20+ unit complexes in City of Seattle, Spring 2015; Percent of area median income is based on U.S. Department of Housing & Urban Development (HUD) Program Income Limits, Seattle-Bellevue, WA HMFA, FY2015.

Based on the 30% of household income standard widely used as an indicator of housing affordability, the U.S. Department of Housing and Urban Development (HUD) considers households to be cost burdened if they spend more than 30% of household income on housing costs: moderately if they spend more than 30% and up to 50% of household income on housing costs, and severely if they spend more than 50% of household income on housing costs. Approximately 38% of all households in Seattle, or roughly 105,000 households, are cost burdened at either a moderate or a severe level. Renter households are more likely than owner households to be burdened by housing costs they cannot afford. An estimated 42% of Seattle's renter households are cost burdened. The greater prevalence of cost

[1] HUD published income and rent limits are published for each region in every state in the U.S. and are the standard index for compliance with affordable housing incentive and subsidy programs at the state and local level. The HUD Seattle-Bellevue HMFA is the King and Snohomish county region.

burdens is primarily due to the higher prevalence of severe burdens among renter households. More than 75% of renter households with incomes at or below 50% of AMI are cost burdened and more than 60% of renter households with incomes at or below 30% of AMI are severely cost burdened (i.e. spend more than half their income on housing.)

Seattle's households of color are disproportionately likely to have incomes at or below 30% of AMI or 50% of AMI. Unaffordable housing cost burdens fall disproportionately on households of color. This is true for both owners and renters. About 22% of all households of color are severely cost burdened, compared to roughly 15% of White, non-Hispanic households.

It is against this backdrop that mitigation of affordable housing impacts for commercial development is being proposed. MHA-Commercial will reduce, to some extent, the effect of new commercial development in exacerbating an already severe shortage of affordable housing in Seattle.

Affordable Housing Impacts

In 2015, the City Council retained David Paul Rosen & Associates (DRA) to analyze the impact of construction of new commercial floor area on the need for affordable housing both within Seattle's primary job growth centers (Downtown and South Lake Union) and other areas of the city. The findings of the DRA's *Seattle Non-Residential Affordable Housing Impact and Mitigation Study, September 2015* ("DRA Study") supports creation of an affordable housing impact mitigation program for development of new commercial floor area.

The DRA Study analyzed a number of commercial development prototypes intended to represent a broad range of potential development activity in Seattle. First, DRA performed a series of calculations to estimate the number of employee households earning (1) up to 60% of AMI and (2) greater than 60% of AMI but no more than 80% of AMI, corresponding to each development prototype. These calculations rely on assumptions that are based on a series of data sources such as the U.S. Department of Labor and Bureau of Labor Statistics.

Next, DRA performed an "affordability gap analysis" to estimate the capital subsidy needed to develop housing affordable to households earning 60% of AMI and 80% of AMI (a "payment" requirement). Based on the foregoing, DRA calculated a mitigation fee for each of the prototypes, which would mitigate the affordable housing impacts of the prototypes.

The DRA Study makes explicitly conservative assumptions throughout its analysis, which have the overall effect of significantly understating the payment necessary to fully mitigate the impacts of new commercial development. For instance, DRA illustrates that the cost of developing affordable housing varies drastically depending on the location and building type of the development. However, for purposes of estimating payment requirements, DRA selected to model the most efficient type of development in the most inexpensive market area of the city. In addition, there are a number of assumptions that have the effect of significantly understating affordable housing need, such as rounding up all household incomes to 60% of AMI when in fact many employees will likely earn far less than 60% of AMI.

The payment amounts in proposed in Council Bill 118498 are in all cases less than the estimated mitigation amounts in the DRA Study.

Table 2: Mitigation Amounts for New Commercial Floor Area as Quantified by DRA Study

Development prototype		Mitigation Amounts Per Gross Square Foot (Low Cost Scenario)*		
Commercial Use	**Commercial Floor Area**	**≤ 60% of AMI**	**> 60% up to 80% of AMI**	**Total Mitigation Amount**
Office	324,000 gsf	$48.60	$31.40	$80.00
Hotel	144,000 gsf	$57.65	$13.42	$71.07
Grocery (mixed-use)	50,000 gsf	$56.87	$11.67	$68.54
Restaurant (mixed-use)	3,000 gsf	$60.29	$10.91	$71.20
Entertainment (mixed-use)	15,000 gsf	$37.83	$7.48	$45.30
Retail (stand-alone)	25,000 gsf	$60.47	$12.46	$72.94
R&D laboratory	100,000 gsf	$39.77	$24.68	$64.45
Medical office	87,000 gsf	$39.73	$24.60	$64.33

* The conservative low cost development scenario is based on costs to build new the low- to mid-rise rental housing prototypes used in the DRA Study gap analysis.
Source: *Seattle Non-Residential Affordable Housing Impact and Mitigation Study, September 2015* ("DRA Study")

Council Bill 118498 proposes payment amounts ranging from $8.00 to $17.50 per gsf of chargeable floor area in Downtown and South Lake Union Urban Center zones. Payment amounts in zones outside of the Downtown and South Lake Union Urban Center range from $5 to $10 per gsf of chargeable floor area. All of the payment amounts are substantially less than the mitigation amounts provided in the DRA Study. In addition, the DRA Study calculates the mitigation amount per gross square foot of total floor area in commercial use for each development prototype. The far lower payment amounts proposed Council Bill 118498 would apply only to new commercial floor area that is not exempt for purposes of calculating floor area limits. Further detail on calculation of the payment amounts proposed in Council Bill 118498 is included in the "Payment Option" subsection below.

MHA-Commercial Framework Description

Summary

Council Bill 118498 adds a new Chapter 23.58B Affordable Housing Impact Mitigation Program for Commercial Development to Seattle's land use code (Title 23 of the Seattle Municipal Code). The new Chapter 23.58B establishes the MHA-Commercial standards and process, which would be implemented through subsequent legislation increasing commercial development capacity or contract rezones. The

"Scope of chapter" section of Chapter 23.58B stipulates that the affordable housing impact mitigation requirements only apply in areas for which "provisions of the zone specifically refer to this Chapter 23.58B." In other words, the housing impact mitigation requirements will not go into effect until zoning provisions are amended or through the terms of a contract rezone in accordance with Section 23.34.004. The "Intent for implementation" section of Chapter 23.58B clearly states that any land use code or map amendments must increase commercial development capacity in order for MHA-Commercial implementation to apply. This is consistent with the terms of *Statement of Intent*.

As noted in the Background section, MHA-Commercial is just one of 65 recommendations forwarded in July 2015 by the HALA Advisory Committee to Mayor Murray and the City Council. The mitigation does not eliminate all affordable housing impacts of development of new commercial floor area, nor is it intended to do so. It also does not address existing deficits of affordable housing for lower income households. It is part of a comprehensive package of strategies to address Seattle's demonstrated housing needs.

Applicability

The mitigation required by Council Bill 118498 applies to development of either a new structure, or an addition to an existing structure, that contains more than 4,000 square feet of new chargeable floor area that will be devoted to commercial use. The land use code defines chargeable floor area as "gross floor area of all structures on any lot in a zone in which floor area limits apply, except portions of structures or uses that are expressly exempt from floor area limits under the provisions of Title 23, and after reduction by any applicable adjustment for mechanical equipment. Chargeable floor area is computed using the exemptions and adjustments in effect at the time the computation is made" (SMC 23.84A.006).

Commercial uses are defined in Chapter 23.84A of the land use code. They are comprised of the following: animal shelters and kennels; eating and drinking establishments; entertainment uses; food processing and craft work; research and development laboratories; lodging uses; medical services; offices; and sales and services (general, heavy, automotive, and marine).

Institutional uses, which are generally defined as "structure(s) and related grounds used by organizations for the provision of educational, medical, cultural, social and/or recreational services to the community" (see SMC 23.84A.018 for additional detail), would not be required to mitigate affordable housing impacts. These uses are not commercial in nature, and support other public purposes and therefore are not prioritized for mitigation of affordable housing impacts.

Manufacturing uses are also exempt. Manufacturing uses and manufacturing in industrial centers generate relatively little or no affordable housing-related impacts, given the relatively small ratio of jobs to physical space in such facilities. Therefore, they would not be subject to MHA-Commercial.

The Master Planned Community – Yesler Terrace (MPC – YT) zone is exempt from applicability. Yesler Terrace is currently owned by the Seattle Housing Authority. The MPC – YT zone has a master plan for the redevelopment of Yesler Terrace, including requirements for rent- and income-restrict affordable housing units. As a result additional mitigation of affordable housing impacts is not required.

The following commercial uses in structures with at least 50% of above-grade floor area in residential use would be exempt from floor area calculations for purposes of MHA-Commercial requirements:

> 1) Up to 4,000 square feet of street-level floor area containing arts facilities, eating and drinking establishments, entertainment uses; and general sales and services;[2]
>
> 2) Street-level uses along a designated pedestrian street that are required to meet street-level use standards in pedestrian zones; and
>
> 3) Commercial uses within a low-income housing development, provided that a regulatory agreement or housing covenant limits the income and rent to no higher than 60% of AMI for at least 75% of the units in the residential portion of the development for at least 50 years.

Exemptions 1 and 2 in the list above are intended to acknowledge existing City priorities to activate street fronts. Exemption 3 in the list above is for low-income housing developments with long term affordability restrictions well in excess of the level required by MHA-Commercial, but that could otherwise be made ineligible by the more general rule against certain types of public subsidy.

Voluntary Agreement

Under MHA-Commercial, an applicant electing to seek approval of a permit for development of new commercial floor area would enter into a voluntary agreement to mitigate a portion of its impacts on the need for affordable housing. The applicant would have the option to mitigate impacts either through a cash contribution for preservation or production of affordable renter- and owner-occupied housing ("payment option") or by providing rental housing affordable to households with incomes no higher than 60% of AMI either on- or off-site ("performance option"). The applicant could also opt to use a combination of the payment and performance options. As described above, Council Bill 118498 proposes payment and performance requirements well below the amount needed to mitigate the affordable housing impact of development of new commercial floor area calculated by the DRA Study. A declaration, in a form approved by the Department of Planning & Development (DPD) Director, would need to be recorded prior to issuance of the first construction permit other than a demolition, excavation, or shoring permit or, if the Director has approved a phased building permit application, prior to issuance of the portion of the building permit that includes the structural frame for the entire building. In the absence of a signed voluntary agreement, acceptance of the construction permit constitutes a voluntary agreement for purposes of Chapter 23.58B.

Payment Option

One option for mitigating affordable housing impacts is to provide a cash contribution to the City for production or preservation of affordable housing. The Office of Housing would deposit cash contributions into a special account established solely for the cost of preserving and producing housing for renter households with incomes at or below 60% of AMI or for owner households with incomes at or below 80% of AMI. The Office of Housing would award the funds on a competitive basis to non-profit

[2] Note, the following entertainment uses would be required to mitigate housing impacts under MHA-Commercial as proposed by Council Bill 118498: adult cabarets, adult motion picture theaters, and adult panorams.

and for-profit developers of affordable housing for income-qualified households. Affordability terms, including any resale restrictions for owner-occupied housing, must be for at least 50 years. Tables 3 and 4 are for reference only and are not included in Council Bill 118498.

Table 3: Payment Option – 2015 Income Limits (for reference only)

Household size	30% of AMI (Rental)	60% of AMI (Rental)	80% of AMI (Owner)
1	$18,850	$37,680	$50,240
2	$21,550	$43,020	$57,360
3	$24,250	$48,420	$64,560
4	$26,900	$53,760	$71,680
5	$29,100	$58,080	$77,440
6	$31,200	$62,400	$83,200
7	$33,360	$66,720	$88,960
8	$35,490	$70,980	$94,640

Source: Office of Housing, based on Income Limits as published by U.S. Department of Housing & Urban Development Program Limits for the Seattle-Bellevue HUD Metro Fair Market Rent Area (King-Snohomish Counties).

Table 4: Payment Option – 2015 Rent Limits (for reference only)

Bedrooms	30% of AMI	60% of AMI
0	$471	$942
1	$505	$1,008
2	$606	$1,210
3	$700	$1,398
4	$780	$1,560
5	$860	$1,721

Source: Office of Housing, based on Income Limits as published by U.S. Department of Housing & Urban Development Program Limits for the Seattle-Bellevue HUD Metro Fair Market Rent Area (King-Snohomish Counties).

When determining the location of housing funded with cash contributions for purposes of mitigating affordable housing impacts, Council Bill 118498 provides that the City consider the following factors:

1. Affirmatively furthering fair housing choice in keeping with federal, state, and local fair housing laws;
2. Locating within an urban center or urban village;
3. Locating in proximity to frequent bus service or current or planned light rail or street car stops; and
4. Furthering City policies to promote economic opportunity and community development and addressing the needs of communities vulnerable to displacement.

This framework legislation includes an initial proposal for the payment amounts that would be charged for each zone based on a general methodology. This initial proposal could, however, change slightly during implementation of MHA-Commercial based on public engagement and additional study of proposed capacity increases.

In Downtown and South Lake Union Urban Center zones, the proposed payment amounts range from $8.00 to $17.50 per gross square foot of new chargeable floor area devoted to commercial uses. In those zones where Table A for 23.58B.040 (included as Attachment A to this Director's Report) shows a payment amount of $0.00, the City is proposing no increased development capacity. This is due to unique circumstances that make increased floor area ratio (FAR) or height limits difficult or impossible in the following zones: DH1 (zone that applies to structures that are located over water); PMM-85 (located in Pike Place Market historic preservation district and subject to a development agreement); SM 85/65-160 (South Lake Union residential waterfront zone subject to specific massing restrictions), SM 85-240 (a South Lake Union highrise residential-only zone in which commercial development is limited to amounts less than the MHA-C applicability threshold of 4,000 square feet) and C2-40 zones in South Lake Union (zone that borders Lake Union and contain parcels with limited dry land).

In the Downtown and South Lake Union Urban Center zones where MHA-Commercial is applicable, payment amounts (Table A for 23.58B.040 in Council Bill 118498) were generally calculated as follows:

- Calculate the total amount of the affordable housing payment for a project maximizing its development capacity using voluntary incentive zoning (VIZ); plus
- Calculate a total payment amount for the estimated commercial development capacity increase for the zone based on a higher per square foot rate than is in effect for VIZ;
- Divided sum total of the payments calculated in steps 1 and 2 by the total chargeable floor area for a project maximizing its development capacity.

For purposes of the calculations, the cash contribution amount a developer would make for affordable housing under Seattle's voluntary incentive zoning was based on the current Downtown/South Lake Union rate of $25.72 per gross square foot of bonus nonresidential floor area. In most zones the increased development capacity was charged at $41.74 per gross square foot of chargeable floor area devoted to commercial uses. However, in certain zones, a per gross square foot charge of $30.00 was used based on changing construction types or preservation requirements.

Below is a summary of the assumptions made to generate the payment amounts for zones in the Downtown and South Lake Union Urban Centers.

Table 5: Summary of Assumptions for Calculation of Payment Amounts in Downtown and South Lake Union Urban Centers

Zone in Downtown/South Lake Union Urban Centers	Estimated VIZ Extra Nonresidential Floor Area Cost	Estimated Development Capacity Increase Cost	Estimated commercial development capacity increase

Table 5: Summary of Assumptions for Calculation of Payment Amounts in Downtown and South Lake Union Urban Centers			
Zone in Downtown/South Lake Union Urban Centers	**Estimated VIZ Extra Nonresidential Floor Area Cost**	**Estimated Development Capacity Increase Cost**	**Estimated commercial development capacity increase**
DH2, SM/R 55/85, SM-85, SM-125	$25.72/gsf	$41.74/gsf	Height increase*
All PSM zones	$25.72/gsf	$30.00/gsf	Height increase*
DMR/C 85/65, DMR/C 125/65, DMR/C 240/125, DMR/R 85/65, DMR/R 125/65, DMR/R 240/65	$25.72/gsf	$41.74/gsf	0.5 FAR
DMR/C 65/65-85, DMR/C 65/65-150, IDR 150, IDR 45/125-240	$25.72/gsf	$30.00/gsf	0.5 FAR
SM 85/65-125	$25.72/gsf	$41.74/gsf	0.5 FAR plus height increase*
SM 160/85-240	$25.72/gsf	$41.74/gsf	1 FAR plus height increase*
DMC 85/65-150, IDR/C 125/150-240	$25.72/gsf	$30.00/gsf	1 FAR
DMC-65, DMC-85, DMC-125, DMC-160, DMC 240/290-400, DMC 340/290-400, DOC1 U/450/U, DOC2 500/300-500, DRC 85-150, IDM 150/85-150, IDM 75/85-150, IDM-65-150, IDM-75-85, SM 240/125-400	$25.72/gsf	$41.74/gsf	1 FAR

* Height increase is assumed to generally be one extra story, or 10 feet, for commercial uses.

Source: Seattle Office of Planning and Innovation and Department of Planning and Development.

In zones outside of the Downtown and South Lake Union Urban Centers, per square foot payment amounts vary by area of the city – $5 for low cost areas, $7 for medium cost areas, and $8 for high cost areas, consistent with the *Statement of Intent*. Low, medium, and high cost areas were delineated based on average rental rates in various parts of Seattle according to Dupre + Scott data.

Table 6: Seattle Neighborhood Market Area Average 1-Bedroom Rents		
D+S Market Area	**Average Rent**	**Average Rent of Units Built 2010-2015**

Table 6: Seattle Neighborhood Market Area Average 1-Bedroom Rents		
D+S Market Area	**Average Rent**	**Average Rent of Units Built 2010-2015**
	High Cost Areas	
Capitol Hill-Eastlake	$1,462	$1,901
First Hill	$1,470	$1,852
	Medium Cost Areas	
Ballard	$1,533	$1,777
Central	$1,425	$1,754
Queen Anne	$1,472	$1,696
Green Lake-Wallingford	$1,470	$1,671
West Seattle	$1,299	$1,615
University	$1,214	$1,614
Magnolia	$1,206	$1,502
Madison-Leschi	$1,315	n/a
	Low Cost Areas	
Beacon Hill	$1,082	n/a
North Seattle	$1,072	$1,371
Rainier Valley	$1,063	$1,399

Source: Dupre+Scott Apartment Advisors, *Apartment Vacancy Report*, units within 20+ unit complexes, 14 D+S-defined neighborhood market areas within Seattle, Spring 2015.

The payment amount for the IC 85-160 zone is an exception to the $5, $7, and $8 rubric. The voluntary incentive zoning in effect in the IC 85-160 zone is similar to that in many zones in Downtown and South Lake Union Urban Centers, so the same payment calculation methodology as described for those areas was used. A map in Council Bill 118498 (Map A for 23.58A.050, included as Attachment C to this Director's Report) provides a high-level look at all of the payment areas.

As noted under Housing Impacts, Council Bill 118498 proposes to mitigate a portion of the impacts of development of new commercial floor area on affordable housing as identified in the DRA Study.

Performance Option

The applicant would also have the option of providing affordable housing on-site as part of a mixed-use development or off-site if approved by the Office of Housing. All affordable housing provided through the performance option must meet a set of standards outlined in proposed land use code subsection 23.58B.050.B. The standards for affordable housing are summarized as follows:

- <u>Tenure</u>: Rental only (ownership units, such as condominiums, would not be eligible for the performance option)
- <u>Rent and income limits</u>: 60% of area median income, adjusted for household income, unless the unit is 400 net rentable square feet or less, in which case the rent limit is 40% of AMI. Tables 7 and 8 are for reference only and are not part of Council Bill 118498:

Table 7: Performance Option – 2015 Income Limits (for reference only)		
Household size	**AMI Level**	**2015 Income Limit**
1	40% of AMI*	$25,120
1	60% of AMI	$37,680
2	60% of AMI	$43,020
3	60% of AMI	$48,420
4	60% of AMI	$53,760
* Income limit is 40% of AMI if unit is 400 square feet or fewer of net rentable floor area (nrfa)		

Source: Office of Housing, based on Income Limits as published by U.S. Department of Housing & Urban Development Program Limits for the Seattle-Bellevue HUD Metro Fair Market Rent Area (King-Snohomish Counties).

Table 8: Performance Option – 2015 Rent Limits (for reference only)		
Income Limit	**Unit Type**	**2015 Rent Limit**
40% of AMI*	≤ 400 sq. ft. nrfa	$628
60% of AMI	0 BR	$942
60% of AMI	1 BR	$1,008
60% of AMI	2 BR	$1,210
60% of AMI	3 BR	$1,398
* Rent limit is 40% of AMI if unit is 400 square feet or fewer of net rentable floor area (nrfa)		

Source: Office of Housing, based on Income Limits as published by U.S. Department of Housing & Urban Development Program Limits for the Seattle-Bellevue HUD Metro Fair Market Rent Area (King-Snohomish Counties).

- Affordability term: At least 50 years
- Unit size, type, location: The average size and type of affordable housing units, whether provided on-site or off-site, would be required to generally be proportional to any market-rate residential units in the mixed-use development (for on-site performance) to which MHA-Commercial applies. If there are no residential units in the commercial development to which MHA-Commercial applies, then the average size and type of affordable housing units would be proportional to other market-rate residential units in the off-site development in which they are located. In addition, the affordable housing units must be generally distributed throughout the residential portion of the development; they may not be concentrated in one area (e.g. lower floors, along an alley).
- Minimum number of affordable housing units: If the calculation for the amount of affordable housing provided through the performance option yields fewer than 3 dwelling units, the applicant must use the payment option. This ensures greater efficiency of City resources designated to compliance monitoring and enforcement over the minimum 50 year affordable term. Additional benefits include a greater mix of incomes in neighborhoods, which is one of the primary goals and values set out by the HALA Advisory Committee. It is difficult for a small

number of affordable housing units to be proportional in size and type and distributed in terms of location compared to market-rate units within a building.

- Public subsidy: Public subsidies for affordable housing provided through the performance option are generally prohibited. Council Bill 118498 provides for two exceptions. The first is the Washington State 4% Low-Income Housing Tax Credit with Multifamily Housing Bonds, which are currently a non-competitive, unlimited resource for financing affordable housing for households with incomes up to 60% of area median income. The second is Seattle's Multifamily Tax Exemption (MFTE) Program, whereby the property taxes on the residential improvements of a new or rehabilitated apartment building may be waived for up to 12 years, provided 20% of the total housing units are affordable to and reserved solely for lower-income households (currently 40% of AMI for small efficiency dwelling units otherwise known as SEDUs, 65% of AMI for studios, 75% of AMI for 1-bedrooms, and 85% of AMI for 2-bedrooms and larger). However, the MFTE exception only applies if the affordable housing units provided to satisfy MFTE and MHA-Commercial requirements are not the same units. In other words, affordable housing units may not be double-counted.
- Completion deadline: The affordable housing must be completed and available for occupancy at or before the time when a final certificate of occupancy is issued for the commercial development, regardless of whether the affordable housing is on-site or off-site.
- Reporting: A report documenting compliance must be submitted to the Office of Housing annually.

If the affordable housing is proposed to be provided off-site, the applicant must demonstrate to the satisfaction of the Office of Housing Director that the mitigation will be equal to that provided by the on-site performance option. If the commercial development is located within an urban center or village, any off-site affordable housing must be located in that same urban center or village. If the commercial development is located outside of an urban center or village, any off-site affordable housing must be located within one mile of the commercial development.

For the performance option, the amount of net rentable floor area provided as affordable housing is calculated as a percentage of total gross square footage of new chargeable floor area devoted to commercial uses. This percentage varies depending on the zone in which the commercial development is located. The performance option section of Chapter 23.58B.050 includes two tables that list the percentage amounts – one for developments located inside the Downtown or South Lake Union Urban Centers and another for developments located elsewhere in Seattle. These tables are attached as Attachment B to this Director's Report.

In Downtown and South Lake Union Urban Center zones, the performance amounts range from 5.0% to 10.6% of new chargeable floor area devoted to commercial uses. In those zones where Table A for 23.58B.050 shows a performance amount of 0%, the City is proposing no increased development capacity. Performance amounts required in the Downtown and South Lake Union Urban Centers were generally calculated by seeking to maintain the same relationship between performance and payment requirements as exists under the City's current voluntary incentive zoning. In zones for which an increase in commercial development capacity is proposed, the minimum performance amount is 5% of gross square feet of chargeable floor area devoted to commercial uses, which is roughly equivalent to the minimum $8 per gross square foot payment amount.

In zones outside of the Downtown and South Lake Union Urban Centers, the performance amount was set at 5% per square foot of new chargeable floor area devoted to commercial use, regardless of whether the development is located in a low, medium, or high cost area. The performance amount for the IC 85-160 zone is an exception: it is 6.1% and was calculated similarly to zones within the Downtown and South Lake Union Urban Centers.

As noted under Housing Impacts, the City is only seeking to mitigate a portion of the impacts of development of new commercial floor area on affordable housing as identified in the DRA Study.

Modification of Payment or Performance Amounts

Council Bill 118498 includes provisions whereby the DPD Director may also modify the mitigation amount provided using the payment or performance option in certain cases. (In all three cases, modification of the payment or performance amount would be granted as part of the land use permit decision, but the for cases 1 and 3, the decision is a Type II Decision, which is subject to appeal to the City's Hearing Examiner.)

1. **Mitigation greater than impact.** Modification of the payment or performance amount may be granted if the applicant clearly demonstrates that the required amount of mitigation exceeds the amount that would be needed to mitigate the actual demand for affordable housing created by the development.
2. **Mitigation in zones with height limits exceeding 85 feet.** Modification of the payment or performance amount may be granted if it can be clearly demonstrated that the applicable development standards prohibit the development from exceeding a height of 85 feet in a zone with a height limit greater than 85 feet.
3. **Financial hardship.** The amount of mitigation would cause a severe and unexpected financial hardship that outweighs the benefit of mitigating the affordable housing impact.

More detail on these modification standards can be found in Council Bill 118498.

SEPA Amendments

Council Bill 118498 includes amendments to the City's SEPA environmental policies related to Housing. SEPA, or the State Environmental Policy Act (Chapter 43.21C RCW), is the process by which all new non-exempt developments are reviewed for potential adverse impacts on the environment under state law. The City's SEPA policies are rules adopted to implement SEPA and the SEPA regulations, Chapter 197-11 WAC and to establish local procedures and policies. Chapter 25.05 SMC contains the City's SEPA regulations.

Council Bill 118498 modifies the City's specific environmental policies in the area of Housing. The new SEPA language strengthens the policy background related to housing with statements including but not limited to the following:

- All people have a fundamental right to healthful environment, and that housing is a critical component of the environment.
- Development of new commercial floor area is accompanied by employment growth, including lower-wage jobs. An increase in lower-wage jobs associated with new commercial floor area correlates with an increase in the need for affordable housing.
- The impact correlated with commercial development on the need for affordable housing falls disproportionately on persons of certain incomes and certain races and ethnicities.
- Because affordable housing is in short supply in the City and newly constructed housing is generally not affordable, lower-wage employees may be forced to live in less than adequate housing within the City, pay a disproportionate share of their incomes to live in adequate housing in the City, or commute ever increasing distances to their jobs from housing located outside the City when they are unable to locate adequate housing within the City.

New specific SEPA mitigation policies are added that apply only to the development of a new structure, or an addition to an existing structure, that is not categorically exempt and contains more than 4,000 square feet of new chargeable floor area devoted to commercial uses in areas for which the provisions of the zone specifically refer to Chapter 23.58B. These policies authorize and state the city's policy to mitigate a portion of the affordable housing impacts of commercial development, but at the same time, Council Bill 118498 provides that compliance with Chapter 23.58B constitutes compliance with the new policies. Thus, mitigation of affordable housing impacts would occur pursuant to MHA-Commercial for projects that are subject to Chapter 23.58B, as long as MHA-Commercial exists.

MHA-Commercial Implementation

Commercial Development Capacity Increases

MHA-Commercial is proposed to be implemented concurrent with zoning changes that increase commercial development capacity. These can be land use code amendments, land use map amendments, contract rezones or a combination. In order to describe when and how MHA-Commercial amendments and review happens, the "Intent for implementation" section of Council Bill 118498 defines an "initial implementation phase," which encompasses the following commercial upzones: (1) all Downtown and South Lake Union Urban Center zones, except DH-1, PMM-85, SM 85/65-160, SM 85-240, and C2-40; (2) all NC, C, SM, and IC zones outside of the Downtown and South Lake Union Urban Centers; and (3) any portions of the University District in accordance with the University District urban design framework process.

Modification of Development Standards

In certain circumstances, development on some sites may not be able to use the increase in development capacity that is proposed to be provided in conjunction with implementation of MHA-Commercial. Council Bill 118498 includes an intent section stating the Council's intent that a new process will be added to the land use code to allow modification of certain development standards to ensure that, in most cases, the City's development standards do not preclude utilization of the increased development capacity.

The intent statement says that the DPD Director will report on which development standards might be appropriate for modification. The intent statement also provides that the Council intends that the modification process will also provide for a reduction of the payment and/or performance amounts in a limited number of cases where a portion of the increased development capacity cannot be used. For more detail on these provisions, refer to Council Bill 118498.

Community Process

Implementation of both MHA-Commercial and MHA-Residential, including corresponding capacity increases, will require significant public engagement. The City Council will consider changes to land use and zoning provided that certain minimum outreach, planning, and mitigation requirements have been met. This will likely include development of an inclusive public outreach and engagement plan that optimizes participation by under-represented communities. Elements of the plan might include the following:

- Ongoing and continuous engagement through a variety of means, including community meetings and social media.
- At least one facilitated meeting in each urban center or village on proposed changes to zoning and land use regulations, proposed in a resolution being considered by the Select Committee on Housing Affordability. Meetings for adjacent or nearby urban centers or villages may be combined. Meetings would include representatives from the Department of Neighborhoods, the Office of Housing, the Office of Economic Development, the Department of Planning and Development or its successor departments, the Department of Transportation, and the Department of Parks and Recreation. Outreach and materials for the meetings would be culturally appropriate.

Planning and implementation of MHA-Commercial and MHA-Residential will be coordinated with the ongoing 7-year update of Seattle's Comprehensive Plan, known as Seattle 2035. Where possible, planning, public engagement, and reporting for implementation of MHA-Commercial and MHA-Residential will be integrated with planning, public engagement, and reporting for Seattle 2035.

Planning studies will be provided to inform decision makers and the public about proposed changes to zoning and land use regulations.

MHA-Commercial Post Adoption of Council Bill 118498 Amendment and Review

Relationship to Voluntary Incentive Zoning

In many zones, particularly in the Downtown and South Lake Union Urban Centers, a developer may currently achieve extra nonresidential floor area beyond the base floor area ratio (FAR) up to the maximum FAR by using voluntary incentive zoning (VIZ). In zones with height limits greater than 85 feet where VIZ is an option, Land Use Code provisions generally require 75% of extra nonresidential floor area to be achieved through housing and childcare bonus and 25% of extra nonresidential floor area to be achieved through either, in South Lake Union, the purchase of rural development credits preserving forest or agricultural land outside of Seattle or, in Downtown, the purchase of transferable development rights from Landmark buildings or major open space sites or bonuses for on-site amenities (e.g. public open space). In zones with height limits 85 feet or less in Downtown, South Lake Union, and elsewhere in Seattle where VIZ is an option, the increment of extra nonresidential floor area that may be achieved is much smaller, so housing and childcare bonus is the only option for achieving it.

VIZ would continue in its current form with the adoption of Council Bill 118498 and implementation of MHA-Commercial through subsequent legislation. A project built in a zone where extra nonresidential floor area can be achieved by using VIZ would provide the amount of affordable housing that is the greater of the amount calculated under VIZ according to Chapter 23.58A or Chapter 23.49, whichever is applicable, or under MHA-Commercial according to Chapter 23.58B. However, even if the MHA-Commercial payment or performance amount under Chapter 23.58B is greater than the VIZ housing amount, the applicant still must satisfy all other VIZ requirements including but not limited to those for child care, open space, regional development credits, and TDR. For example, in most zones with height limits greater than 85 feet, 75% of the extra nonresidential floor area would continue to be achieved through child care public benefits and 25% of the extra nonresidential floor area would continue to be achieved through other non-housing public benefits in accordance with the provisions of the zone.

Amendments to Payment and Performance Amounts

In order to provide predictability the intent for implementation section of CB 118498 states the Councils's intent that amendments to payment and performance amounts are limited to the following circumstances:

1. Modeling of MHA-Commercial and MHA-Residential performance during the "initial implementation phase" suggests it will not result in sufficient affordable housing to meet the MHA-Commercial and MHA-Residential 10 year combined target production of 6,000 affordable units for households with incomes no higher than 60% of AMI set by the *Statement of Intent*. The "Intent for implementation" section of Council Bill 118498 states the intention of the Council that any amendments "be preceded by a robust stakeholder engagement process including representatives of the for-profit and non-profit development sectors who participated in the July 13, 2015 Statement of Intent..."
2. Increases in commercial development capacity not contemplated by subsection 23.58B.010.A.2 as proposed in Council Bill 118498 (zones specifically *included* in the "initial implementation phase" and for which commercial development capacity increases are contemplated include all zones in the Downtown and South Lake Union Urban Centers except DH-1, PMM, SM 85/65-160, SM 85-240, and C2-40; zone-wide increases outside the Downtown and South Lake Union Urban Centers in all NC, C, SM, and IC zones; and rezones of any portions of the University District that are upzoned in accordance with the University District urban design framework process).
3. One or both of the following occurs after 5 years from the effective date of Council Bill 118498:

    - Failure to meet projected expectations for MHA-Commercial performance; or
    - Significant positive or negative changes in real estate market conditions.
4. 10 years have elapsed since the completion of the "initial implementation phase" described in subsection 23.58B.010.A.2.

Amendments made under scenarios 3 or 4 would require a Mayor- and Council-appointed "Technical Review Committee whose membership includes appropriate stakeholder representation, including representatives of the for-profit and non-profit development sectors and members of community-based groups." The Technical Review Committee would prepare a report, including recommendations for changes to the payment and performance amounts. The Mayor must consider the report and recommendations and transmit it to City Council along with any recommendation for amendments to the payment and performance amounts.

Program Review

By July 1, 2018, the DPD Director will prepare a report on the performance of MHA-Commercial, including amount of cash contributions made under the payment option, the number of affordable housing units produced and preserved with such payments, and the number of affordable housing units constructed under the performance option. The performance report will be updated every 2 years thereafter.

Attachment A
Council Bill 118498 Payment Amounts

Table A for 23.58B.040 Cash contribution to be provided for affordable housing (payment requirement): inside Downtown and South Lake Union Urban Centers	
Zone	Dollars per square foot of new chargeable floor area according to subsection 23.58B.020.B
All DH1 zones	$0.00
DH2/55	$14.25
DH2/65	$15.00
DH2/85	$15.25
DMC-65	$8.25
DMC-85	$8.00
DMC 85/65-150	$11.75
DMC-125	$10.00
DMC-160	$8.00
DMC 240/290-400	$10.00
DMC 340/290-400	$12.50
DOC1 U/450/U	$14.75
DOC2 500/300-500	$14.25
DRC 85-150	$13.50
DMR/C 65/65-85	$9.75
DMR/C 65/65-150	$9.75
DMR/C 85/65	$17.50
DMR/C 125/65	$17.50
DMR/C 240/125	$14.25
DMR/R 85/65	$14.00
DMR/R 125/65	$16.00
DMR/R 240/65	$16.00
All IDM zones	$8.00
IDR 45/125-240	$10.00
IDR 150	$10.00
IDR/C 125/150-240	$8.00
PMM-85	$0.00
PSM 100/100-120	$11.00
PSM 100/100-130	$11.00
PSM 100/120-150	$11.00
PSM-100	$11.00
PSM-245	$10.25
PSM-85-120	$12.25
SM 85/65-125	$8.00
SM 85/65-160	$0.00

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

Table B for 23.58B.040 Cash contribution to be provided for affordable housing (payment requirement): outside Downtown and South Lake Union Urban Centers			
Zone	Dollars per square foot of new chargeable floor area according to subsection 23.58B.020.B		
	Low	Medium	High
IC 85-160	$10.00	$10.00	$10.00
All other zones[1]	$5.00	$7.00	$8.00
Footnotes to Table B for 23.58.B.040 [1] Except that the requirements of this Chapter 23.58B are not applicable in Lowrise Multifamily (LR), Midrise Multifamily (MR), Highrise Multifamily (HR), Residential Small Lot (RSL), Single-family (SF), Industrial Buffer (IB), Industrial General (IG), and Master Planned Community – Yesler Terrace (MPC-YT) zones.			

Attachment B
Council Bill 118498 Performance Amounts

Table A for 23.58B.050 Affordable housing to be provided (performance requirement): inside Downtown and South Lake Union Urban Centers	
Zone	Percentage of new chargeable floor area according to subsection 23.58B.020.B
All DH1 zones	0.0%
DH2/55	8.6%
DH2/65	9.1%
DH2/85	9.2%
DMC-65	5.0%
DMC-85	5.0%
DMC 85/65-150	7.1%
DMC-125	6.1%
DMC-160	5.0%
DMC 240/290-400	6.1%
DMC 340/290-400	7.6%
DOC1 U/450/U	8.9%
DOC2 500/300-500	8.6%
DRC 85-150	8.2%
DMR/C 65/65-85	5.9%
DMR/C 65/65-150	5.9%
DMR/C 85/65	10.6%
DMR/C 125/65	10.6%
DMR/C 240/125	8.6%
DMR/R 85/65	8.5%
DMR/R 125/65	9.7%
DMR/R 240/65	9.7%
All IDM zones	5.0%
IDR 45/125-240	6.1%
IDR 150	6.1%
IDR/C 125/150-240	5.0%
All PMM zones	0.0%
PSM 100/100-120	6.7%
PSM 100/100-130	6.7%
PSM 100/120-150	6.7%
PSM-100	6.7%
PSM-245	6.2%
PSM-85-120	7.4%
SM 85/65-125	5.0%
SM 85/65-160	0.0%

Table A for 23.58B.050 Affordable housing to be provided (performance requirement): inside Downtown and South Lake Union Urban Centers	
Zone	Percentage of new chargeable floor area according to subsection 23.58B.020.B
SM 85-240	0.0%
SM 160/85-240	6.8%
SM 240/125-400	6.1%
SM/R 55/85	5.0%
SM-85	5.0%
SM-125	5.0%
IC-45	5.0%
IC-65	5.0%
C2-40	0.0%

Table B for 23.58B.050 Affordable housing to be provided (performance requirement): outside Downtown and South Lake Union Urban Centers	
Zone	Percentage of new chargeable floor area according to subsection 23.58B.020.B
IC 85-160	6.1%
All other zones(1)	5.0%
Footnotes to Table B for 23.58.B.050 (1) Except that the requirements of this Chapter 23.58B are not applicable in Lowrise Multifamily (LR), Midrise Multifamily (MR), Highrise Multifamily (HR), Residential Small Lot (RSL), Single-family (SF), Industrial Buffer (IB), Industrial General (IG), Master Planned Community – Yesler Terrace (MPC-YT) zones.	

Attachment C
Map of Payment and Performance Areas

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