

Attachment A

**CITY OF SEATTLE**

**FINDINGS OF FACT**

**Overview**

1. The City Council is implementing an affordable housing incentive program under RCW 36.70A.540, to apply within the City of Seattle or portions thereof. Implementation of this affordable housing incentive program will address the need for increased residential development, consistent with the City of Seattle's local growth management and housing policies.
2. In order to do so, the City Council will adopt a residential framework bill and then one or more subsequent bills to address various geographic areas and/or zones. Council Bill 118736 is the residential framework legislation. This framework legislation neither increases residential development capacity, nor contains substantive performance or payment requirements, the amounts of which will be determined in subsequent bills.
3. There is a need for increased residential development in Seattle. The City's Comprehensive Plan recognizes that, over the next 20 years, the City will need to accommodate at least 70,000 additional housing units.
4. While the Council is not, in this ordinance, determining the particular areas where the affordable housing incentive program addressed by this ordinance will be applied, there are land use designations and geographical areas where increased residential development will assist in achieving the City's growth management and housing policies.
5. The City's comprehensive planning efforts call for the bulk of Seattle's future growth to take place in areas designated as urban centers and urban villages. The City's planning efforts similarly recognize the importance of focusing growth in areas well-served by transit. The City's Downtown and South Lake Union Urban Centers, the University Community Urban Center, as well as Commercial, Multifamily and Seattle Mixed zones, offer substantial locations where increased residential development is appropriate and where additional affordable housing will be critical to achieving the City's planning objectives.
6. In subsequent legislation, the City Council intends to:
  - a. Identify certain land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies.
  - b. Provide increased residential development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives.

- c. Determine that increased residential development capacity or other incentives can be achieved within the identified area, subject to consideration of other regulatory controls on development; and
- d. Establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations, consistent with the requirements of RCW 36.70A.540, including, but not limited to, an appropriate amount of payment allowed in lieu of providing low-income housing units.

### **RCW 36.70A.540 Background**

7. In 2006, the Washington State Legislature found that as new market-rate housing developments are constructed and housing costs rise, there is a significant and growing number of low-income households that cannot afford market-rate housing in Washington State.
8. The Washington State Legislature also found that, absent incentives to provide low-income housing, market conditions would result in housing developments in many areas that lack units affordable to low-income households, and this would lead to adverse socioeconomic effects.
9. Municipal governments have an interest in ensuring affordable housing for households of all income levels, because households that pay more than 30 percent of their income for housing costs (“cost burdened households”) may have difficulty affording necessities such as food, clothing, transportation, and medical care.
10. Shelter is a basic human need. Housing supports health and general welfare and is essential for the public good.
11. Households paying more than 50 percent of their household income for housing costs (“severely cost burdened households”) may have even greater difficulty affording necessities. Thus, while shelter is itself a basic need, lack of affordable shelter jeopardizes other basic needs.
12. The Washington State Legislature sought to address these public concerns, characterized as “a serious, statewide problem,” by enacting RCW 36.70A.540. This tool allows the City to “establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations.”

### **Need to Increase Affordable Housing**

13. The City of Seattle is facing increasing affordability concerns emblematic of the concerns raised by the Washington State Legislature in 2006.
14. There is insufficient supply of housing in the City of Seattle affordable to households at or below 80% of Area Median Income (“AMI”). As explained in the Housing

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

15. The Housing Appendix to the Comprehensive Plan determined that, assuming an income distribution for new households that is the same as for existing households, 26% of the new households expected in the next twenty years would have incomes under 50% of AMI and 40% would have incomes under 80% of AMI.
16. The Housing Appendix further determined that addressing the affordability needs of the 70,000 new households would require production of roughly 27,500 to 36,500 housing units affordable at or below 80% of AMI, in addition to existing unmet need.
17. New market-rate housing is generally not affordable to lower-income households. At the same time, new market-rate housing creates an increased need for affordable housing.
18. The affordability challenges facing Seattle, and the insufficiency of existing programs to meet the need for affordable housing, are further described in the findings accompanying Ordinance 124895, and those findings are incorporated herein by reference.
19. Additional evidence of affordability concerns are present based on recent data. One-bedroom apartments are the most common size of apartment unit in Seattle. Between 2005 and 2014, the average rent for one-bedroom apartments increased an estimated 35%, and further increases have subsequently occurred.
20. A vacancy rate of 5% is commonly recognized as the equilibrium point signaling relative balance between supply and demand. As of fall 2014, market vacancy rates were averaging between 0.4% and 3.8% of units in complexes with 20 or more units. In Seattle's 3 most affordable rental market areas – Beacon Hill, Rainier Valley, and North Seattle – vacancy rates were averaging an estimated 2.2%.
21. Under the authority provided to the City of Seattle by RCW 36.70A.540, and its police power, the City Council seeks to prevent the public harm that stems from residential development that fails to help meet the housing needs of households of all income levels.
22. As described in the incorporated findings accompanying Ordinance 124895, the lack of affordable housing for those making less than 80% of AMI disproportionately impacts Seattle's communities of color.
23. The City Council also seeks to further the City's fair housing objectives including the provision of affordable housing to Seattle's communities of color.
24. The City of Seattle has an obligation under the Growth Management Act to plan for affordable housing. RCW 36.70A.070 requires counties and cities, in the housing element of their comprehensive plans, to make "adequate provisions for existing and

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

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

### **Council Work Program, HALA Recommendation and Grand Bargain**

26. In May 2013 the Council adopted Resolution 31444, which established a work program for reviewing and potentially modifying the City’s affordable housing incentive zoning and other affordable housing programs.
27. In accordance with Resolution 31444, the Council commissioned reports to identify new strategies for Seattle, including:
  - a. Cornerstone Partnership produced reports dated February 4, 2014, entitled “Seattle Incentive Zoning Analysis of data relating to the historical production under Seattle’s Incentive Zoning System,” and July, 2014, entitled “Policy Options for Refining Seattle’s Incentive Zoning Program,” as well as a memo dated September 12, 2014, entitled “Recommendations for Implementation of an Affordable Housing Linkage Fee.”
  - b. Otak, Inc., in partnership with Paul Peninger, produced a report dated May 2014 entitled “Seattle Workforce Housing / Programs and Policies Related to Meeting Workforce Housing Needs in Seattle: A Survey and Analysis of Best Practices in Comparative Jurisdictions.”
  - c. David Paul Rosen & Associates (DRA) produced a report dated October 10, 2014, entitled “Seattle Affordable Housing Incentive Program Economic Analysis,” later supplemented by a memo dated May 18, 2015, containing economic impact analysis for additional prototypes.
28. The Department of Planning and Development issued a Determination of Non-Significance under SEPA, dated June 8, 2015, for a proposal for legislation requiring new development to provide affordable housing and related comprehensive plan amendments. The DNS was appealed but the appeal was withdrawn.
29. In July 2015, a 28-member Housing Affordability and Livability Agenda (“HALA”) Advisory Committee comprised of a cross section of interested community members, after 10 months of research, community meetings, and discussions with experts, forwarded a report to Mayor Murray and City Council with 65 recommended strategies.
30. Among the highest-profile recommendations, the HALA Advisory Committee recommended that the City boost market capacity by extensive citywide upzoning of residential and commercial zones and, in connection with such upzones, implement a mandatory inclusionary housing program for new residential

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

31. The HALA Committee's recommendation to increase development capacity and require mandatory affordable housing was further developed in the Statement of Intent for Basic Framework for Mandatory Inclusionary Housing and Commercial Linkage Fee, July 13, 2015 (commonly referred to as the "Grand Bargain"), signed by Mayor Murray, Councilmember O'Brien, the Co-Chairs of the HALA Committee, and representatives of the for-profit and non-profit development sectors.
32. The Grand Bargain identifies a goal of producing 6,000 units of affordable housing for households with incomes equal to or less than 60% of AMI through mandatory affordable housing strategies over 10 years.
33. In November of 2015, the Council adopted Ordinance 124895, which established the framework for an Affordable Housing Impact Mitigation Program for commercial development.

#### **Previous RCW 36.70A.540 Efforts**

34. The City of Seattle has utilized other approaches under RCW 36.70A.540 in the past. For instance, the City has administered a voluntary residential incentive zoning (IZ) program both in downtown, under SMC Chapter 23.49, and in selected other areas under SMC Chapter 23.58A.
35. Generally, residential developers opting to seek additional floor area above base height in IZ-eligible zones with maximum height limits of 85 feet or less can obtain such floor area by providing units affordable to households with incomes up to 80% of AMI for rental apartments or 100% of AMI for owner-occupied condominiums. At higher heights, developers can either include affordable housing units as part of their projects or make a contribution to the City to fund affordable housing.
36. The City engaged Cornerstone Partnership to make recommendations for improvements to Seattle's IZ program. Cornerstone Partnership found that, while a number of refinements could strengthen the program, even with the refinements, it appears unlikely that the voluntary incentive program will produce dramatically more affordable housing units in the future. One of the bases for this conclusion was that the incentive program only applies to projects where the developer chooses to build above the "base" level permitted by zoning.

#### **Income Level to be Served**

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

39. Average rents for apartments in Seattle are not affordable to households with incomes at the 30%, 60%, and (except for studios) 80% of AMI levels, and the gap is even greater for apartments in newer buildings.
40. Over 80% of Seattle renter households with incomes 0-80% of AMI are in the 0-30% of AMI and 30-60% of AMI categories, which supports the Council's decision to address affordable housing needs for rental housing up to the 60% of AMI level.

### **Payment in Lieu of Performance**

41. RCW 36.70A.540 provides that affordable housing incentive programs may allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site, as long as the payment does not exceed the approximate cost of developing the same number and quality of housing units that would otherwise be developed.
42. The program set forth in Council Bill 118736 provides developers with the alternatives of either providing affordable units as part of the units being developed (the "performance option") or making a cash contribution to the City to be used for purposes authorized by RCW 36.70A.540 (the "payment option"). While Council Bill 118736 does not set the amounts of performance or payment requirements for any areas, the Council finds that it is appropriate to provide both options.
43. Unlike with affordable housing produced on-site, the investment of payment funds allows the flexibility to create housing affordable to households with incomes even lower than 60% of AMI. While this may create tradeoffs with the amount of housing produced, the City has in many cases made the policy choice to support housing for individuals and families with incomes lower than the maximum target income level, due to compelling cases that can be made for addressing the greatest needs.
44. Tenant households of Office of Housing-funded rental affordable housing are 42.9 percent White, 29.2 percent Black/African American, 12.2 percent Asian, 7.2 percent two-or-more-races, 5.7 percent Hispanic/Latino, and 2.9 percent Native American.
45. The Office of Housing has a history of promoting fair housing choice and opportunity by investing in housing throughout the city. Council Bill 118736 provides that the City will invest payment proceeds in locations that advance the following factors: (a) affirmatively furthering fair housing choice, (b) locating within an urban center or urban village, (c) locating in proximity to frequent bus service or current or planned light rail or streetcar stops, (d) furthering City policies to promote economic opportunity and community development and addressing the needs of communities vulnerable to displacement, and (e) locating near developments that generate cash contributions.
46. These locational factors support the recommended equitable development strategies identified in the Growth and Equity report prepared in connection with the proposed

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

47. In general, the amount of payments received would yield a greater number of affordable housing units than otherwise would be produced on-site, due to the other public and private financing that these funds can leverage, a significant amount of which remains untapped by developers of rent/income-restricted housing. Among projects that utilize 4% Low Income Housing Tax Credits and tax exempt bonds, the City has leveraged approximately \$3 in non-City funding for every \$1 of City funding invested. Using an even more conservative estimate of \$2.25 in leverage for every \$1 of City funding in the future, payment will still produce substantially more affordable housing than would be achieved through on-site performance.
48. A number of prototype models have been constructed and reviewed by the City Council. These models support the conclusion that payment will yield significantly more units of affordable housing than performance.
49. Funds invested in affordable housing can result in a range of other community benefits. For instance, public investment can stimulate economic development in areas of the City that lack private investment; preserve historic buildings that would otherwise be lost to deterioration or demolition; and help stabilize rents in areas where residents are at risk of displacement. On the whole, funds can be strategically invested to maximize housing choice throughout the city. In addition to leveraging other investment in housing, public funds can also leverage investments for spaces for a wide range of non-residential purposes such as affordable childcare, small business space, and social service facilities. Finally, affordable housing projects often include resident service programs and other connections to social services that help individuals and families to thrive.
50. Thus, the Council finds that payment in lieu of performance achieves a result equal to or better than providing the affordable housing on-site.

### **Payments in Lieu of Continuing Affordability**

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

52. In the case of demolition or change of use, the payment in lieu of continuing affordability is based on the difference between the monthly restricted rent of the performance unit and the average monthly rent of a comparable unit that is not subject to rent and income restrictions, multiplied by the typical number of months between demolition of multifamily housing and completion of redevelopment of property in the zone, not to exceed 30 months. This approach reflects the fact that the City expects, and is drafting its Mandatory Housing Affordability programs to provide, that applicable subsequent redevelopment or use of the property will be subject to affordability requirements.
53. In the case of conversion to ownership housing, the payment in lieu of continuing affordability is equal to the inflation-adjusted amount of the cash contribution that would have been required at the time of permit issuance if the applicant had elected the payment option, reduced to reflect the portion of the performance term during which performance units were provided. The rate of reduction reflects the fact that delayed, smaller payments make it more difficult for the Office of Housing to effectively and efficiently deploy payment proceeds for construction of affordable housing.

## **Conclusions**

54. The City will monitor progress on key issues addressed by the program set forth in Council Bill 118736, including the number of affordable housing units developed through performance and cash contributions. This monitoring allows the City to keep this program responsive to the needs of Seattle.
55. The residential framework bill creates a program reasonably related to the public harms identified above and to the City's legitimate public goals to fulfill its planning obligations under State law and to ensure access to affordable housing for all communities and households in Seattle, utilizing the tool of RCW 36.70A.540 provided by the Washington State Legislature.