

# **Mandatory Housing Affordability for Commercial Development (MHA-C) Amendments**

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Director's Report

**October 2016**

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## SUMMARY

This Council Bill amends Chapter 23.58B, which contains standards for Mandatory Housing Affordability for commercial development, commonly referred to as MHA-C, and was created by [Ordinance 124895 \(MHA-C\)](#) in November 2015. This bill makes changes to MHA-C to provide greater consistency with Chapter 23.58C “Mandatory Housing Affordability for Residential Development” or MHA-R, which was approved by [Ordinance 125108 \(MHA-R\)](#) in August 2016. These changes clarify regulatory requirements, add new standards for performance, and make other technical edits. Together, Chapter 23.58B (MHA-C) and Chapter 23.58C (MHA-R) provide the requirements for properties where MHA will be implemented. Under MHA, developers are required to contribute to rent/income-restricted housing by including affordable housing within the new development or by paying into a fund administered by the City’s Office of Housing that supports the development and preservation of affordable housing. However, MHA requirements do not become effective until City Council approves increases in additional development capacity through legislative or contract rezones.

## BACKGROUND

The Mayor and City Council convened the Housing Affordability and Livability Agenda (HALA) Advisory Committee in September 2014 as memorialized by Seattle City Council [Resolution 31546](#). In July 2015, the 28-member HALA Advisory Committee published the [Seattle Housing Affordability and Livability Agenda \(HALA\) - Final Recommendations to Mayor Edward B. Murray and the Seattle City Council](#), which included 65 recommendations focused on the following areas: 1) increasing housing supply, 2) strategically preserving housing, 3) providing protections for vulnerable tenants and homeowners, 4) streamlining systems and implementing other reforms to reduce housing costs, 5) growing resources for production and preservation of affordable housing, and 6) building affordably as Seattle grows.

A key recommendation of the HALA Advisory Committee was to “boost market-rate development capacity by extensive citywide upzoning of residential and commercial zones” along with mandatory affordable housing requirements for commercial and residential development (Seattle HALA, July 2015, p. 15).

Following the HALA process, the City passed Ordinance 124895 (MHA-C) in response to the HALA Advisory Committee recommendation for mandatory affordable housing requirements where development capacity is increased (Seattle HALA, p. 15). The MHA-C ordinance establishes the framework for the commercial component of MHA, which was codified in a new Chapter 23.58B. At the same time that City Council passed MHA-C, they also adopted a resolution stating their intent to make changes to zoning and land use regulations to implement mandatory affordable housing for residential development in [Resolution 31612 \(November 2015\)](#).

In August 2016, the City Council passed Ordinance 125108 (MHA-R), establishing the framework for the residential component of MHA, which was codified in a new Chapter 23.58C. Together, Chapters 23.58B

(MHA-C) and 23.58C (MHA-R) provide basic parameters and procedural requirements for MHA. However, the framework ordinances do not alone implement MHA in any zone or area. The MHA requirements are implemented as part of an increase in development capacity through legislative or contract rezones.

## PROPOSAL

This Council Bill primarily includes changes to ensure that MHA-C is consistent with the MHA-R requirements wherever possible. It also includes technical changes to ensure clear regulatory requirements and implement best practices for administration of mandatory affordable housing programs. Key changes proposed by this bill include:

- Removes the intent to implement section from the Land Use Code and instead includes it as a separate section in the Council Bill, consistent with MHA-R;
- Clarifies that incentive zoning provisions are not departable, except in limited cases that are already specified in the code;
- Clarifies that development of floor area in commercial use includes changes of use from residential to commercial;
- Simplifies the exemption for first 4,000 square feet of street-level commercial uses;
- Modifies relationship of MHA to incentive zoning so that compliance with MHA requirements satisfies affordable housing requirements for extra floor area under incentive zoning, consistent with MHA-R;
- Revises permit documentation requirements to make them similar to MHA-R and address performance option situations unique to MHA-C;
- Updates severe economic hardship modification provisions to make them consistent with MHA-R;
- Updates payment and performance requirement tables to provide greater clarity;
- Adds requirements for performance units consistent with MHA-R requirements (i.e. affirmative marketing; limitations on charges; annual certification, third party verification; annual fee; over-income households, unit substitution; maintenance, insurance);
- In a mixed-use structure with both MHA-C and MHA-R housing provided through the performance option, removes the obligation to provide MHA-C housing upon demolition of the structure, so long as owner makes a payment in lieu of continuing affordability not to exceed a maximum of 30 months;
- Modifies rent limit, eligible households, public subsidy, and reporting provisions to provide greater consistency with MHA-R;
- Includes the following amendments made by Council to the MHA-R legislation:
  - Adding Council intent to consider higher payment and performance amounts, subject to statutory limits, for areas where the increase in development capacity would be likely to increase displacement risk;
  - Adding Council intent to have the July 1, 2018 report compare changes in the Consumer Price Index with changes in rent and other housing market variables when adjusting payment and performance requirements;
  - Adding “with an expectation of ongoing affordability” to the duration of affordability terms for housing funded by payments;

- Adding “Locating near developments that generate cash contributions” as one of the criteria considered by Office of Housing for location of use of payments;
- Deletes a map of high, medium, and low areas for purposes of payment and performance amounts and replaces it with “Reserved”
- Changing the term of affordability for performance option housing from 50 years to 75 years;
- Note: MHA-R amendments related to ownership housing provided through the performance option are not included; Ordinance 124895 MHA-C restricts tenure of performance units to rental
- Makes numerous non-substantive changes, primarily for consistency with MHA-R and/or clarify requirements

Specific proposed changes are discussed in more detail below.

### Intent to implement

SMC Section 23.58B.010 currently outlines City Council’s intent for implementation of Chapter 23.58B through future implementing legislation. It gives direction on the setting and changing of payment and performance amounts during an initial implementation phase, review of program performance, the amendment of payment and performance amounts after the initial implementation phase, and the establishment of additional processes for modifying dimensional development standards and/or payment or performance amounts. This proposal moves that statement of intent from Section 23.58B.010 to a non-codified section of this ordinance and replaces Section 23.58B.010 language with a short paragraph that directs the reader to Section 1 of this Council Bill. This approach is consistent with Ordinance 125108 MHA-R. The intent statement is proposed to be removed from the Land Use Code because it is not regulatory language.

The new intent to implement language is generally consistent with Ordinance 124895 MHC-C except that a brief applicability subsection is deleted to avoid confusion and potential conflict with actual applicability provisions of Chapter 23.58B. Also, the timeline for adoption of rezones is updated to reflect the most recent proposed schedule.

Additionally, two statements adopted by Council as part of their review of MHA-R are added to MHA-C. These statements outline:

- Council intent to consider higher performance and payment amounts for those areas where the increase in development capacity would be likely to increase displacement risk.
- Council intent to revisit use of Consumer Price Index for annual adjustment of payment amounts.

### Applicability and general requirements

The following minor changes are proposed for Section 23.58B.020 including:

- Renaming the section title from “Voluntary agreements for affordable housing” to “Applicability and general requirements.”

- Consolidating all provisions in Chapter 23.58B related to voluntary agreements within subsection 23.58B.020.A.
- Moving the exceptions for street-level chargeable floor area to Sections 23.58B.040 and 23.58B.050 since they relate to the calculation of payment and performance amounts and not applicability of MHA-C to a commercial development.
- Changing the unit of measure when determining applicability from “new chargeable floor area” to “gross floor area” since gross floor area is the standard measure for purposes of applicability for other land use code provisions.
- The exemption for mixed-use development that includes both commercial uses and a significant amount of affordable housing is modified to be consistent with MHA-R.

Additionally, subsection 23.58B.020.D “Relationship to incentive zoning” is modified to mirror parallel language in MHA-R. Under this approach, the affordable housing requirements for incentive zoning are automatically satisfied through compliance with MHA-C. Current provisions require applicants to calculate both MHA and incentive zoning requirements and make the larger of the two affordable housing contributions. In practice, there are no known circumstances in which incentive zoning affordable housing requirements for extra non-residential floor area would be higher than the MHA-C requirement.

### Permit documentation

Section 23.58B.025 “Permit application and decision” and Section 23.58B.035 “Documentation and timing” are combined into a single Section 23.58B.025 with the new title “Permit documentation.” The structure and content of the MHA-C permit documentation section generally mirrors the one for MHA-R, with the primary difference being the off-site performance option, which is only available to commercial developers under MHA-C. With MHA-R, all affordable housing provided through performance is on-site and there is no option for off-site performance. With MHA-C, the affordable housing can be provided by the same or a different developer on the same or a different site. If the MHA-C housing is located in a different structure than the commercial development, a building permit for the affordable housing needs to be issued prior to issuance of the building permit for the commercial development. If the owner of the commercial development is not the owner of the affordable housing, then an agreement between the owners of the commercial development and the development that builds the off-site affordable housing is required. If the affordable housing is provided off-site, the commercial development must provide the Office of Housing a letter of credit in the amount required according to the payment calculation. The bill does not alter the requirement that MHA-C housing, whether on-site or off-site, be completed and ready for occupancy at or before the time when a certificate of occupancy is issued for the commercial development. However, if after one year from that date a certificate of occupancy has not been issued for the affordable housing, the Director of Housing could draw on the letter of credit and use those proceeds in the same way as authorized for payments according to Chapter 23.58B.

## Modification of payment/performance amounts

Section 23.58B.030 is modified to more closely parallel the modifications section in Chapter 23.58C MHA-R. Two modifications, a Type I modification called “Modification in zones with height limits exceeding 85 feet” and a special decision modification called “Modification based on mitigation greater than impact” trade places within the Section (i.e. subsections B and C) because of their decision types (a special exception and cannot be reviewed until after any Type I modification is considered). Subsection 23.58B.030.D “Modification based on severe economic impact” (formerly referred to as “Financial hardship”), which is also a special exception, is amended for consistency with Chapter 23.58C (MHA-R), which includes that same modification.

## Payment option

Subsection 23.58B.040, which is similar in structure to a parallel subsection in MHA-R, is simplified and the following changes are made:

The provisions are revised to clarify that the requirements apply to floor area that is changing from a residential use to a commercial use. This is similar to Chapter 23.58C (MHA-R), where change from any type of use to residential is included in floor area calculations for purposes of determining payment and performance requirements.

The exemption from chargeable floor area for the first 4,000 gross square feet of street-level commercial uses is simplified so that it applies to all commercial uses, not just art facilities, eating and drinking establishments, entertainment uses, and general sales and services use. This more closely aligns MHA-C’s applicability provisions (i.e. 4,000 gross square feet) and eliminates a problematic enforcement issue, recognizing that specific types of commercial uses are rarely locked in at the time of building permit issuance and may change over time.

Additionally, the following changes are proposed to MHA-C to implement changes that Council made as part of their review of Ordinance 125108 MHA-R framework legislation:

- The subsection that lists factors for determining locations for use of cash contributions received through the payment option also prioritizes locations near developments that generate cash contributions; and
- The duration of rent- and income-restrictions on housing supported by cash contributions through the payment option is amended to read a minimum period of 50 years, with an expectation of ongoing affordability.
- The map delineating high, medium, and low cost areas is removed with the intent of reevaluating and adopting a map as part of future implementing (i.e. rezone) legislation.

## Performance option

The following MHA-C requirements that currently apply to MHA-R performance are included in this Council Bill for consistency purposes:

- Affirmative marketing: requires developers to affirmatively market affordable housing to attract eligible households from all racial, ethnic, and gender groups;
- Limitation on charges: allows City to regulate the types and amounts of additional fees and charges that can be placed on eligible households;
- Annual certification and over-income households: requires property owner to recertify household incomes on an annual basis as well as higher income levels at recertification and standards and establishes a process for providing comparable substitute units in the event households exceed a certain income threshold;
- Maintenance and insurance: requires owner to maintain the affordable housing in habitable condition and keep it fully insured
- Annual fee: authorizes Office of Housing to charge an annual fee of \$150/unit of housing to cover costs of administration for performance option

Additionally, the following standards that were originally included in Ordinance 124895 MHA-C are modified for consistency with MHA-R:

- Rent limits: clarifies that a utility allowance is included for purposes of calculating “monthly rent.”
- Type: clarifies that accessory dwelling units (ADU) and detached accessory dwelling units (DADU) do not qualify as affordable housing for the purposes of MHA-C.
- Reporting: authorizes the Office of Housing (OH) to assess a late fee of \$50 per day starting 14 days after notice for delinquent annual reports.
- Agreement: requires owner of the affordable housing to record an agreement against the title of the property specifying the requirements of performance

Another amendment clarifies that affordable housing provided through MHA-C must be newly constructed.

Casualty provisions are also added. If one or more MHA-C housing units are out of service for one or more years the duration of the affordability term is automatically extended.

Consistent with a Council amendment to the MHA-R framework legislation, the minimum duration of affordable housing is increased from 50 to 75 years for MHA-C performance units.

The following new requirements related to the off-site performance option are also be added. MHA-R does not allow off-site performance. These changes address specific issues that were not addressed in Ordinance 124895 (MHA-C) rather than make it more consistent with MHA-R.

- Developers agreement: This proposal requires an agreement between the owners of the commercial development and the affordable housing, if different. The agreement provides a detailed outline of the financial arrangement between the two parties to ensure adequate financing and timely completion of the affordable housing. The agreement requires the Director of Housing to approve and is not recorded against any real property.



- Letter of credit: This proposal requires the commercial developer using the off-site performance option to provide a letter of credit equal to the payment amount. This is a requirement for off-site performance under the City's The letter of credit is necessary to enable enforcement of MHA-C requirements since withholding a certificate of occupancy for a commercial development is not a practical or desirable option. The City may not not draw on the letter of credit until at least 1 year from the date of issuance of the certificate of occupancy for the commercial development, thereby providing a one-year grace period, in order to provide reasonable cushion for unforeseen delays.

## Definitions

The term "net rentable floor area" is proposed to be removed throughout Chapter 23.58B and instead substituted with the term "net unit area," which is undefined in the code, but is a standard Building Owners Management Association (BOMA)-recognized term for measuring the interior floor area of units.

## MHA-C related amendments to other Code chapters

This proposal amends subsection 23.41.012.B relating to development standard departures, to include Chapters 23.58B and 23.58C in the list of land use code provisions that are non-departable. The amendments also clarify that Chapter 23.58A (voluntary incentive zoning) is non-departable, except as existing Code language specifically allows.

This proposal amends subsection 23.76.006.B and subsection 23.76.006.C, which identify decisions as Type I versus Type II, to clarify which modifications in 23.58B are Type I and which are Type II. Calculations of payment and performance requirements and modification of such amounts according to subsection 23.58B.030.B "Modification in zones with height limits exceeding 85 feet" are proposed to be Type I decisions. Modifications according to subsections 23.58B.030.C "Modification based on mitigation greater than impact" and 23.58B.030.D "Modification based on severe economic impact" are proposed to be Type II decisions.

This proposal edits the State Environmental Policy Act (SEPA) housing policies according to subsection 25.05.675.1.3.a to align the terminology with that used in Chapter 23.58B.