Background Report
for

Affordable Housing Mitigation Program and Incentive Zoning Update Options

June 2015 – Environmental Review DRAFT

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This background report outlines policy options developed by the Department of Planning and Development (DPD) and the Office of Housing (OH) for updating the current voluntary incentive zoning program and implementing a mandatory affordable housing mitigation program. The City's current affordable housing incentive zoning program enables developers to achieve extra floor area beyond a base FAR or height by providing public benefits such as affordable housing. The program is voluntary in that a developer would not need to provide any benefits if no extra floor area is sought. By contrast, the proposed affordable housing mitigation program would require developers to provide affordable housing (either through performance or payment of a fee) regardless of whether an incentive was used, in order to mitigate (to some extent) the impacts of new development on the need for affordable housing. While the incentive zoning requirement would be calculated based on the amount of extra floor area achieved, the affordable housing mitigation program requirement would be calculated based on the total floor area of the project regardless of its size. These programs could be structured such that the requirements are additive or such that compliance with one program could be counted toward compliance with the other.

This background report provides policy options and analysis for the Mayor and City Council. To support this effort, DPD and OH have also prepared draft legislation for consideration, along with SEPA analysis of the legislation and other affordable housing mitigation options under consideration. It is anticipated that the legislation will be finalized after the Housing Affordability and Livability Agenda Advisory Committee completes their discussions in June 2015.

BACKGROUND

In September 2014, Mayor Murray and the City Council adopted Resolution 31546 calling for the creation of a Housing Affordability and Livability Agenda (HALA) and convening a HALA Advisory Committee. The purpose of the HALA is to chart a course for the next 10 years for ensuring the development and preservation of housing that addresses the wide diversity of housing needs of people across the income spectrum. The HALA Advisory Committee is anticipated to deliver to City Council and the Mayor a set of housing strategy recommendations in June 2015.

In October 2014, Council voted 7-2 to approve Resolution 31551, which requests the Executive to produce legislation to implement an "affordable housing linkage fee program" (one of the affordable housing mitigation policy options under discussion by the HALA). The Affordable Housing Mitigation Program addressed by this report encompasses the "linkage fee" concept, but because Resolution 31551 was nonbinding and there is the potential to change various parameters contained in the resolution, this report uses the broader title Affordable Housing Mitigation Program.

Discussions about incentive zoning and an affordable housing mitigation program have largely been informed by three reports produced by consultants hired by City Council. Two of the reports were authored by David Rosen & Associates: (1) *Seattle Affordable Housing Incentive Program Economic Analysis* (October 2014 with May 2015 additions), which articulates existing market conditions, and (2) *Seattle Affordable Housing Nexus Study* (May 2015), which estimates the need for additional affordable housing generated by new development. The third report, authored by the Cornerstone Partnership, *Policy Options for Refining Seattle's Incentive Zoning Program* (July 2014), explores potential options for updating Seattle's incentive zoning for affordable housing, including a linkage fee. Each of these reports is available at: www.seattle.gov/council/issues/affordablehousing/resources.html.

This background report and the related SEPA analysis are intended to support both the HALA process and City Council's request for development of legislation with the goal of finalizing legislation for adoption in late 2015 or 2016. The accompanying legislation shows one scenario for updating incentive zoning and implementing a citywide affordable housing mitigation program; however, the final legislation could vary significantly based on the specific policy options chosen.

OPTIONS ANALYZED

The City is considering the following changes to existing regulations and policies:

1. Implementation of a new affordable housing mitigation program.
2. Changes to existing Incentive Zoning standards and requirements, many of which could also apply to an affordable housing mitigation program.
3. Amendments to Seattle Comprehensive Plan goals and policies

Affordable Housing Mitigation Program and Incentive Zoning

An affordable housing mitigation program would require new development to provide affordable housing through production or through payment into a fund that would be used to produce or preserve affordable housing. The requirement would be proportional to the gross floor area in the new development. The affordable housing either provided by performance or through an in-lieu payment would mitigate a portion of the need for affordable housing created by new development, as demonstrated by a nexus analysis. Affordable housing provided to satisfy requirements of an affordable housing mitigation program could be allowed to also satisfy any concurrent affordable housing-related requirements of incentive zoning when additional development capacity is gained; however, the mitigation program could also be structured as an additional requirement. Under either approach, the combined requirement of these programs could not exceed the maximum supportable level established by the nexus study. The Mayor and City Council could consider implementing a combination of these options at the same time or implementing one or more options independently.

The proposed affordable housing mitigation program primarily differs in its structure from the current incentive zoning program in that, under the mitigation program, the requirement to provide affordable housing is not dependent on the developer choosing to make use of an incentive in the form of extra floor area; rather, the requirement would simply apply to all project floor area. The following factors may be relevant as part of the decision about whether to pursue an affordable housing mitigation program:

- **Geography:** The affordable housing mitigation program potentially could be implemented on a wider geographic basis than the City's current incentive zoning approach.
- **Benefit:** For a variety of reasons, an affordable housing mitigation program has the potential to create substantially more affordable housing compared to the current incentive zoning program
- **Development Cost:** Under incentive zoning, the decision to pursue extra floor area beyond a base floor area ratio (FAR) and/or base height is voluntary. Developers participate if the cost of providing the affordable housing is less than the benefit of the extra floor area. Mitigation programs are not tied to an incentive, so the affordable housing mitigation program could have a greater impact on overall development cost.

The existing incentive program and proposed mitigation program share many similar attributes. Consequently, many of standards for incentive zoning, such as affordability levels, duration of affordability, distribution of units in the building, permit process, and timing of payments, could be applied to an affordable housing mitigation program as well. Below is discussion of potential policy options that could be applied to an incentive and/or mitigation approach.

Foundational Policy Options

Policy options that would substantially impact the outcomes of an affordable housing mitigation program include:

- Income and rent limits for affordable housing to be provided;
- Amount of affordable housing required under a performance option
- Fee amount for a payment option;
- Varying requirements to account for cost and market differences in different zones and neighborhoods;
- Type of uses in new development to which mitigation requirement would be applied;
- Phase-in
- Waiver/Reduction

The overall benefits and costs of an affordable housing mitigation program will vary depending on decisions on these policy options. Decisions made on the AMI targets and geographic variation of the affordable housing mitigation program could also be applied to the existing incentive zoning program.

Income and rent limits

Income and rent limits for Seattle's affordable housing incentive program are as follows:

- For rental units: 80% of AMI, unless the units are less than 400 net rentable square feet (NRSF) in size in which case they must be affordable to households with incomes not exceeding 40% of AMI.

- For ownership units, 100% of AMI.

The following are four approaches that could be considered for rent and income limits for an affordable housing mitigation program and voluntary affordable housing incentive zoning program; however, other approaches could be used as well.

1. Use existing approach (described above)
2. Tier income levels according to unit type, similar to Seattle's current Multifamily Tax Exemption (MFTE) program, as follows:
   - 80% of AMI for 2+ bedroom units (MFTE's limit for 2+ bedrooms is 85% of AMI; however the maximum income and rent limit per the state statute governing affordable housing incentive programs is 80% of AMI)
   - 75% of AMI for 1 bedroom units
   - 65% of AMI for studio units
   - 40% of AMI for units that are 400 NRSF or less (MFTE's 40% of AMI limit applies specifically to Small Efficiency Dwelling Units, commonly referred to as SEDUs)
3. Tier income levels according to unit size in terms of net rentable square feet (NRSF), such as:
   - 80% of AMI for units > 700 NRSF
   - 70% of AMI for units > 600-700 NRSF units
   - 60% of AMI for units > 500-600 NRSF units
   - 50% of AMI for units > 400-500 NRSF units
   - 40% of AMI for units ≤ 400 NRSF units
4. Refocus program to concentrate on the production of housing affordable for households at 60% of AMI for rental and/or 80% of AMI for ownership

Establishing different rent and income limits by unit types or sizes might help to ensure greater consistency in the cost of providing affordable housing across different units. The following chart summarizes the approximate monthly per net rental square foot cost of providing an affordable housing unit, by AMI level and units type, based on the annual citywide average rent for studios, 1-bedroom, and 2-bedroom/1-bath apartments between 2011 and 2015 (Source: Dupre and Scott Apartment Advisors, Apartment Vacancy Report, 20+ unit buildings, 14-market areas within Seattle, Spring 2015).

Average Gap in Monthly Rent Rates between Market-Rate and Income/Rent Restricted Affordable Housing per Net Rentable Square Foot

% AMI	40%	45%	50%	55%	60%	65%	70%	75%	80%	85%
Studio	$1.82	$1.65	$1.49	$1.32	$1.15	$0.99	$0.82	$0.66	$0.49	$0.33
1BR	$1.88	$1.75	$1.62	$1.49	$1.37	$1.24	$1.11	$0.98	$0.84	$0.72
2BR/1BA	$1.84	$1.72	$1.60	$1.47	$1.34	$1.22	$1.09	$0.97	$0.84	$0.72

This data suggests that the cost to provide a studio that is income/rent restricted at 65% or 70% of AMI is about the same as providing a 1 bedroom or 2 bedroom unit (with 1 bath) that is income/rent restricted at 75% or 80%. A higher AMI for 2 bedroom units might provide a small incentive for development of those units.

Approach 2 would increase consistency with Seattle's MFTE program (assuming current income and rent restrictions), especially if the income/rent restrictions for MFTE were modified for 2+ bedroom units (currently it is 85% of AMI) and small units (currently the 40% of AMI limit only applies to SEDUs but could be expanded to any unit smaller than 400 NRSF). Aligning the requirements for MFTE and incentive zoning would make compliance easier for housing developers and owners who use both programs.

Approach 3 could help address the difficulty of identifying units by type, which is often complicated by "open" bedrooms and loft areas, etc. Additionally, this approach might discourage unintended consequences, such as the creation of 2+ bedroom units that qualify for higher rent/income limits but have unusually small bedrooms.

Approach 4 could allow the program to address the needs of households at lower incomes. This approach might require lower percentage amounts in proportion to payment amounts given the increased cost to produce housing affordable at lower AMI targets.

Performance option

Under Seattle's voluntary affordable housing incentive program, developers using the performance option provide affordable housing with a net rentable floor area equal to 14.0% of extra residential floor area or 15.6% of the extra nonresidential floor area. Because extra floor area represents just a portion of the total gross floor area, this commitment represents a smaller percentage of total units in the building – generally between 1% and 8% of total housing units in a development.

For purposes of SEPA review, the City is analyzing an affordable housing mitigation requirement that could have a performance option for residential development amounting to as much as 10% of total housing units depending on the size and location of the development, and up to 10% of gross floor area for non-residential development. A variety of factors could be considered in setting the performance amount but the requirement would not exceed the maximum supportable level established by the nexus study as it now exists or may be revised or supplemented.

The City is also considering adjusting the performance amount under incentive zoning to improve the functioning of the program and/or make it consistent with the affordable housing mitigation program, but it is anticipated that such adjustment would involve reduction (not increase) of the performance amount.

Payment option

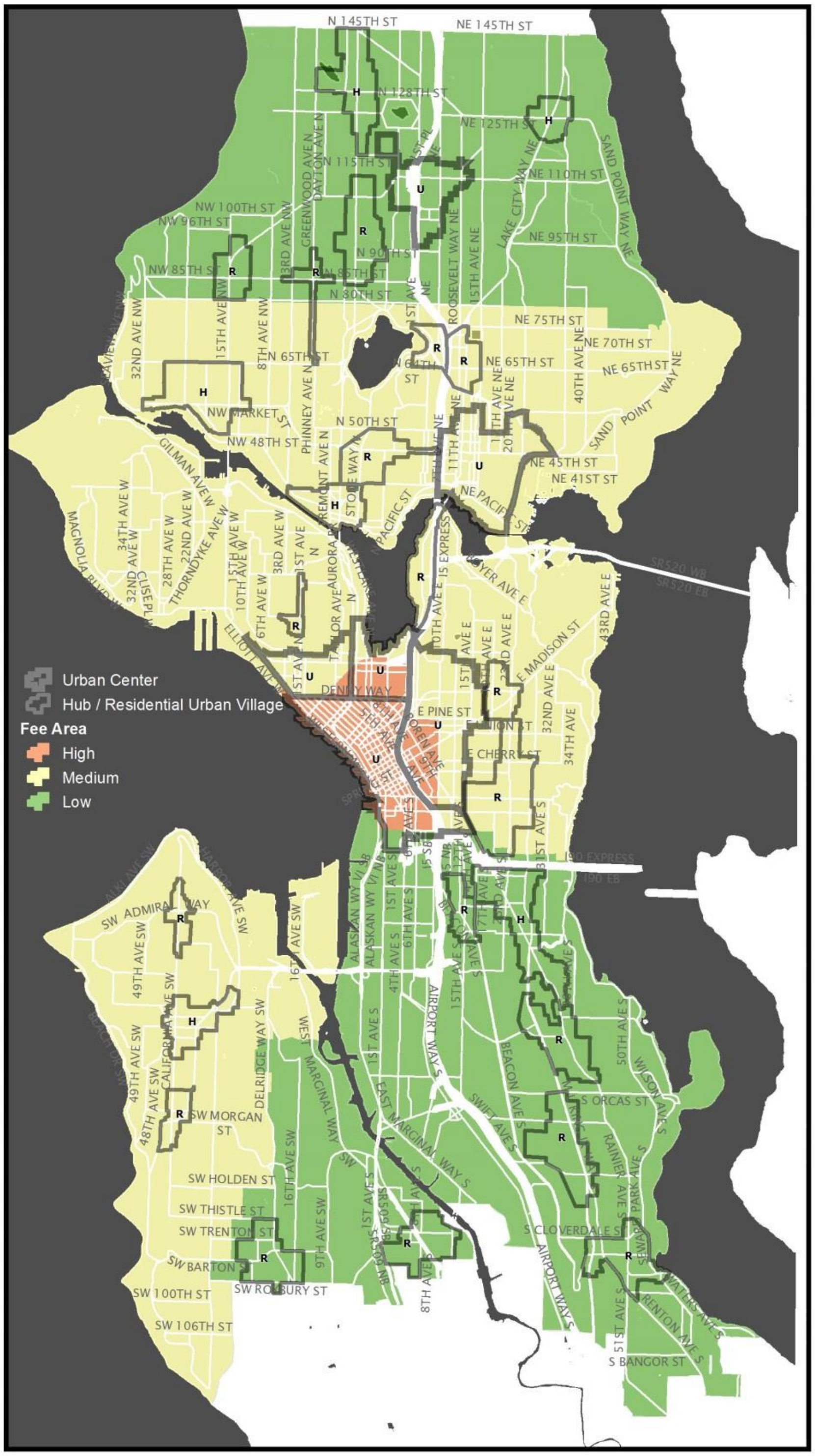
Under Seattle's current incentive zoning program for affordable housing, developers using the payment option contribute between $15.15 and $25.02 per square foot of extra floor area achieved, depending on the type of extra floor area (residential vs nonresidential) and location of the development.

For purposes of analyzing affordable housing mitigation program options under SEPA, the City is considering payment amounts that could be as high as $28 per square foot of total gross floor area (roughly proportional to twice $22/net square foot, which was the highest amount proposed by Cornerstone Partnership). Similar to performance, a variety of factors could be considered in setting the payment amount but the requirement would not exceed the maximum supportable level established by the nexus study as it now exists or may be revised or supplemented.

Geographic variation

The percentage amount for the performance option and the payment amount for the payment option could vary by geographic area. As a nonexclusive example, the City is considering a recommendation by Cornerstone Partnership to identify low, medium, and high areas, which was supplemented based on analysis of data from Dupre+Scott Apartment Advisors and reflected in City Council Resolution 31551 (supporting implementation of a linkage fee). These areas, as proposed in Resolution 31551, are shown in the following map.

Geographic Areas Proposed by Council Resolution 31551



Uses affected

The City is currently considering applying an affordable housing mitigation requirement to all new development except manufacturing uses in manufacturing and industrial centers. The City is proposing to exclude manufacturing uses in manufacturing and industrial centers, based on the assumption they generate relatively little or no affordable housing-related impacts given the relatively small ratio of jobs to physical space in these facilities. Additionally, although new manufacturing space continues to be developed in Seattle, the total number of manufacturing jobs in manufacturing and industrial centers has decreased. As discussed earlier, various uses could be subject to different performance percentages or payment amounts to reflect their relative impacts on additional affordable housing need.

Phase-in

The City is currently considering phasing in the requirement for an affordable housing mitigation program in three stages, spaced a year apart. In stage one, the affordable housing mitigation requirement would be one third of the full mitigation requirement. In stage two, it would be 2/3 of the full mitigation requirement. In stage three, it would be the full mitigation requirement. However, the requirements could be phased over a longer or shorter time period.

Waiver/Reduction

The proposal could provide the ability to waive or reduce a mitigation requirement through an administrative or appeal process.

Discussion of Foundational Policy Options

The overall benefits (specifically, affordable housing) of a proposal will depend on the foundational policy options discussed previously. In order to help assess various combinations of policy choices, the following are 6 potential scenarios showing estimated affordable housing production. In each of the scenarios, the payment amounts are based on the estimated cost to produce the affordable housing on-site in a residential development at current AMI targets derived from David Rosen and Associate's *Seattle Affordable Housing Incentive Program Economic Analysis* report, except that scenarios 3 and 5 have a 1/3 reduction in payment amounts for residential projects and scenario 6 is a commercial development only.

Cost to Produce Affordable Units On-site Per Gross Square Feet of Total Floor Area

Location	Performance Set-Aside			
	5% requirement		10% requirement	
	Range from report	Average used for calculation	Range from report	Average used for calculation
High Cost Areas (zones greater than 85 feet)	$16-18	$14	$32-35	$28
High Cost Areas (zones 85 feet or less)	$8-13		$16-26	
Medium Cost Areas	$6-11	$9	$13-21	$18
Low Cost Areas	$5-9	$7	$11-17	$14

Summary of Scenarios

Scenario	Performance Option: Percentage of Units			Payment Option: Payment per Square Foot of Gross Floor Area		
	Geographic Area			Geographic Area		
	Low	Medium	High	Low	Medium	High
1	10%	10%	10%	$14	$18	$28
2	5%	5%	5%	$7	$9	$14
3	5%	5%	5%	$7 NR $4.66 R	$9 NR $6 R	$14 NR $9.33 R
4	3%	3%	3%	$5	$7	$10
5	3%	3%	3%	$5 NR $3.33 R	$7 NR $4.66 R	$10 NR $6.66 R
6 (nonresidential only)	N/A			$5 NR	$7 NR	$10 NR
NR = nonresidential uses and R = residential uses						

Estimated benefits

To estimate potential benefits of each scenario, the City developed a model for estimated future development over the next 10 years and how the programs might be applied to them. This model is based on the following assumptions:

- 30,000 new market-rate units would be produced over the next 10 years (based on a goal established for purposes of the HALA process)
- 90% of new units would be multifamily and the remainder would be single family (consistent with growth between 2000 and 2013)
- The average size of new multifamily development would be 1,050 gross square feet per unit (assumption used for DPD Development Capacity Model based on previous development)

- The average size of new detached single-family units would be 2,200 square feet per unit (average size of single family built in 2010 through 2014 according to King County Assessor's data)
- Total gross floor area of new non-residential development and proportion of uses within that development would be consistent with development between 2000 and 2013 according to King County Assessor's data. The Assessor's Data was reduced by 10% to account for demolished floor area and by 6% to account for parking that would be exempted. Below is a summary of the 10-year estimate.

Estimated 10 Year Non-residential Development by Use

Use	Square Footage	Percentage
Office	14,246,000	50%
Hotel	1,186,000	4%
Retail	2,472,000	9%
Research & Development	1,602,000	6%
Educational	68,000	0%
Entertainment	111,000	0%
Institutional	353,000	1%
Medical	1,523,000	5%
Government	3,544,000	13%
Industrial & Warehouse	1,602,000	6%
Other	1,602,000	6%
TOTAL	28,311,000	100%

- The estimated portion of growth in low, medium, and high cost areas was based on the proportions of housing and employment growth between 2005 and 2014 that occurred in those urban centers and villages located predominately within the low, medium, and high areas identified by City Council for purposes of Resolution 31551, related to linkage fees, which was adopted in October 2014. No future employment growth was assumed for those villages that had negative job growth between 2005 and 2014. Growth outside urban centers and villages was divided equally between low and medium areas.
- Government, Industrial/Warehouse, and Other uses were not included.

This model is used to describe the estimated benefits for each scenario in three ways:

1. Payment option ($): Assumes the payment option for all new development and measures outcome in dollars.
2. Payment option (units): Assumes the payment option for all new development and measures outcome in total units of affordable housing produced units based on current assumptions regarding housing development cost and leverage of funds. The scenario uses an average cost to produce housing of $80,000 per affordable housing unit, based on the average city subsidy for 4% tax credit and bond projects.
3. Performance option (units): Assumes the performance option for all new development, including non-residential, and provides the total number of affordable housing units produced.

Summary of Estimated Benefits

	All payment option ($)	All payment option (units)	All performance option (units)
Scenario 1	$1,160M	14,500	5,900
Scenario 2	$580M	7,200	2,900
Scenario 3	$470M	5,900	2,900
Scenario 4	$430M	5,400	1,800
Scenario 5	$340M	4,200	1,800
Scenario 6	$175M	2,200	860

Estimated impacts

For purposes of SEPA, the City compared potential payment amounts under each scenario with total development costs estimated by David Rosen & Associates in their *Seattle Affordable Housing Incentive Program Economic Analysis* report. The findings are summarized in the table below. Affordable housing mitigation costs will tend to result in some combination of increased purchase or rental rates, decreased land value, and/or reduced profit. The extent to which each of these three outcomes could occur will depend on complex and interrelated market factors including: the elasticity of land price, the elasticity of purchase and rental rates, the relative competitiveness of other cities, demographic trends, income levels, overall development capacity, transportation costs, and specific market conditions. While there has been significant study of the extent to which each of these three outcomes could occur[1][2][3][4][5][6][7], there is no accepted or reasonably reliable quantitative method for estimating where development costs are absorbed. Consequently, the City has not attempted to estimate total impact on development prices, land value, or profit.

Estimated Affordable Housing Mitigation Cost as a Percentage of Total Existing Development Cost: Downtown & South Lake Union

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[1] Benjamin Powell & Edward Stringham, *The Economics of Inclusionary Zoning Reclaimed: How Effective are Price Controls*?, Florida State University Law Review, Vol. 33:471, at 471

[2] Schuetz et al, Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets**,** Center for Housing Policy working paper.

[3] Richard K. Green, Stephen Malpezzi and Stephen K. Mayo, *Metropolitian-specific estimates of the Price Elasticity of Supply of Housing and Their Sources***,** For Session on Regulation and the High Cost of Housing, January 7, 2005, 2:30 PM

[4] Gregory S. Burge, Arthur C. Nelson, and John Matthews, *Effects of Proportionate-Share Impact Fees*, Housing Policy Debate, 2007

[5] Nicholas J. Brunick*, The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs Over Voluntary Programs*, American Planning Association Zoning Practice, September 2004

[6] Burchell, et al, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?*, New Century Housing, Volume 1, Issue 2, October 2000

[7] National Housing Conference, *Inclusionary Zoning: The California Experience*, NHC Affordable Housing Policy Review, Volume 3, Issue 1, February 2004

	Downtown Residential	Downtown Commercial	SLU Residential	SLU Commercial
Scenario 1	7.0%	6.6%	6.6%	7.1%
Scenario 2	3.5%	3.3%	3.3%	3.5%
Scenario 3	2.3%	3.3%	2.2%	3.5%
Scenario 4	2.5%	2.4%	2.4%	2.5%
Scenario 5	1.6%	2.4%	1.6%	2.5%
Scenario 6	n/a	2.4%	n/a	2.5%

Estimated Affordable Housing Mitigation Cost as a Percentage of Total Existing Development Cost: Other Areas (Residential Only)

	Midrise zones			Lowrise zones	
	High cost	Medium cost	Low cost	Medium cost	Low cost
Scenario 1	7.7%	5.6%	4.9%	5.5%	5.0%
Scenario 2	3.9%	2.8%	2.5%	2.8%	2.5%
Scenario 3	2.6%	1.9%	1.6%	1.8%	1.7%
Scenario 4	2.8%	2.2%	1.8%	2.1%	1.8%
Scenario 5	1.8%	1.4%	1.2%	1.4%	1.2%
Scenario 6	n/a	n/a	n/a	n/a	n/a

Secondary Policy Options for Incentive Zoning and Affordable Housing Mitigation Programs

Policies regarding administrative process, agreements, limits on public subsidy, location of affordable housing, timing of completion, comparability of affordable housing units to others in the development, and long-term monitoring and associated fees could in some cases be consistent for incentive zoning and affordable housing mitigation programs. Consistency between the programs would be particularly important if affordable housing provided to satisfy the requirements of an affordable housing mitigation program was allowed to also satisfy the affordable housing requirements for purposes of incentive zoning.

The following changes to the existing incentive zoning program could be made, some of which could also impact an affordable housing mitigation program.

Eliminate the performance option for ownership housing developments

Under Seattle's current incentive zoning program, residential developers seeking to achieve extra floor area in zones with heights equal to or less than 85 feet are required to provide affordable housing through the performance option. Multifamily residential developers seeking to achieve extra floor area in zones with heights greater than 85 feet may provide for affordable housing either through the performance or payment options.

To date, only one of the nineteen residential projects to provide incentive zoning through the performance option has been a condominium development. That project, Solo Lofts in Ballard, provided one of twenty total units to satisfy the incentive zoning requirements for affordable housing. It also illuminated a number is issues that need to be addressed in order to ensure a meaningful homeownership component through on-site performance.

On-site performance of affordable ownership housing has been problematic, in part, due to the challenge of establishing prices that are affordable, given that interest rates and condo association dues vary and because the City does not have a stewardship mechanism to shepherd homeownership units or a dedicated fund source to pay for stewardship services. A steward would be responsible for protecting original and future homeowners and ensuring continued public benefit. Specifically, the steward would:

- set the unit price for initial sale and future sales;
- market the units, including allowing sellers to find eligible buyers within a reasonable timeframe and affirmative marketing of affordable for-sale units;
- educate buyers around program requirements, especially resale restrictions;
- monitor units to ensure compliance over time, including owner-occupancy, timely tax and insurance payments, maintenance;
- enforce regulatory and program requirements; and
- manage successive re-sales.

If the City directly plays a steward role, the City is exposed to risks associated with compliance and enforcement, which could include eviction and foreclosure actions and compelling a resale that could result in a loss to a homeowner. The cost and benefit of focusing resources on rental housing in comparison to ownership housing should be considered. One option to address these issues could be to eliminate the performance option for ownership housing development and require payment (concurrent with allowing payment in zones with height limits 85 feet or less).

Modify the performance option for ownership housing developments

If the performance option for ownership housing developments is not eliminated as discussed above, the City might also modify the standards for this option. One approach the City is considering is to partner with a non-profit partner that would be given authorization to undertake all the responsibilities of the steward discussed previously. Under this approach, the non-profit partner would develop a process for determining initial and re-sale prices based on a review of annual housing costs, which may include: mortgage principal and interest payments, as calculated using prevailing interest rates on a 30-year fixed rate loan; projected condominium association dues and assessments; mortgage insurance; homeowners' insurance; real estate taxes; and other charges included with county property tax billings. This approach would also likely require dedicated funding for the non-profit partner and new code requirements for enforcement and owner-occupancy requirements.

Eliminate the off-site performance option

Currently, developers may provide affordable housing off-site to fulfill the performance option of the incentive zoning program. To comply with the off-site performance option, the developer must provide an amount of affordable housing equal to what would have been required on-site, meet certain locational criteria, and provide sufficient security to ensure future production of the affordable housing. The Land Use Code does not currently ensure that the public benefit achieved through off-site performance option is equal to or better than the public benefit that would otherwise be achieved through the payment or on-site performance option. In addition, executing the off-site performance option with a developer has proven to require significant city resources and administrative capacity. Because it is complex and time-consuming to broker off-site performance deals and provide the legal mechanisms for implementation, a developer generally only pursues this path if the per square foot costs are substantially less than the payment option. To eliminate the uncertainty associated with off-site performance, the City could remove the off-site performance option and require that all developers participating in an incentive or mitigation program provide payment or on-site performance.

Require minimum number of affordable housing units under the performance option

Many of the projects using incentive zoning have included a very small number of affordable housing units (averaging 3 units, with the exception of two outlier projects where the increment of additional floor area was significant due to a low base FAR). Monitoring and enforcement of small numbers of units in multiple projects is costly and inefficient relative to the benefit. To address this issue, the City could establish a minimum number of units – such as 3 units. If the performance requirement was below this threshold, a developer would be required to use the payment option or provide additional units. This policy could decrease the proportion of developers using the performance option, although analysis has shown that payment option is producing greater overall benefits if measured strictly by numbers of affordable housing units produced and income and rent limits targeted in terms of demonstrated need.

Prohibit double-counting of affordable housing units provided for MFTE and incentive zoning

Currently, developers may provide the same affordable housing units to satisfy requirements for extra floor area under incentive zoning and for exemption of property taxes on residential improvements under the Multifamily Tax Exemption Program (MFTE). Units provided to satisfy MFTE must satisfy a lower AMI target for 1 bedroom and studio units and are only required to be affordable for up to 12 years (with an unqualified option to exit the program at any time). A policy change could be made to require that separate affordable housing units be provided to satisfy the requirements of incentive zoning and MFTE, recognizing the distinct benefits awarded the developer under those two programs.

Consolidate policies on use of payment revenue

Payments contributed by developers for affordable housing through the incentive zoning program are currently the City's most flexible fund source for affordable housing. RCW 36.70A.540, the state statute that authorizes affordable housing incentive programs, states that jurisdictions shall use payments of money or property in lieu of low-income housing units "to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing." Currently, the Land Use Code contains specific requirements for where payments received from developments in Downtown and South Lake Union developments must be used. The Office of Housing's Housing Funding Policies, which are regularly approved by City Council, provide additional requirements if the payments are used to support certain existing programs. The City could move the requirements in the Land Use Code to the Housing Funding Policies to ensure consistency.

Allow distribution of affordable housing within first 85 feet of height for highrise buildings

Current incentive zoning requirements specify that affordable housing provided on-site must be distributed throughout the building. For high-rise buildings with a wide podium at the bottom of the building and a skinny tower, this requirement has been interpreted to mean that affordable housing units must be placed in the tower and the podium in proportion to the total residential floor area in each. Since units in the tower are much more expensive to build due to the steel and concrete construction type and can be rented for much larger sums, this outcome discourages on-site performance because potential revenue is significantly reduced by placing the affordable housing units in the tower. This provision would allow affordable housing units to be dispersed through the first 85 feet of the building only in order to encourage on-site production. To ensure that the program still meet the goals of creating mixed-income communities, this provision would only be allowed if the affordable units did not represent more than 50% of the units in the first 85 feet.

Secondary Policy Options Applying Only to Incentive Zoning

The following are additional policy options that would only apply to Seattle's incentive zoning for affordable housing.

Allow payment option in all incentive zoning areas

Under the current incentive zoning program, residential developers in zones with a height limit 85 feet or less do not have the option of achieving extra floor area through the payment option. This policy change would give the payment and performance option to all developers, not just highrise developers.

Relative to projects in other zones, residential projects in zones with lower height limits tend to be smaller scale. Consequently, many of the projects using incentive zoning have included a small number of affordable housing units. With the exception of two projects in zones with unusually high base FAR to max FAR ratios, projects in these zones have averaged only 3 units per development. Monitoring and enforcement of small numbers of units in multiple projects is costly and inefficient for the owner and the City, relative to the benefit. In addition, for smaller size projects, the costs of on-site performance can be exceedingly high. For example, a 4 unit townhouse might need to provide 1 of its 4 units as affordable housing, which would likely be cost prohibitive.

Allowing payment in zones with lower height limits might help improve participation in incentive zoning in those areas by minimizing these issues. While usage of incentive zoning has been relatively high for areas with heights greater than 85 feet, a survey of eligible projects between January 2007 and August 2013 found that only 8 of 25 projects in Midrise zones and 2 of 7 projects in zones with a base FAR suffix were proposing to use incentive zoning.

Allowing payment in all incentive zoning areas could also enable greater consistency with a mitigation program if a payment for incentive zoning could also count toward an affordable housing mitigation requirement.

Create uniform 65%-35% split between housing and non-housing benefits

Under the current incentive zoning program, the share of extra floor area that must be achieved by providing affordable housing versus other public benefits varies in different areas of the city. Non-housing benefits generally include transfer of development rights and on-site amenities such as various types of public open space. Below are examples of how these splits differ:

- Downtown non-residential: 75% affordable housing, 25% other;
- Downtown residential: 100% affordable housing;
- South Lake Union non-residential: 75% affordable housing, 25% other;
- South Lake Union residential: 60% affordable housing, 40% other;
- South Downtown residential and hotel: 60% affordable housing, 40% other;
- Highrise: At least 60% affordable housing (and as much as 100%) and the remainder from other benefits; and
- Development under 85 feet: 100% affordable housing.

These splits generally reflect numerous City Council and Executive decisions made over a long time span. They are not, however, an accurate reflection of need or neighborhood preference for specific public benefits.

A uniform split in all zones with height limits greater than 85' would greatly simplify Seattle's incentive zoning program. It could also make implementation of a city-wide affordable housing mitigation program more equitable assuming affordable housing provided through the performance or payment option for incentive zoning would count toward affordable housing mitigation program requirements. Using the existing splits between housing and non-housing benefits would result in significantly varying costs for affordable housing-related incentives in different areas. For example, while all zones would be subject to the same affordable housing mitigation program requirements, a downtown residential project would achieve all of its extra floor area by complying with the affordable housing mitigation requirement, while a South Lake Union residential project would still need to achieve 40% of their extra floor area by providing non-housing benefits.

In zones with height limits greater than 85 feet, a consistent split for extra floor area of 65% through affordable housing and childcare (for nonresidential only) and 35% through other public benefits for all development using incentive zoning is proposed. Modifying the split for downtown residential zones would result in the creation of a non-housing benefit for the first time. The draft legislation would allow highrise residential developers to achieve 35% of extra floor area by providing on-site public open space or by purchasing TDR.

Adopt incentive zoning with quasi-judicial rezones

Currently, incentive zoning provisions are only applied to rezones that are initiated by the City. Incentive zoning could also be applied as part of rezones initiated by a property owner. Under these rezones, the maximum FAR under the existing zoning would become the base FAR under the revised zoning and any extra floor area above the base FAR would be achieved through incentive zoning. On a lot with no FAR limits under the existing zoning, the base FAR would be the estimated development capacity of the site according to standards currently outlined in Section 23.58A.028.

Phase out option to purchase Housing TDR

In some zones in Downtown, developers have the option of achieving extra floor area by purchasing Housing TDR as an alternative to providing affordable housing through the incentive zoning payment or performance options. Housing TDR can only be sold from a lot that contains a residential structure, or structures, built prior to July 27, 2001 where the owner agrees to provide the following for 50 years:

1. Income and rent restricted units affordable at 80% of AMI in an amount equal to at least 50% of the floor area; and
2. Income and rent restricted units affordable at 50% of AMI in an amount equal to at least 1 FAR.

If a site meets these requirements, the owner may sell unused chargeable floor area, calculated by multiplying the size of the eligible lot area times the base FAR and subtracting any TDR sold previously from the lot. A developer that purchases Housing TDR achieves extra nonresidential floor area equal to the amount of gross square feet of TDR transferred. Purchase and sale of TDR is the same as any other real property transaction. The TDR is moved from one lot to another via execution and recording of a statutory or special warranty deed.

The primary purpose of Housing TDR was to preserve existing affordable housing in Downtown and to provide a means for recapitalization of existing income and rent restricted housing. To date, sales of Housing TDR have yielded about $10 million for recapitalization of 11 low-income housing buildings in downtown. Approximately one-half of those sales were to the City of Seattle. TDR purchased by the City was later sold to commercial developers (the last such sale was in December 2006). The last Housing TDR certification was in 2010, although another one is underway currently.

While this program has generated funds for affordable housing providers, it directly competes with the incentive zoning performance and payment options. Because it is complex and time-consuming to broker these deals and provide the legal mechanisms for implementation, a developer generally only pursues this path if the per square foot costs are substantially less. Funds contributed to the City through the incentive zoning payment option, by comparison, are higher per gross square foot and can be used to support the highest priority preservation opportunities, based on location, population and other needs considerations.

The draft legislation only allows for use of Housing TDR certified prior to the effective date of that legislation. This would ensure that property owners who already have certified Housing TDR could still have an opportunity to sell them.

Simplify payment option for residential projects in DMC zones

Under the current incentive zoning program, the payment amount for residential projects in DMC zones varies on different floors from $11.45 per square foot of extra residential floor area on lower floors to $29.43 per square foot of extra residential floor area on the top floors, but may not exceed an average of $22.29 per square foot of gross residential floor area. This proposal would remove the variable amounts on each floor and implement the average across the entire building.

Remove SMC 23.58A.014 housing replacement requirements

Currently, residential developers using incentive zoning according to SMC 23.58A.014 (e.g. in South Lake Union, South Downtown, Highrise, and Midrise zones) are required to provide very low-income housing units, in addition to affordable housing provided in order to achieve extra floor area, equal to the number of tenants receiving a tenant relocation assistance payment, provided the proposed development includes demolition of a structure with four or more dwelling units occupied as rental housing within 18 months prior to that Master Use Permit application. The very low-income housing units must be provided through the performance option (i.e. payment is not allowed) and must be affordable to households with incomes at or below 50% of AMI.

The City could eliminate this requirement for consistency with incentive zoning in other areas and zones. Without a payment option, this requirement would be difficult to implement for non-residential projects. It is also difficult to implement for projects that are otherwise pursuing the payment option. It is also not clear how a condominium development (or other homeownership project) would satisfy these requirements, since a significant amount of down payment assistance would be required to ensure long-term stability for a very low-income homeowner for which replacement housing was provided.

Eliminate alternative performance option for 50% AMI affordable housing

For residential projects outside of Downtown and South Lake Union, developers may elect to provide less affordable housing, equal to 8% of extra floor area, if income and rent limits are at 50% of AMI (versus 14% of extra floor area at 80% of AMI). To date, this mechanism for providing very low-income housing through incentive zoning has not been used. This provision could potentially encourage a developer to provide very low-income units if they received additional subsidies or built very small market-rate affordable housing units. However, awarding public subsidies diminishes the public benefit and the land use code already requires affordable housing smaller than 400 square feet to be income and rent restricted at 40% of AMI without a corresponding reduction in the percentage requirement. The City could eliminate the alternative compliance pathway for 50% AMI units.

Consolidate and clarify incentive zoning-related land use code provisions

The standards and process requirements for incentive zoning are currently located in many different parts of the code. The draft legislation demonstrates one way that these provisions could be consolidated so that we can have a clear and consistent process for implementing the current or new incentive zoning program and any affordable housing mitigation program. While much of this reorganization is non-substantive, there are many minor differences between existing provisions which require alignment. The following is a list of potential changes to accomplish those goals:

- Remove option for residential developers to defer payment from issuance of building permit to certificate of occupancy.
- Expand certain Chapter 23.58A standards for the calculation of available TDR and floor area limits to Downtown zones outside of South Downtown.
- Apply certain Downtown standards for open space amenities to other zones.
- Modify combined lot standards to clarify existing provisions and relationship to incentive zoning.
- Move definitions currently in 23.58A.004 to 23.84A and revise as needed. Add new definitions for clarity.

Comprehensive Plan Changes

The proposal would also make a number of changes to the Comprehensive Plan which are show in attachment A. Generally, the proposal for comprehensive plan changes is to:

- Clarify the City's goals and policies related to affordable housing to strengthen the City's policy direction and provide further policy support for addressing the need for affordable housing.
- Broaden the range of affordable housing strategies the City should consider.
- Make clear that both incentive-based and non-incentive-based strategies should be considered.
- Make clear that the City may establish a program whereby impacts on affordable housing that are generated by total project area, not just area above a base height or density, may be required to be at least partially mitigated.

While these changes are proposed to be adopted as part of the 2014-2015 Comprehensive Plan annual amendment process, they are included in this options analysis for the purpose of SEPA.