

Audit of Seattle's Incentive Zoning for Affordable Housing

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Seattle Office of
City Auditor



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Report Highlights

Background

Since 1985, Seattle's Incentive Zoning for affordable housing has allowed developers to gain extra floor area in exchange for providing affordable housing units or paying a fee to fund affordable housing in Seattle. We were asked to report on incentive zoning development projects that made affordable housing contributions from 2006 to 2015 and to verify whether the City of Seattle (City) was accurately applying Seattle's Incentive Zoning Land Use Code requirements for affordable housing to these projects.

What We Found

Missing Contributions: The City did not have an accurate count of projects that made or were required to make affordable housing contributions. One project owed the City an affordable housing payment totaling over \$3.4 million since 2012. As a result of our audit, the City sought and received a \$3.76 million payment (including interest) in November 2016.

Late Payments: Developers for at least ten projects should have paid for or finalized performance agreements to provide affordable housing units at earlier stages of the permitting process.

Documentation and Data Discrepancies: We found discrepancies, errors, and missing information in documents and systems used to determine or track extra floor area and affordable housing contributions. Recordkeeping weaknesses contributed to a lack of transparency and inaccurate reporting.

Insufficient Processes: There was no formal process for the City to revise affordable housing contribution agreements when building plans changed. Thus, developers may not have provided the City an accurate affordable housing contribution.

Land Use Code Complications: According to City staff, complex, unclear and conflicting elements of the Land Use Code related to Incentive Zoning for affordable housing required staff interpretation, making customer service and uniform application of the program's implementation difficult.

Inadequate Program Fees: In 2014, the City started adjusting payment option fees using the Consumer Price Index, which does not fully account for changes in housing costs, resulting in lower affordable housing contributions.



Why We Did This Audit

This audit was conducted in response to Seattle City Councilmember Mike O'Brien's request that we review the City's Incentive Zoning for affordable housing projects. Specifically, we were asked to determine:

- The number and location of projects from 2006 to 2015;
- Whether the projects' affordable housing benefits were accurately calculated;
- Whether the City secured developer affordable housing commitments from the projects receiving extra floor area.

How We Did This Audit

To accomplish the audit objectives, we reviewed and analyzed applicable laws, including the Seattle Municipal Land Use Code, program procedures, consultant reports, source documents and electronic data for 65 projects including City agreements with project developers, permitting systems data, and building plans. We interviewed program staff, City attorneys, developers, and architects.

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Recommendations

We make 22 recommendations in five categories to address the findings:

1. **Program Management Framework:** Incentive Zoning for affordable housing should function within a management framework that includes a program lead responsible for planning and performance, oversight, and accountability.
2. **Internal Controls:** Policies and procedures should be updated to improve department coordination, prevent payment and data errors, and decrease the risk of fraud.
3. **Transparency and Reporting:** Reporting should include additional metrics, increase in frequency, and be made available to the public in an easily accessible manner. The City should reach consensus on how to count housing units created with payment funds.
4. **Customer Service:** Developers' awareness of the program should be increased, and program instructions, annual fee amounts, and other resources for applicants should be created and made accessible.
5. **Program Fees:** The City's method of annually adjusting the payment fee and deferred payment interest fee should consider local and regional construction costs.

The Seattle Department of Construction and Inspections (SDCI) and the Office of Housing provided formal comments in response to this audit. The departments concurred with most of the recommendations pertaining to them (see Appendix F).

*The 588 Bell Street
(2301 6th Ave.,
Insignia Towers
I & II) project
provided a \$3.76
million affordable
housing payment on
November 4, 2016*



Source: Seattle Office of
City Auditor, 2016

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I. Introduction

Incentive zoning allows developers to gain extra floor area¹ (measured in gross square feet) beyond the allowable base in exchange for providing public benefits, such as affordable housing or open space. City Councilmember Mike O'Brien asked us to report on development projects that participated in Seattle's Incentive Zoning program in which developers committed to providing an affordable housing contribution between 2006 and 2015. Developers make affordable housing contributions by providing on-site or off-site designated affordable housing units, referred to as the **performance option**, or by paying the City an in-lieu of performance fee, referred to as the **payment option**. Councilmember O'Brien also requested that we verify whether the City was applying the City's Land Use Code² as required for these projects, including determining when developer commitments were fulfilled.

We respond to the Councilmember's specific requests and highlight other significant findings in Section II. Section III provides background information, and Section IV provides details on the findings and recommendations, which we categorized into five areas: 1) Program Management Framework, 2) Internal Controls, 3) Oversight, Reporting, and Transparency, 4) Customer Service, and 5) Program Fees. Information about the audit's scope and methodology is in Section V. We include a list of recommendations and additional information about the Incentive Zoning for affordable housing projects in the appendices.

The Seattle Department of Construction and Inspections and the Office of Housing provided a formal response to our audit, which can be found in Appendix F.

II. Summary of Findings

Response to Audit Objectives

This section addresses Councilmember O'Brien's three audit objectives.

Objective 1: Provide a list and map of the projects that have elected to participate in Incentive Zoning for affordable housing since 2006.

¹ Extra floor area (also referred to as bonus floor area) means extra residential floor area or extra non-residential floor area.

² Seattle Municipal Code Chapter 23.58A and Chapter 23.49, depending on the location of the project.

List of Incentive Zoning Projects May be Incomplete

The Seattle Department of Construction and Inspections (SDCI) and the Office of Housing identified 63 projects with issued building permits between 2006 and January 2016³ that provided affordable housing as part of the Incentive Zoning program (See Appendix B for the project list). However, the two departments, SDCI and the Office of Housing, did not maintain accurate project lists or complete project records. Therefore, we cannot be sure that the 63 projects they identified is a complete list of all the projects that should have provided affordable housing.

SDCI and the Office of Housing maintained separate lists with conflicting data. As of April 2016, we found two additional projects with no affordable housing contribution which may have been a result of a breakdown in communication, as the Office of Housing believed the projects were on hold, yet SDCI had already issued the building permits. These two projects received extra floor areas totaling over 200,000 square feet, but provided no affordable housing contributions, with an estimated value of nearly \$5 million. In May 2016, one of the project's developers signed a covenant to provide five performance units, and in November 2016 the other developer paid the City over \$3.76 million (including interest) for a project that had received the building permit in 2012 and is completed and occupied.

In addition to the above 65 projects, another project acquired its bonus in 2007 through the purchase of King County Transfer Development Rights without having to make an affordable housing contribution to the City. We did not include this project in our scope because incentive zoning changes in the Land Use Code that occurred in 2006 made it unclear to us as to whether this project was required to provide affordable housing for the bonus area gained. The lack of a clear vesting⁴ date on several of the project's documents and record keeping weaknesses for this and other projects we reviewed create a risk that a project that received a bonus but did not provide a housing contribution would be undetected.

The information available did not provide us with certainty that all projects that provided or should have provided affordable housing were included in the departments' records. Identifying all the projects that received bonus floor area would require performing a manual review of all eligible development projects, which was beyond the scope of this review. Therefore, the project participation list and map we present is based on the information available. Exhibit 1 displays the location of Incentive Zoning for affordable housing projects within each Seattle City Council District.

³ We expanded the scope of this audit to include two projects with building permits issued in January 2016.

⁴ Vesting dates determine which Land Use Code statutes and ordinances are applicable.

Exhibit 1: Incentive Zoning for Affordable Housing Projects 2006 - January 2016

Locations of
Incentive Zoning
for affordable
housing projects
within each
Seattle City
Council District



Source: Seattle Office of City Auditor generated based on data from the Office of Housing and SDCI.

Objective 2: Verify whether the extra floor area and commensurate affordable housing public benefit were accurately calculated and tracked, and whether the City was implementing the program as required by the Land Use Code.

We Found Discrepancies and Calculation Errors

We found discrepancies,⁵ calculation errors, and missing data between the extra floor areas gained (also referred to as bonus floor area) and the affordable housing contributions provided. For example, on some projects the extra floor area amounts on the building plans differed from the amounts recorded on developer agreements, which sometimes resulted in a different affordable housing contribution. Because we lacked complete and accurate information about these discrepancies, we were unable to measure their impact on affordable housing contributions.

Objective 3: Determine whether commitments to affordable housing benefits were adequately obtained, how they were secured, and at what stage in the permitting process they were secured.

Payments Confirmed, but Payment Timing an Issue

For projects electing the payment option and whose payments the departments tracked, we confirmed that the City received the payments.⁶ However, we found ten projects with payments that should have been made to the City at earlier stages of the permitting process. We also found performance projects whose building permits were issued, contrary to requirements, before agreements for the affordable units were finalized. According to program officials, these timing issues were due in part to a lack of clarity in the Land Use Code regarding the permit type (e.g., the first building permit) that can be issued only after payment occurs or performance agreements are in place.

For performance projects, we did not verify whether the required units were built and maintained as affordable. However, the Office of Housing is in the process of expanding its site inspections to include performance units. We urge the Office of Housing to complete these inspections as soon as possible.

⁵ We define discrepancies as projects whose extra floor area and/or affordable housing contribution could not be verified due to conflicting, missing or inaccurate information on one or more of the following sources of information used in our analysis: building plans, declarations and/or covenants, data from Hansen (SDCI's permit tracking system) or SDCI's Permit and Complaint Status System.

⁶ For the two projects that received a bonus but provided no affordable housing contribution, the departments did not report having received affordable housing contributions and we found no evidence, as of April 2016, that developers committed to providing affordable housing contributions.

Additional Findings

Besides addressing the three objectives, we identified additional findings that we categorized into five areas: **1) Program Management Framework, 2) Internal Controls, 3) Oversight, Reporting, and Transparency, 4) Customer Service, and 5) Program Fees.**

Program Management Framework

Although Seattle's Incentive Zoning for affordable housing has existed for over 30 years, it lacks a program management framework with fundamental elements such as overall program accountability, planning, and performance measures. We found insufficient collaboration among the departments involved in the day-to-day operations of the program, and department procedures were still in draft form. We also found that some practices deviated from the Land Use Code and these draft procedures.

Internal Controls

We found a lack of internal controls and systems to minimize and correct errors, to reduce the risk of fraud, and to ensure timely affordable housing payments. After agreements to provide affordable housing were in place, there was no formal process to address changes in building plans that resulted in different affordable housing contributions.

Oversight, Reporting, and Transparency

We found insufficient oversight in the permit application review process to determine the bonus calculation and housing contribution, insufficient reporting, and minimal information about the program and project participation.

Customer Service

There was little information about the City's Incentive Zoning for affordable housing outside of the Land Use Code, and the project applicants we spoke with had only limited awareness and understanding of the program and its process. Resources for applicants, such as user-friendly instructions and templates, could provide consistency and improve efficiency for permit reviewers.

Program Fees

The City uses the Consumer Price Index to annually adjust the affordable housing payment fees and to assess interest on deferred payment projects. This index does not accurately reflect changes in housing costs. A more relevant method should be used, such as the Building Cost Index or the Construction Cost Index.

To address these findings, we make 22 recommendations, described in Section IV.

III. Background

Through the Land Use section of Seattle's Municipal Code, Incentive Zoning for affordable housing allows developers to gain extra floor area (measured in gross square feet) for their commercial or residential development projects in exchange for providing affordable housing. This requirement can be satisfied by providing on-site or off-site designated affordable housing units (performance option) or by paying the City an in-lieu of performance fee (payment option). In this section, we explain the evolution and history of Incentive Zoning, describe the program's administration, and provide information about the projects that have participated in Incentive Zoning for affordable housing.

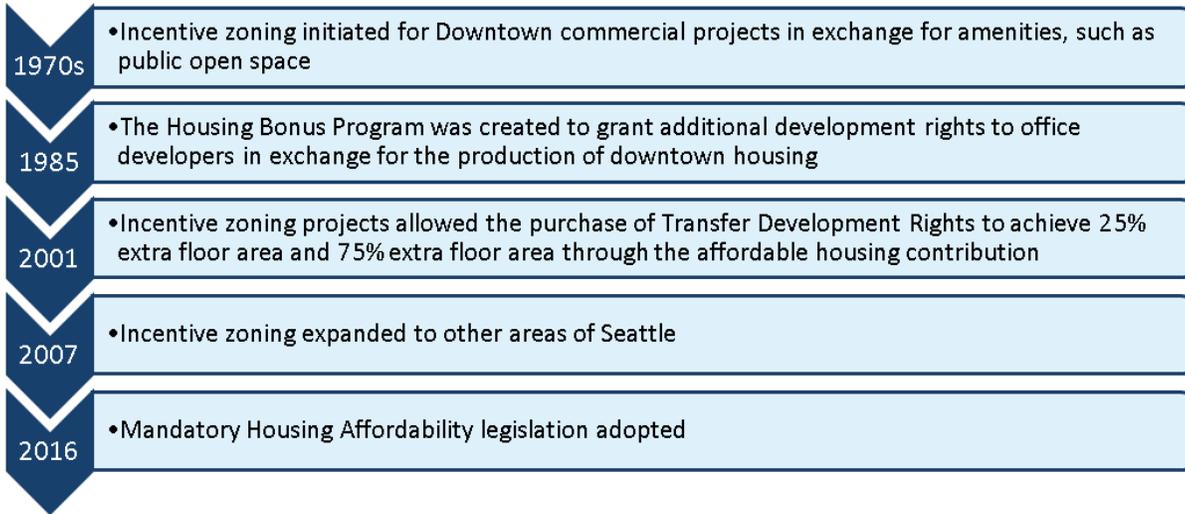
Evolution of Seattle's Incentive Zoning Program

Incentive zoning in Seattle dates to the 1970s, when it was offered to downtown commercial projects in exchange for public amenities, such as public open space. In 1985, the City established the Housing Bonus Program to grant additional development rights to office developers in exchange for the production of downtown housing. In the 2000s the program for affordable housing expanded to include different types of projects, such as mid-rise and high-rise projects, and in different areas of the city, such as South Lake Union. In 2011, the program was expanded to urban villages and other areas of the city. Implementing these multiple code changes over time has resulted in a very complex, and at times inconsistent Land Use Code as it relates to Incentive Zoning for affordable housing.

Recently the City evaluated Incentive Zoning for affordable housing and highlighted several policy issues and concerns. Because of that evaluation, the City Council in conjunction with the Mayor's Housing Affordability and Livability Agenda (HALA) took actions to move away from the City's voluntary approach by adding new Land Use Code language requiring that developers pay a fee on commercial and residential development through a program called Mandatory Housing Affordability (MHA). As part of this program, the City will up-zone several areas of the city. These changes did not eliminate the incentive zoning language from the Land Use Code; however, the MHA program will be the new way developers contribute towards the creation of affordable housing. Though our audit was of Incentive Zoning for affordable housing, most recommendations we make are also relevant to the MHA program because we focused on improving the City's process for determining and securing affordable housing benefits, which will remain very similar.

Visit www.seattle.gov/hala for more information about HALA and the MHA program.

Exhibit 2: History of Major Changes to Seattle's Incentive Zoning



Source: Seattle Office of City Auditor generated based on information from the Office of Housing.

Program Administration

At the start of our audit there were three departments involved in implementing Incentive Zoning for affordable housing: the Seattle Department of Construction and Inspections (SDCI), the Office of Housing, and to a lesser degree, the Office of Planning and Community Development (OPCD). Since then, OPCD has not been involved with incentive zoning.⁷ However, OPCD is a key player in collaborating with SDCI and the Office of Housing to review and update codes that regulate the incentive zoning. SDCI's role is to review the applicant's building plans to ensure they comply with the City's Land Use Code, including the applicable Incentive Zoning provisions. The Office of Housing's role is to work with developers to draft the affordable housing agreements, which is then reviewed by SDCI to ensure consistency with building plans. For projects using the payment option, this agreement is called a declaration, which the developer signs once it is approved by SDCI. The Office of Housing collects the final declaration and the required affordable housing payment, which is then processed by the Department of Finance and Administrative Services. For projects using the performance option, a housing covenant specifying the on-site or off-site affordable housing contribution should be signed by the developer and by the Office of Housing Director. The Office of Housing keeps records of declarations and covenants, and some other related project documentation.

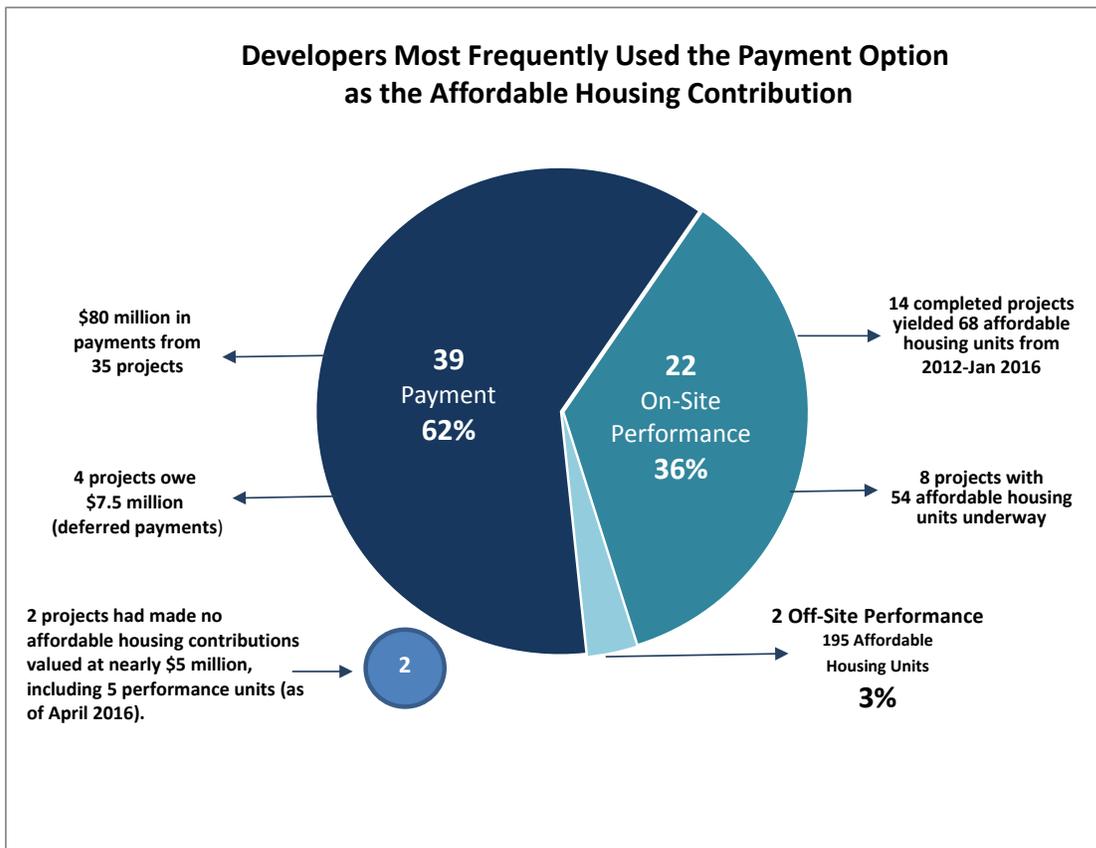
Program Participation

Incentive zoning is available in certain zones within Seattle, as specified in the Land Use Code. See Appendix D for a map showing these zones. In our attempt to provide a complete population of projects that participated in Incentive Zoning for affordable housing since 2006, we encountered data discrepancies and instances of missing data, which we discuss in Section IV. Because of these data inconsistencies, the way SDCI recorded data in the permitting system (Hansen), and the lack of crucial program elements, it is conceivable that there are some projects that received extra floor area and did not contribute to affordable housing. As of April 2016, we discovered two projects that received extra floor area, but had not provided a performance or payment contribution. Since then, one project has provided a \$3.76 million payment and the other project has recorded a performance covenant committing to providing five affordable housing units. Therefore, the list we present is our best estimate based on the data provided. See Appendix B for the list of projects.

⁷ At the time of our audit, the Office of Planning and Community Development was responsible for assisting developers with drafting declarations.

From 2006 to January 2016, the departments tracked 63 projects that had made an affordable housing contribution through Incentive Zoning. Exhibit 3 shows that about two-thirds of the projects elected the payment option, one-third used the on-site performance option, and two projects used the off-site performance option. In addition, two projects had not provided an affordable housing contribution.

Exhibit 3: Seattle Incentive Zoning Affordable Housing Contributions 2006 – January 2016

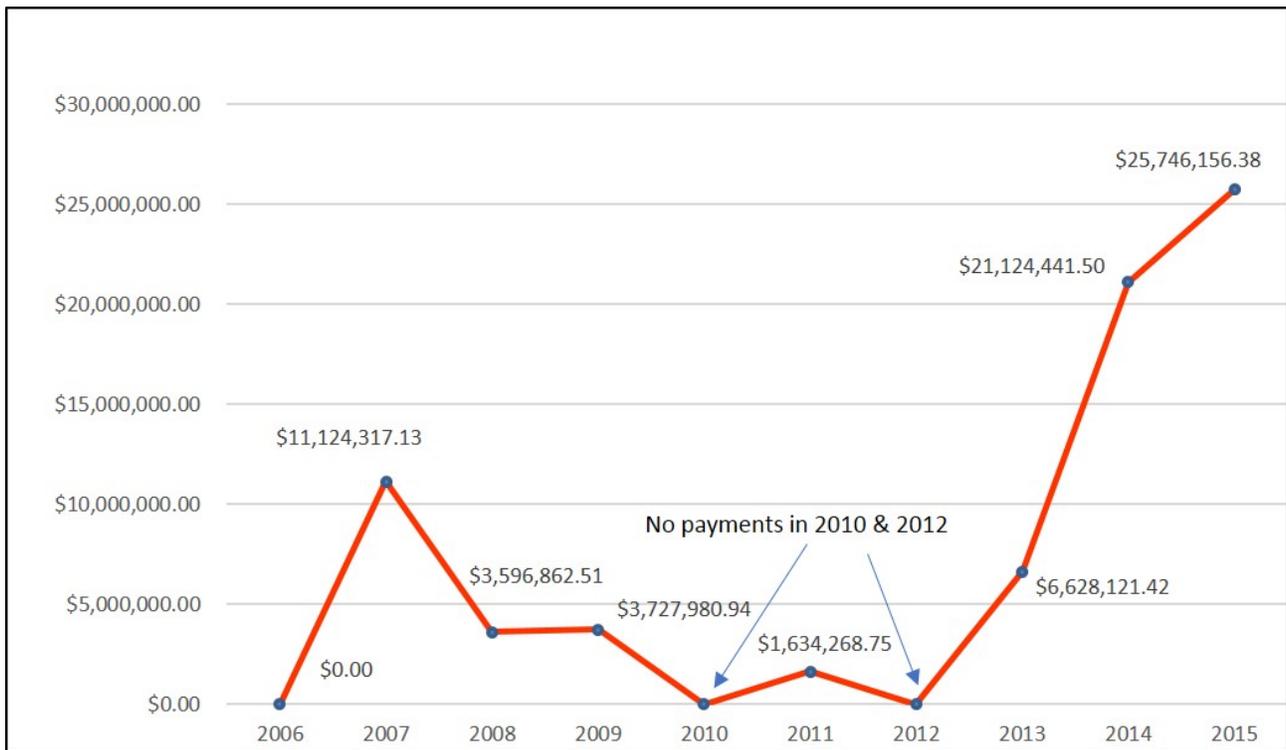


Source: Seattle Office of City Auditor generated based on data from the Office of Housing, as of April 2016.

Payment Option

From 2006 to January 2016, the City received approximately \$80 million in payments from development projects in-lieu of performance towards affordable housing. Exhibit 4 displays the annual in-lieu of performance payments developers made to the City for affordable housing.

Exhibit 4: Annual Incentive Zoning Affordable Housing Payments Received



Source: Seattle Office of City Auditor generated based on data received from the Office of Housing.

Payments from the Incentive Zoning program get leveraged or comingled with other funding sources to produce affordable units. Therefore, it is difficult to determine the precise number of affordable units that resulted from the incentive zoning payments alone. In 2016, the Office of Housing reported that incentive zoning payments resulted in creating 948 affordable units.

A 2014 report⁸ from Cornerstone Partnership that analyzed Incentive Zoning affordable housing data stated that the typical project from 2000 to 2013 cost \$192,000 per unit to build. The Office of Housing estimates that the average cost of City funded affordable housing which includes bonus funds is \$226,763 per unit. However, the methodology used to count units created with payment funds has not been formally agreed upon by stakeholders and the City Council, and we did not independently validate the reported data on units produced through the program.

Deferred Payment Projects

In addition to payment projects, a total of seven projects elected to defer

⁸ Cornerstone Partnership, "[Analysis of data relating to the historical production under Seattle's Incentive Zoning Program.](#)" February, 2014.

payments in the 10-year period we reviewed. Three of these projects paid approximately \$230,000 in interest and are completed. Four projects, for which occupancy permits had not been issued, owe the City approximately \$7.5 million in payments due to the developer selecting a deferred payment option.⁹

Performance Option

The first performance agreement was signed in 2012. Since then, about one-third (22) of the Incentive Zoning affordable housing projects have selected the on-site performance option, and two projects opted to provide the housing units off-site. As of April 2016, of the 22 on-site projects, 14 had been completed, generating 68 affordable housing units. The remaining eight projects had not received occupancy permits for 54 affordable units.

IV. Audit Findings and Recommendations

We categorized our audit findings and recommendations into five areas: 1) Program Management Framework, 2) Internal Controls, 3) Oversight, Reporting, and Transparency, 4) Customer Service, and 5) Program Fees.

Program Management Framework

Implementing Incentive Zoning for affordable housing is based on a set of Land Use Code provisions that are complex, and at times conflicting and impractical to implement, especially for projects that can change or when the City approves changes to the Land Use Code. Implementation of these provisions are further hampered by a lack of a clear program management framework, insufficient interdepartmental collaboration, and no approved set of procedures. According to SDCI staff, because many factors must be considered in determining the extra floor area gained and the corresponding affordable housing contribution (e.g., vesting date, location, building use, and height, and Land Use Code provisions that are subject to changes), it is difficult to create systems that would work for each project. While we recognize a “one size fits all” approach to the Land Use Code is not feasible, systems and processes need to be in place to document project changes and decisions for the extra floor area gained and affordable housing contribution provided. We identified several best practices to help maximize program performance from the Committee of Sponsoring Organizations of the

⁹ Applicants of residential development payment projects can elect to defer the affordable housing payment. If the applicant elects to defer payment, the certificate of occupancy for the project is conditioned until receipt of the affordable housing payment, plus an interest factor.

Treadway Commission (COSO), program management literature, and a Government Accountability Office's (GAO) report on collaboration.¹⁰

Program Management Framework Should Address Missing Program Elements

Although some form of Incentive Zoning for affordable housing has been in place in Seattle for about 30 years, it lacks a management framework with fundamental program elements, including a body or individual accountable for:

- program planning, including establishing, monitoring, and reporting,
- program results,
- developing and implementing policies and procedures,
- providing oversight, and
- ensuring transparency.

SDCI and the Office of Housing created a process to implement Incentive Zoning for affordable housing based on language in the Land Use Code, and each department has certain responsibilities for implementation. However, neither department has full responsibility over the program, and no one is responsible for planning or ensuring that general program objectives are being met or that the Land Use Code is consistently applied. Neither department is monitoring program results with a goal of revising the program to respond to changing market conditions or a lack of participation. According to an economic analysis¹¹ of the City's Incentive Zoning for affordable housing, the program is not widely used and other stakeholders have raised questions about the lack of participation.

We found inconsistent application of the Land Use Code related to Incentive Zoning for affordable housing and draft program procedures that have not been finalized. Further, roles and responsibilities were not clearly defined, including an entity responsible for the implementation and enforcement of program procedures.

We found discrepancies that could have been identified and addressed with increased department collaboration and oversight. Specifically, we identified two projects that received extra floor area that made no affordable housing contribution, and discrepancies and missing information in and between various sources of documentation, including building plans, developer agreements (declarations and covenants), department tracking spreadsheets, and SDCI's permit systems (Hansen and SDCI's Permit and Com-

¹⁰ United States Government Accountability Office, "[Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies](#)," October 2005.

¹¹ David Paul Rosen & Associates, "[Seattle Affordable Housing Incentive Zoning Program Economic Analysis](#)," October 2014.

plaint Status on-line systems). These issues might have been addressed if a single entity or individual had responsibility for program oversight and management.

Additionally, we found that attempts at process improvements have not been fully implemented. Although there have been attempts to make process improvements in recent years, we found issues and discrepancies even after process improvements were made that were designed to address these problems. For example, in 2013 the Office of Housing required that all payment projects record a declaration, which is a statement from the developer committing to a specific payment amount in exchange for the extra floor area received. However, we found two 2014 projects without declarations. An improved program management framework could help ensure attempts at process improvements are successfully implemented.

While the Office of Housing was responsible for periodic reporting to the City Council, neither it nor SDCI were ensuring program transparency to the public. Transparency helps promote accountability by clearly presenting program results, and it is the responsibility of leadership to ensure applicants, stakeholders, and the public are adequately informed.

The proper management framework for the Incentive Zoning program should be developed in consideration of the direction of the program and with the participation of the two departments¹² involved and other stakeholders. When two or more departments are involved in programs, as is the case for the Incentive Zoning program, program governance and department expectations should be well defined and collaboration between the departments involved should be enhanced.

Recommendation 1: The City should develop a program management framework for Incentive Zoning for affordable housing, and report a plan for implementation to the City Council, including:

- **Identifying a leadership structure accountable for program results,**
- **Developing performance measures and a process for monitoring results,**
- **Developing a process to propose and enact policy and procedural changes to the program,**

¹² According to SDCI and the Office of Housing, the Office of Planning and Community Development (OPCD) no longer has a role in Incentive Zoning for affordable housing.

- **Defining roles and responsibilities, and enhancing department collaboration and coordination,**
- **Instituting more oversight, and**
- **Improving and increasing reporting and transparency.**

Interdepartmental Collaboration Needed to Produce Accurate Program Information

SDCI and the Office of Housing each use different systems to record and track incentive zoning projects. The Office of Housing uses an Excel spreadsheet to document project details and track projects by address. SDCI uses their permit tracking system, Hansen, to track projects by the permit number. The two departments did not regularly reconcile their project lists with each other's information, and we found multiple discrepancies between the two lists. Therefore, the program information the Office of Housing used in its reports may not be accurate. We also found instances of the "incentive zoning" field in Hansen not completed for projects that participated in the program, so these projects were not present in a report we obtained from SDCI, yet they were in the Office of Housing's spreadsheet. Important project data, such as bonus square feet, differed in the two record keeping systems and also differed from what was in building plans. Usually we could verify the correct amounts by reviewing the developers' building plans. However, we could not determine the accuracy of some projects because project documentation was not retained in either department. Sometimes the City collected the incorrect payment amount due to these data discrepancies.

At the start of our audit, the Office of Housing did not have access to SDCI's Hansen system to verify the accuracy of information developers provided on declarations. According to Office of Housing staff, they now have access. The Office of Housing's spreadsheet is maintained by one person and poses data error risks if it is not regularly reconciled against source documents and SDCI records. Tracking projects by address instead of a unique identifier (i.e., building permit number) makes it difficult to compare data between departments, as some properties have multiple addresses or have changed addresses during the permitting process. Because program data can be used to assess the effectiveness of the program and to make policy and procedural changes, the accurate tracking and reporting of data should be a priority for the Office of Housing and SDCI.

With access to SDCI's new permit processing system, Accela, the Office of Housing will be able to verify SDCI planners' data entries. This would minimize data entry errors and empty data fields, and it will help ensure there is one consistent list that can be used for accurate reporting. Implementing

SDCI's new permitting system will allow the departments to create a process that establishes one project list that both departments can verify.

Recommendation 2: SDCI and the Office of Housing should use the same system (e.g., a centralized database) to track incentive zoning properties and regularly check for data inaccuracies.

Update and Improve Policies and Procedures

There are different requirements for the types, locations, and sizes of projects that makes Seattle's Land Use Code complex and difficult to implement, yet it serves as the basis for the Incentive Zoning for affordable housing procedures. Neither SDCI nor the Office of Housing have finalized these procedures. Each department has separate procedure documents that are inconsistent with one another and do not accurately describe the actual Incentive Zoning for affordable housing process. For example, Office of Housing procedures include a step that reads "Project-specific email correspondence – save to project file," yet we did not find project related emails for any of the projects we reviewed. In another example, the Office of Housing procedures state developers should submit recorded declarations to the Office of Housing, but SDCI procedures say developers should submit recorded declarations to SDCI. These sorts of discrepancies create confusion about roles and responsibilities. Our interviews with program staff from both departments revealed confusion and a lack of mutual understanding regarding roles and responsibilities.

While most project documentation we reviewed was consistent across multiple sources, we found instances in which the building plan and declaration had different extra floor area amounts that would result in different affordable housing amounts. We also found several instances in which the building plan matched the declaration extra floor area, but the extra floor area recorded in Hansen, SDCI's permit tracking system, showed a different extra floor area. SDCI attributed some of these discrepancies to human error, or not having updated Hansen. There is no Seattle Municipal Code language or department procedures about correcting such inconsistencies and no evidence that either department had attempted to correct them.

Recommendation 3: SDCI and the Office of Housing should update, coordinate, and finalize Incentive Zoning procedures for their respective departments.

Internal Controls

We found insufficient internal controls¹³ in Incentive Zoning for affordable housing projects to prevent errors and reduce the risk of fraud. Internal controls are measures that an entity can take to operate efficiently, deter and detect errors and fraud, ensure accuracy, provide management information, and ensure adherence to regulations and policies. Based on the data available, from 2006 through January 2016, the City has collected over \$80 million in payments from developers and has signed covenants to produce hundreds of affordable housing units. Because of the complexity of incentive zoning as defined in the Land Use Code and the large payment amounts involved, the risk of errors and likelihood of fraud is high. While we did not find evidence of fraud, we found a lack of documentation, errors, and discrepancies that might have been prevented or addressed with the internal controls identified below. At the time of our audit, SDCI was preparing to implement a new permitting system to replace Hansen, their current system. According to SDCI, the improved functionality of this new system, Accela, would help address some of the issues we identified.

Final Bonus Floor Area is not Required to Determine Affordable Housing Contribution

It is important that the City grants accurate bonus floor areas because they are used to determine affordable housing contributions. We found several instances when SDCI did not use the final bonus floor area amount in the final building plans or in the permitting system to determine affordable housing contributions. Sometimes this occurred because SDCI did not use the revised bonus floor area amounts on final building plans or those amounts recorded in the permitting system.

According to the Land Use Code, the bonus amount should be derived from the Master Use Permit (MUP), which is a preliminary conceptual design of the project. Because MUP plans can be modified before the final building permit is issued, and the Land Use Code does not require that final floor plans be used to calculate the bonus amount to establish the affordable housing contribution, the Land Use Code may prevent the City from receiving the correct affordable housing contribution.

SDCI has tried to address the weakness in the code by waiting until they believe building plans will no longer change, before informing the applicant that they should work with the Office of Housing for payment and perfor-

¹³ Internal controls are systematic measures (such as reviews, checks and balances, methods and procedures) instituted by an organization to (1) conduct its business in an orderly and efficient manner, (2) safeguard its assets and resources, (3) deter and detect errors, fraud, and theft, (4) ensure accuracy and completeness of its accounting data, (5) produce reliable and timely financial and management information, and (6) ensure adherence to its policies and plans. Source: BusinessDictionary.com.

mance arrangements. The Office of Housing drafts and finalizes the agreements with developers specifying the exact affordable housing contribution amount, making collaboration between departments important at this stage; however, such collaboration was not evident in the documentation we reviewed. We found projects for which the final bonus floor area amount was not used to determine the affordable housing contribution that SDCI has since resolved or explained to us. Furthermore, the Land Use Code does not specify a process for making changes to housing contributions after they've been made even if revised plans would mean a different affordable housing contribution.

During our review of the documents for the 65 projects, we found discrepancies between bonus amounts in final building plans, the permitting system, and the bonus amount used to determine the affordable housing contribution. See Appendix C for a list and description of discrepancies and inconsistencies. Sound internal controls call for developing and implementing policies and procedures to minimize risks and achieve program objectives. Until changes in the Land Use Code occurs to address the weaknesses, SDCI and the Office of Housing should establish formal procedures to address them. We were unable to assess the affordable housing contribution impacts of these discrepancies due to incomplete and inaccurate data, and according to SDCI, researching the discrepancies will take them several weeks.

Recommendation 4: SDCI and the Office of Housing should assess the discrepancies we identified to determine their impact, if any, on extra floor areas developers achieved and their affordable housing contributions and commitments, and report their results to the City Council.

Recommendation 5: The City should change the Land Use Code to require that the bonus amount used to determine the affordable housing contribution be based on the final bonus floor area granted. Until a change in the Land Use Code occurs, SDCI and the Office of Housing should establish a procedure to ensure the final bonus floor area is used to calculate payment and performance amounts.

There is No System in Place to Ensure Receipt of Affordable Housing Payment Before Permit Issuance

For most projects, there is a requirement that developers submit their affordable housing payments before certain permits are issued. Untimely payments represent a loss in interest earnings and delay the distribution of funds to be used for building affordable housing projects. We found at least 10 instances when payments were made after they were required. For

example, for one project that owed approximately \$4.7 million, the building permit was issued on November 22, 2013 but the City didn't receive payment until April 27, 2015. For the 10 projects with late payments, payments were received an average of over nine months after the first building permit was issued.

SDCI does not verify that payment checks have been cleared, and sometimes did not verify the correct amount had been paid before issuing the building permit. Receiving the required payment amount from the developer is an important prerequisite to issuing the building permit; otherwise, the developer's commitment may not be fulfilled or the developer could delay payment without consequence. As mentioned earlier, we found two projects with building permits for which bonuses were granted but no payment was made. One of those projects is completed and occupied.

**Lack of System
Payment Controls
Highlights Equity
Issue**

The current process assumes that the City's authority to withhold building permits until payment is received will guarantee timely payments, but there are no systems in place to prevent the building permit to be issued without payment.

When payments were received later than required, there were no procedures in place to address this situation such as requiring a developer to pay a late fee. This could be an equity issue that the City may want to address because other City processes can involve fines for late payments. For example, when parking violations go unpaid beyond a certain amount of time, the City's information system automatically imposes late payment fees and other penalties. Conversely, a developer's missed affordable housing payment contribution can be in the millions of dollars and go unpaid for years without consequence.

Recommendation 6: SDCI should modify its incentive zoning permit review procedures and implement a control to ensure a consistent process for when developer payments are required to be made or covenants executed before it issues the applicable permits.

**Declarations are
Not Required for
All Projects**

A declaration is a document the developer signs specifying the amount of bonus floor area gained and the affordable housing contribution provided. Declarations are used for most payment in-lieu of performance projects. Starting in 2014, SDCI and the Office of Housing required declarations for payment projects, consistent with some sections of the Land Use Code for some projects and as a best practice. The written declaration serves as a prerequisite to SDCI issuing the building permit, and adds transparency by

clearly documenting important incentive zoning information that is otherwise found in only some building plans.

In our review of project documents, we found projects without declarations from 2006-2013, and two projects from 2014-2015. The Office of Housing should make requiring a declaration a formal practice on all payment projects and the Land Use Code should be updated to require a declaration for all payment projects.

Recommendation 7: The City should change the Land Use Code to require all incentive zoning projects to have written agreements recorded with the King County Recorder's Office.

Some Building Plans Lack Required Incentive Zoning Calculation

Sections of the Land Use Code¹⁴ require some projects to include bonus calculations on the Master Use Permit (MUP) applications. For projects for which SDCI does not require a MUP, SDCI uses building permit application plans in-lieu of the MUP. In these cases, the calculations should be included on the building application plans. We found several instances when these calculations were not included in the MUPs or building application plans, and in these cases, we could not verify the accuracy of payments compared to building plans. Building permits should not be issued until MUP or building application plans clearly document the bonus calculation and the intended performance or payment amount. According to an Office of Housing official, staff requests to address this issue have been on hold at the request of the Executive and Law Department.

Recommendation 8: The Land Use Code should be updated to require all incentive zoning projects to include the bonus calculation on the building permit application plans, and SDCI should consistently enforce this requirement.

Project Vesting Date Not Consistently Documented

The Land Use Code¹⁵ specifies that the "vesting date" determines which version of the Land Use Code will be applied to a project. For incentive zoning projects, because earlier Land Use Codes may have different fees and requirements, this includes determining the performance or payment amount applicable when the project is vested. According to SDCI, the vesting date is often determined through a calculation of several dates, and can be difficult to determine. Sometimes the vesting date can change if building plans are

¹⁴ [Seattle Municipal Code Section 23.58A.006](#) - Permitting conditions-Incentive Plans.

¹⁵ [Seattle Municipal Code Section 23.58A.014](#) - "The amount of the in-lieu payment made at the time specified in subsection 23.58A.014.C.2 shall be based on the payment amount that is in effect when vesting of a Master Use Permit occurs under Section 23.76.026."

revised or for some projects the vesting date is the date of the early design guidance process. According to SDCI staff, they recently started giving the vesting date to the Office of Housing to include on declarations. However, this is the only place where this date is documented. The vesting date is an important data element that should be consistently documented in SDCI's permitting system, and in more areas than declarations. This would increase transparency and help ensure consistency in how the vesting date is determined by documenting how it was applied.

Recommendation 9: SDCI should ensure that the new permitting system (Accela) includes a field to document vesting dates for incentive zoning projects and that all recorded project documents (declarations and covenants) include the vesting date.

SDCI Has Not Charged Developers Application Review Fees Since 2014

The Land Use Code¹⁶ requires developers that participate in the Incentive Zoning program for affordable housing to pay a \$550 application review fee for the Office of Housing's review of the application. According to SDCI, this fee has not been collected since 2013. SDCI should improve the permit application intake process to ensure developers are being consistently charged this fee.

Recommendation 10: SDCI should improve the permit application intake process it uses to assess and collect the incentive zoning review fee.

Recommendation 11: SDCI should determine whether uncharged fees can be retroactively collected.

Program Staff Should Not Accept Payments

The Office of Housing receives payments directly from developers and then submits the checks to the Department of Finance and Administrative Services (FAS) for processing. According to the Office of Housing, they have implemented these internal controls for receiving developer payments:

1. Date stamping the check as a record of the date the Office of Housing received the check,
2. Logging receipt of the check in a check log book, and

¹⁶ [Seattle Municipal Code Section 22.900G.015](#) - "An applicant...shall pay a fee in the amount of \$550 to the Department for transfer to the Office of Housing for review of the application."

3. Scanning a copy of the check and saving it in the project file

We verified that all payments tracked by the Office of Housing had been deposited in the City's payment tracking systems (Storm and Summit) for the 35 projects on the Office of Housing's list of projects that chose the payment option. However, during this review, we found at least three instances when an Office of Housing employee deposited the check directly at the bank instead of following the procedure of delivering the check to FAS. Although the funds ultimately reached the City, allowing program staff to leave City premises with a check increases the risk of theft. FAS told us that having department staff deposit checks directly is highly unusual and they heavily discourage this practice.

We assessed the Office of Housing's controls for payment processing and reviewed the check log book. Since the first check log entry in September 2013, we found that all but one payment was appropriately recorded in the check log book. The City collected the payment.

We also reviewed the Office of Housing's payment processing policy, which during our audit field work, appeared to be in draft form, as it was not dated and it was not clear whether it had management approval. This policy document and the Land Use Code should be updated to direct developers to send checks directly to FAS, a neutral and independent department, to be processed and deposited. This would reduce the risk of theft, and make the process more efficient by not having payments routed through the Office of Housing. FAS stated that it supported this change, as the City is moving away from departments directly collecting payments. Office of Housing and FAS management should also approve and date the policy document.

Recommendation 12: The Land Use Code should require developers to directly submit payments to FAS, and the Office of Housing should establish a policy and procedure to reflect this change.

Office of Housing's Practice of Saving Check Copies Creates a Privacy Risk

The [City of Seattle Privacy Principles](#) state that City departments should keep the public's personally identifiable information only if that information is required to deliver City services, and that the City will commit to keeping this information safe and protected.

The Office of Housing practice of scanning checks and saving copies to its SharePoint site may contradict the City's policy to retain personally identi-

fiable information only if needed to deliver City services because the check copies are unnecessary for this purpose. However, if the Office of Housing continues to accept payments from developers and believes it needs to retain copies of these checks, they should add safeguards to reduce the risk of compromising the developer's personally identifiable information. This could include deleting the check copy after the payment has been cleared, or redacting personally identifiable information from the check if it needs to be retained. The redaction should conceal name, address, and bank account information.

Recommendation 13: If the Office of Housing demonstrates a reason for keeping check copies and continues to do so, it should redact personally identifiable information from the copies it retains.

**Program Staff
Do Not Complete
Financial Interest
Statement Forms**

SDCI staff and at least one Office of Housing employee involved in making key decisions regarding the bonus and affordable housing contribution have not completed Financial Interest Statement forms that the City uses to disclose any potential conflicts of interest. The Seattle Municipal Code¹⁷ requires that employees with certain responsibilities annually complete these forms. The Seattle Ethics and Elections Commission recommended that SDCI and Office of Housing management should consider having staff responsible for verifying the appropriate bonus area, which is used to determine the affordable housing contribution, and can involve multi-million dollar payments, be required to complete this form. Disclosing any potential conflicts of interest helps avoid unethical situations and increases transparency to the public.

Recommendation 14: SDCI and Office of Housing staff responsible for verifying or approving Incentive Zoning bonus amounts and affordable housing commitments should annually complete a Financial Interest Statement Form.

Oversight, Reporting, and Transparency

We found insufficient oversight in the process to determine the bonus floor area calculation and housing contribution, and insufficient reporting on and

¹⁷ [4.16.080 Statements of financial interests](#) - "Employees/Supervisors with (a) the authority to purchase more than \$5,000 in goods and services, or (b) the authority to negotiate or execute contracts valued at more than \$5,000."

minimal information provided about the program and program participation. This situation may be due to limited staffing. During our audit, SDCI added a program manager whose duties included helping to ensure the accuracy of bonus calculations and affordable housing contributions. SDCI is also in the process of replacing its permitting system. These changes should help minimize errors and reduce program risks. What follows is a list of additional findings and recommendations to further improve oversight, reporting, and transparency.

Incentive Zoning Review Process to Determine the Bonus Floor Area and Housing Contribution Lacks Oversight

Oversight is an essential element for program success, and is recommended as a best practice in a 2007 study on inclusionary housing best practices.¹⁸ At SDCI, a Land Use Planner reviews and approves bonus calculations without supervisory or independent review. This poses a risk because the bonus calculation determines the developer's performance or payment amount, which for payment projects can be in the millions of dollars.

Some development projects, including Incentive Zoning for affordable housing projects, are subject to additional external reviews and land use appeals depending on their complexity (Type II through Type V projects). Type I development projects require only the SDCI Director's review and the Director's decision is not appealable to the Hearing Examiner, although some Type I projects we reviewed provided a substantial affordable housing contribution. SDCI should either have all types of incentive zoning projects be subject to additional review and appeal, or add a step in its internal process for review of the Land Use Planner's bonus calculations. Adding additional review will decrease the risk of code interpretation error, calculation error, and fraud.

We found two projects that received extra floor area and a building permit, but provided no affordable housing contribution as of April 2016. One of the projects is occupied and the other project is under SDCI review. These projects eventually provided a housing contribution payment or commitment valued at nearly \$5 million including five performance affordable housing units.

Recommendation 15: SDCI should modify the permit review process to include additional oversight of all incentive zoning projects.

¹⁸ Policy Link, "[Delivering on the Promise of Inclusionary Housing: Best Practices in Administration and Monitoring](#)," 2007

Infrequent Reporting Requirement Hinders Oversight and Transparency

Beginning in 2010 and every two years thereafter, an ordinance¹⁹ required the Office of Housing to submit reports to the City Council on the Incentive Zoning program. The Office of Housing completed a report in 2010 and a draft report in 2012, neither of which we could find on the City's Incentive Zoning website. Based on an agreement with a former City Councilmember, the Office of Housing put incentive zoning reports temporarily on hold because of potential Land Use Code changes that were being discussed. During this time, the City contracted with consultants to complete a comprehensive review of incentive zoning. This review resulted in several reports which were completed in 2014 (see Appendix E for the list of Seattle Incentive Zoning consultant reports). According to the Office of Housing, since 2012 reporting has been completed on an ad-hoc or on request basis. Given the program's complexity and public interest in affordable housing and the impact of zoning changes in Seattle, the current reporting schedule does not provide enough oversight and transparency for stakeholders and the public to assess whether the Incentive Zoning program is meeting the City's affordable housing goals. The consultant's report stated that a growing number of incentive or inclusionary zoning programs in other jurisdictions mandate annual reports to assist stakeholders in assessing program effectiveness and to identify program conditions that might merit changes.

Recommendation 16: The Office of Housing should provide program reports more frequently than every two years. At a minimum, reports should be annual and should be posted on the City's website.

Incentive Zoning Project Information Lacks Transparency

The City's website provides no list of the projects participating in the Incentive Zoning program for affordable housing. During our audit, we found it difficult to find complete and accurate basic information, such as the number of projects participating in the program and the amount of housing contributions. For the public to learn details about specific projects in the program, they would need to conduct research on the King County's Recorder's Office records system.

Exhibit 5 shows King County's Transfer Development Rights Sale website. It provides information on projects that purchased transfer development rights for about the last 10 years. The City should provide the same information on its website on Incentive Zoning program projects.

¹⁹ [Ordinance 122990](#) and [Resolution 31291](#).

Exhibit 5: Example Property Listing from King County's Transfer Development Rights Sale Website:



9th and Thomas

The office building, known as Ninth and Thomas is located at 234 9th Ave in Seattle. 234 9th, LLC purchased 14 TDRs to add 12,776 square feet of bonus non-residential floor area and 1,029 square feet of bonus residential floor area to the 12-story structure with 11,564 square feet of retail commercial and 153,733 square feet of office space in South Lake Union. The development will feature views of the Space Needle and Denny Park, as well as indoor/outdoor terraces on multiple floors. The 14 TDRs purchased originated from Snoqualmie Forest. The proceeds from this transaction will be used to purchase farmland development rights in rural King County.

Location: South Lake Union

Developer Name: 234 9th, LLC

TDRs Purchased: 14

Amount of additional development capacity: 13,805 square feet

Source: [King County TDR website](#)

Recommendation 17: SDCI should provide, on the City’s website, a list of details about projects participating in Incentive Zoning for affordable housing and update this list regularly.

Reports Do Not Provide Enough Detail to Thoroughly Determine Program Impact

In a recent incentive zoning report,²⁰ the consultant recommended that the Office of Housing expand their reporting to include other data elements that would provide a more transparent view of the program’s impact. Specifically, the report recommended tracking and reporting on the average number of months it takes the City to use the payment funds to build affordable housing. The report explained that this is an important consideration when determining the policy tradeoffs between the payment and performance options, because under the payment option it can take several years from when the City receives a payment and when the affordable units are built.

Recommendation 18: The Office of Housing should expand its reporting as recommended in a 2014 Policy Options Incentive Zoning consultant report, to include:

- The share of projects that selected the on-site performance, off-site development, and payment-in-lieu of fee options.
- The total dollar amount of fees pledged, collected and committed to a project, and spent in the past year.
- The number of housing units at each relevant affordability level in projects receiving commitments of payment fee revenue.
- For payment fee funds expended in a given year, the average number of months that each dollar was held by the City before expenditure.
- For all off-site projects approved in the past year, the number and affordability level of affordable units in the proposed off-site project compared with the number and affordability levels that would have otherwise been required under the on-site performance option.

Method of Counting Units Produced with Payment Funds Not Formally Agreed Upon

The Office of Housing has used two methods to estimate the number of affordable housing units produced using payment funds. The two methods result in different estimates of program results, and neither method has been formally agreed upon by the City as the preferred method.

²⁰ Cornerstone Partnership, [“Policy Options for Refining Seattle’s Incentive Zoning Program,”](#) 2014.

The first method includes the total number of units from any project that received at least one incentive zoning payment dollar. This method had been used to count units before the 2014 Incentive Zoning consultant review. The second method is a model adopted from the 2014 consultant report that estimates the number of units that would not have been built if incentive zoning funds were not available as a match to leverage other funding sources; this is referred to as the “but for” method. Using this method, the Office of Housing estimated that 948 rental units were created that would otherwise not have been built without incentive zoning payment funds.

These two methods of counting units produce different results on the program’s impact, and both may be over estimating the number of units produced with payment funds because they include assumptions. Regardless of the methodology used, the City Council should review alternative methodologies and determine how units are to be counted. Once a method is selected, it should be used consistently to compare program results over time.

Recommendation 19: The City Council should examine various methods for determining how many units are created with incentive zoning payments and formally agree on the methodology to be used long term.

Customer Service

The value the City of Seattle places on customer service is contained in the [City’s Customer Service Bill of Rights](#), which states, among other things, that City products and services should be easy to locate and access. We found very minimal information on the City’s Incentive Zoning program outside of the Land Use Code, and few resources for developers to facilitate the program’s application, City review and affordable housing contribution process.

Insufficient Resources for Applicants

During our audit, we found minimal information or instructions about the application process for the Incentive Zoning program on either the SDCI or the Office of Housing websites. Applicants are expected to follow the Land Use Code, which is very complicated and does not explain the review and approval process. SDCI has not provided written information to supplement the Land Use Code, such as instructions on how to complete the permit application to facilitate the review process for the incentive zoning component.

Given the complexities of the Incentive Zoning Land Use Code, resources should be provided to applicants to increase awareness of program requirements. Providing more resources and instructions to developers could decrease SDCI review time and developer errors. A consultant report²¹ also recommended that SDCI produce communication materials to make program requirements more transparent.

Although the Land Use Code requires that bonus calculations be present on the Master Use Permit (MUP) application, SDCI has not developed a consistent format for developers to submit the incentive zoning bonus calculation, and sometimes we found this information was missing from both the MUP and final building plans. Due to the highly-detailed nature of these documents, the absence of a specified format or template adds to the review time, as the data applicable for incentive zoning is presented differently or not at all, depending on the architect. Many projects we reviewed had accompanying correction letters from SDCI to architects asking them to present the required incentive zoning data more clearly. Having a consistent method of documenting incentive zoning information, such as the affordable housing template that the Office of Housing is providing developers at a later stage, would aid developers in submitting their proposals correctly the first time, and decrease SDCI review time because they would look at consistently presented incentive zoning data across all projects.

Recommendation 20: SDCI should provide developers with online information and resources, including basic program information, application instructions, a customer service contact, and an affordable housing contribution plan template.

SDCI Does Not Make Payment Amounts and Fees Publicly Available

The City charges different amounts for the bonus areas granted depending on the location of the project and other factors. Since 2014, the payment fee for most zones has been adjusted annually based on the Consumer Price Index (CPI). The calculation used to adjust the fee is part of the Land Use Code, however, the annual increase amount based on the CPI is not, leaving developers to research the CPI for the current year and determine the correct fee. SDCI should publish the current fee so this information is transparent and more easily accessible.

²¹ Cornerstone Partnership, [“Policy Options for Refining Seattle’s Incentive Zoning Program.”](#) 2014.

Recommendation 21: On its website, SDCI should publish the fee schedule for payment and other fees related to Incentive Zoning for affordable housing projects. They should include fee information for the current year and the prior two years. For example, for 2016, the fee schedule should be for 2016, 2015, and 2014.

Program Fees

More Relevant Index Needed to Adjust Payment Fees and Determine Interest Rate for Deferrals

In 2014, the City Council reviewed historical data, performed an economic analysis, and presented policy options for the Incentive Zoning program, which resulted in the adoption of the Mandatory Housing Affordability (MHA) ordinances for commercial and residential developments. One recommendation from that review not addressed in the new ordinances, and still an issue with the Incentive Zoning program, is the use of the Consumer Price Index (CPI) to annually increase the affordable housing payment fees. Unfortunately, the CPI does not accurately reflect changes in housing costs.

In 2014, the City started adjusting affordable housing payment in-lieu of fees based on annual CPI adjustments. The City also uses CPI adjustments to determine the interest rate on residential projects that choose to defer payment until the occupancy permit is issued. However, the CPI is based on the price consumers pay for a basket of goods and services, such as food and haircuts. Although the index also measures rent, it includes other costs less relevant to housing, such as the price of gasoline, which has been low in recent years and is not the best indicator of housing production costs.

A 2014 consultant economic analysis of Seattle's Incentive Zoning program²² found that the cost to developers of paying the in-lieu fee is lower than the cost of providing affordable units on-site through the performance option. One way to ensure that in-lieu fees are more consistent with the cost of production is to adjust the in-lieu fee using a method that takes into account local or regional housing construction costs, as recommended in a 2014 Seattle Incentive Zoning consultant report by Cornerstone Partnership²³ and the American Planning Association.²⁴ The Cornerstone Partnership report identified jurisdictions, including San Francisco, that use changes in housing construction costs, such as the Construction Cost Index, to adjust incentive

22 David Paul Rosen & Associates, "[Seattle Affordable Housing Incentive Program Economic Analysis](#)," October 2014.

23 Rick Jacobus and Joshua Abrams for Cornerstone Partnership, "[Policy Options for Refining Seattle's Incentive Zoning Program](#)," July 2014.

24 American Planning Association, "[Smart Codes: Model Land-Development Regulations, Section 4.4 Model Affordable Housing Density Bonus Ordinance](#)," March 2006.

or inclusionary fees.

To better reflect the cost of production in payment in-lieu and deferred payment fees, the City should use an index that better accounts for the cost of production or the cost in production delays. Exhibit 6 demonstrates the percentage change in the Seattle CPI and the Construction Cost Index in recent years, which illustrates the potential differences.

Exhibit 6: Percentage Changes in Seattle’s Consumer Price Index (CPI) and Construction Cost Index (CCI)

Year	% Change in CPI*	% Change in CCI**
2013	1%	4%
2014	2%	8%
2015	1%	2%

Source: Bureau of Labor Statistics and Engineering News Report

* City of Seattle, Inflation – [Consumer Price Index](#) and U.S. Dept. of Labor, Bureau of Labor Statistics.

** [Engineering News-Report City Cost Index – Seattle](#), as of August, 2016.

Recommendation 22: The City should use a more relevant economic index, such as local and regional construction costs, to adjust affordable housing payment in-lieu of fees and to determine deferred payment fees. This would require a change to the Land Use Code.

V. Audit Scope and Methodology

Scope

We reviewed the documentation and records available for the 65 construction projects with building permits issued from 2006 to 2015 that we identified as having received bonus floor area, including two projects that received the bonus, but that provided no affordable housing contribution. We also reviewed two projects with building permit issue dates in January 2016.

Methodology

Our conclusions, findings, and recommendations are based on the evidence we obtained in our audit work which included:

- A review of pertinent Seattle Municipal Code (SMC) sections, such as the Land Use section, the Revised Code of Washington, SDCI and Office of Housing Incentive Zoning for affordable housing procedures, and Incentive Zoning program documents and ordinances dating back to 1985.
- Reviewing data from Hansen, SDCI's permit processing system.
- Comparing an Office of Housing spreadsheet of project information against SDCI's Hansen project data. We worked extensively with SDCI and the Office of Housing departments to resolve data discrepancies.
- Verifying common data elements for each property among computer data, the Master Use Permit, building plans, building permits, and the declaration/covenant agreements.
- Reviewing SDCI correction letters, and other records related to each project. Sometimes we did not receive all the requested documentation needed to verify the accuracy of project data.
- Interviews with staff from the Office of Housing, SDCI, and OPCD.
- Reviewing consultant reports and interviewing one consultant about the reports' conclusions.
- Consulting with various City officials with specific expertise in cash handling procedures, ethics and conflict of interests, and the City's Land Use Code, including officials from FAS, the Ethics and Elections Commission, and the City Attorney's Office.

- Comparing applicable sections of the Land Use Code to the calculations used to verify that the correct rates were applied to confirm the accuracy of the affordable housing contributions. We also checked the mathematical accuracy of the calculations. This test was administered for only 2014 - January 2016 projects because some project documentation for prior years did not exist and policies and procedures that we used as criteria took effect in 2014. Based on this methodology, we only applied the results of this test to projects within 2014-Januray, 2016.
- Evaluating the timing of payments by comparing the building permit issue date with the payment received date. We reviewed the Office of Housing's check log book, and independently verified payments had been deposited in the City account for the projects it identified as having made payments.
- Comparing the list of projects that purchased King County Transfer Development Rights in Seattle with our list of projects.
- Evaluated internal controls related to ensuring accurate and timely payments, the tracking of those payments, and the handling of check deposits.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX A

List of Recommendations

1. The City should develop a program management framework for Incentive Zoning for affordable housing, and report a plan for implementation to the City Council, including:
 - Identifying a leadership structure accountable for program results,
 - Developing performance measures and a process for monitoring results,
 - Developing a process to propose and enact policy and procedural changes to the program,
 - Defining roles and responsibilities, and enhancing department collaboration and coordination,
 - Instituting more oversight, and
 - Improving and increasing reporting and transparency.
2. SDCI and the Office of Housing should use the same system (e.g., a centralized database) to track incentive zoning properties and regularly check for data inaccuracies.
3. SDCI and the Office of Housing should update, coordinate, and finalize Incentive Zoning procedures for their respective departments.
4. SDCI and the Office of Housing should assess the discrepancies we identified to determine their impact, if any, on extra floor areas developers achieved and their affordable housing contributions and commitments, and report their results to the City Council.
5. The City should change the Land Use Code to require that the bonus amount used to determine the affordable housing contribution be based on the final bonus floor area granted. Until a change in the Land Use Code occurs, SDCI and the Office of Housing should establish a procedure to ensure the final bonus floor area is used to calculate payment and performance amounts.
6. SDCI should modify its incentive zoning permit review procedures and implement a control to ensure a consistent process for when developer payments are required to be made or covenants executed before it issues the applicable permits.
7. The City should change the Land Use Code to require all incentive zoning projects to have written agreements recorded with the King County Recorder's Office.
8. The Land Use Code should be updated to require all incentive zoning projects to include the bonus calculation on the building permit application plans, and SDCI should consistently enforce this requirement.

9. SDCI should ensure that the new permitting system (Accela) includes a field to document vesting dates for incentive zoning projects and that all recorded project documents (declarations and covenants) include the vesting date.
10. SDCI should improve the permit application intake process it uses to assess and collect the incentive zoning review fee.
11. SDCI should determine whether uncharged fees can be retroactively collected.
12. The Land Use Code should require developers to directly submit payments to FAS, and the Office of Housing should establish a policy and procedure to reflect this change.
13. If the Office of Housing demonstrates a reason for keeping check copies and continues to do so, it should redact personally identifiable information from the copies it retains.
14. SDCI and Office of Housing staff responsible for verifying or approving Incentive Zoning bonus amounts and affordable housing commitments should annually complete a Financial Interest Statement Form.
15. SDCI should modify the permit review process to include additional oversight of all incentive zoning projects.
16. The Office of Housing should provide program reports more frequently than every two years. At a minimum, reports should be annual and should be posted on the City's website.
17. SDCI should provide, on the City's website, a list of and details about projects participating in Incentive Zoning for affordable housing and update this list regularly.
18. The Office of Housing should expand its reporting as recommended in the 2014 Policy Options Incentive Zoning consultant report, to include:
 - The share of projects that selected the on-site performance, off-site development, and payment-in-lieu of fee options.
 - The total dollar amount of fees pledged, collected and committed to a project, and spent in the past year.
 - The number of housing units at each relevant afford-ability level in projects receiving commitments of payment fee revenue.
 - For payment fee funds expended in a given year, the average number of months that each dollar was held by the City before expenditure.

- For all off-site projects approved in the past year, the number and affordability level of affordable units in the proposed off-site project compared with the number and affordability levels that would have otherwise been required under the on-site performance option.
19. The City Council should examine various methods for determining how many units are created with incentive zoning payments and formally agree on the methodology to be used long term.
 20. SDCI should provide developers with online information and resources, including basic program information, application instructions, a customer service contact, and an affordable housing contribution plan template.
 21. On its website SDCI should publish the fee schedule for payment and other fees related to incentive zoning for affordable housing projects. They should include fee information for the current year and the prior two years. For example, for 2016, the fee schedule should be for 2016, 2015, and 2014.
 22. The City should use a more relevant economic index, such as local and regional construction costs, to adjust affordable housing payment in-lieu of fees and to determine deferred payment fees. This would require a change to the Land Use Code.

APPENDIX B

Incentive Zoning Projects 2006 - January 2016

Performance Option - On Site

#	Project Address	Use Type	Extra Floor Area (SF)	Affordable Housing Units	Total Housing Units	% of Affordable Housing Units	Building Permit Issue Date
1	1023 E Alder St	Residential	14,105	4	85	5%	6/15/2015
2	120 Harvard Ave E	Residential	8,165	2 or 3*	38	5%	7/15/2013
3	1650 E Olive Way	Residential	6,150	2	78	3%	1/15/2015
4	1815 Bellevue Ave	Residential	2,995	2	65	3%	4/2/2015
5	2018 NW 57th St	Residential	4,452	1	20	5%	8/23/2014
6	215 Boylston Ave E	Residential	857	1	17	6%	10/8/2015
7	220 10th Ave	Residential	7,195	4	92	4%	7/25/2012
8	2721 17th Ave S	Residential/ Street-Level Commercial	11,544	3	46	7%	6/26/2013
9	3040 17th Ave W	Residential	96,982	21	236	9%	11/8/2011
10	3050 SW Avalon Way	Residential	5,845	1	14	7%	5/27/2008 and 6/30/2016
11	3261 SW Avalon Way	Residential	25,083	6	111	5%	8/3/2012
12	4106 12th Ave NE	Residential	8,254	5	104	5%	8/20/2013
13	4123 12th Ave NE	Residential	6,459	5	101	5%	8/13/2013
14	418 Bellevue Ave E	Residential	3,821	2	48	4%	8/6/2012
15	422 Summit Ave E	Residential	6,504	2	48	4%	4/14/2014
16	4230 11th Ave NE	Residential	8,652	5	98	5%	1/27/2016
17	4545 8th Ave NE	Residential	22,249	6	162	4%	2/25/2013
18	4745 40th Ave SW	Residential/ Commercial	10,188	2	151	1%	5/14/2014
19	515 Harvard Ave E	Residential	17,371	4	73	5%	5/24/2014
20	6315 15th Ave NE	Residential	1,741	1	13	8%	11/8/2012
21	800 NE 67th St	Residential	191,832	39	260	15%	9/26/2014
22	900 NE 65th St	Residential/Retail	22,749	4	197	2%	4/29/2014

Source: Seattle Office of City Auditor generated based on data from the Office of Housing and SDCI.

* The covenant states two different numbers of affordable housing units will be provided.

Performance Option - Off Site

#	Project Address (Off-site Housing)	Use Type	Extra Floor Area (SF)	Affordable Housing Units	Total Housing Units	% of Affordable Housing Units	Building Permit Issue Date
1	255 S King St (424 S Main St)	Residential/Retail/Commercial	451,407	85	85	100%	9/13/2012
2	808 Howell St (525 Yesler Way)	Hotel/Retail	461,486	110	110	100%	2/16/2016

Source: Seattle Office of City Auditor generated based on Office of Housing and SDCI data.

Payment Option

#	Project Address	Use Type	Extra Floor Area (SF)	Housing Contribution	Payment Date	Building Permit Issue Date (COO: Certificate of Occupancy)
1	1000 1st Ave	Hotel/Retail	915	\$17,146.88	3/31/2008	3/31/2008
2	1007 Stewart St	Office/Retail	142,635	\$2,674,406.25	3/3/2015	1/6/2015
3	1101 2nd Ave	Office	2,550	\$47,812.50	3/24/2014	5/3/2014
4	1321 Seneca St	Residential/Retail	71,104	\$1,077,376.81	12/17/2014	1/21/2015
5	1521 2nd Ave Previously Deferred	Residential/Retail	97,467.20	\$1,751,000.00	11/5/2008	1/22/2007 COO: 3/23/2009
6	1600 7th Ave	Office	65,625	\$1,501,500.00	7/2/2014	4/14/2015
7	1635 8th Ave (floors 1-16) Non-Residential	Hotel	50,075	\$938,899.69	2/19/2009	8/31/2006
8	1635 8th Ave (floors 17-38) Residential	Residential	37,635	\$570,245.52	1/30/2007	8/31/2006
9	1812 Boren Ave Non-residential	Office	55,601	\$1,272,160.89	8/5/2015	9/21/2015
10	1099 Stewart St	Hotel/Office/Retail	158,717	\$2,975,943.75	9/30/2013	9/19/2013
11	1918 8th Ave	Office	330,653	\$6,183,212.80	12/14/2007	3/21/2008

Payment Option (cont)

#	Project Address	Use Type	Extra Floor Area (SF)	Housing Contribution	Payment Date	Building Permit Issue Date (COO: Certificate of Occupancy)
12	2000 2nd Ave	Hotel	7,738	\$145,087.50	1/15/2014	1/17/2014
13	2001 8th Ave	Office	112,173	\$2,103,247.31	9/18/2007	10/30/2007
14	207 Boren Ave N	Office/Retail	87,161	\$1,634,268.75	2/17/2011	3/16/2011
15	2031 7th Ave	Office/Retail	468,075	\$8,776,406.25	6/6/2014	2/5/2013
16	2030 8th Ave	Residential/Retail	130,449	\$1,976,563.25	8/7/2013	8/12/2013
17	204 Pine St	Residential/Retail	131,040	\$1,912,644.00	2/13/2015	3/13/2015
18	2101 7th Ave	Office/Retail	502,703	\$9,425,681.00	3/20/2015	7/23/2014
19	2101 9th Ave	Residential/Retail	142,922	\$2,165,554.14	8/19/2015	8/24/2015
20	2400 3rd Ave	Commercial/Office	25,882	\$485,287.50	7/17/2015	7/23/2015
21	300 5th Ave	Office/Retail	97,532	\$1,828,715.63	9/2/2008	12/21/2007
22	399 Fairview Ave N (North Tower) 300 Boren Ave N (South Tower)	Office/Retail	147,122	\$3,063,080.04	11/6/2014	11/13/2014
23	325 9th Ave N	Office/Retail	80,224	\$1,670,263.68	1/17/2014	1/31/2014
24	333 Boren Ave N	Office/Retail	148,751	\$2,789,081.25	3/17/2009	4/17/2009
25	400 9th Ave N	Office/Retail	80,464	\$1,675,260.48	1/31/2014	2/24/2014
26	400 Dexter Ave N	Office/Retail	67,497	\$1,544,331.36	9/4/2015	9/16/2015
27	400 Fairview Ave N	Office/Retail	80,481	\$1,675,614.42	12/19/2013	12/26/2013
28	401 5th Ave	Office	4,721	\$88,518.75	3/7/2007	5/24/2006
29	501 Fairview Ave N	Office/Retail	71,907	\$1,497,103.74	5/19/2015	12/31/2014
30	920 5th Ave	Office/Retail	349,927.50	\$6,561,141.00	1/29/2016	9/9/2015
31	515 Madison St	Hotel	53,965	\$1,011,849.00	12/18/2007	1/30/2008
32	802 Seneca St Previously Deferred	Residential	77,370	\$1,172,310.24	12/16/2014	5/30/2013 COO: 3/24/2015
33	801 5th Ave	Hotel/Office	254,346	\$4,768,987.50	4/27/2015	11/22/2013
34	815 Pine St Previously Deferred	Residential	105,923	\$1,995,344.00	10/28/2014	8/3/2012 COO: 2/6/2015
35	818 Stewart St	Office	62,253	\$1,167,243.75	8/10/2007	8/30/2007

Source: Seattle Office of City Auditor generated based on Office of Housing and SDCI data.

Pending Deferred Payment Projects

Current as of April 2016

#	Project Address	Use Type	Extra Floor Area (SF)	Building Permit Issue Date
36	1812 Boren Ave - Residential	Residential/Retail	134,383	9/21/2015
37	1823 Minor Ave	Residential/Retail/ Commercial	106366 / 108430	2/2/2015
38	2015 2nd Ave	Residential/Retail	88,858	3/25/2015
39	2116 4th Ave	Residential/Retail	132,666	8/17/2015

Source: Seattle Office of City Auditor generated based on Office of Housing and SDCI data.

Projects Granted Extra Floor Area with No Affordable Housing Contribution as of April 2016

#	Project Address	Extra Floor Area (SF)	Affordable Housing Contribution	Building Permit Date	Project Status
1	588 Bell St	183,836	\$3,759,546*	6/26/2012	Completed and Occupied
2	1319 Dexter Ave N	38,301	\$1,133,815**	1/22/2016	Permit still under review
	Estimated Total	222,137	\$4,893,361		

* On November 4, 2016, the developer provided a payment of \$3,759,546, including interest.

** Estimated value based on five units at the average cost of \$226,763 for an affordable unit according to the Office of Housing.

APPENDIX C

Summary of Project Discrepancies

This table contains discrepancies found with only payment projects. We also found discrepancies with performance projects. SDCI agreed to address or resolve and report back to us at a later time about the discrepancies related to performance projects.

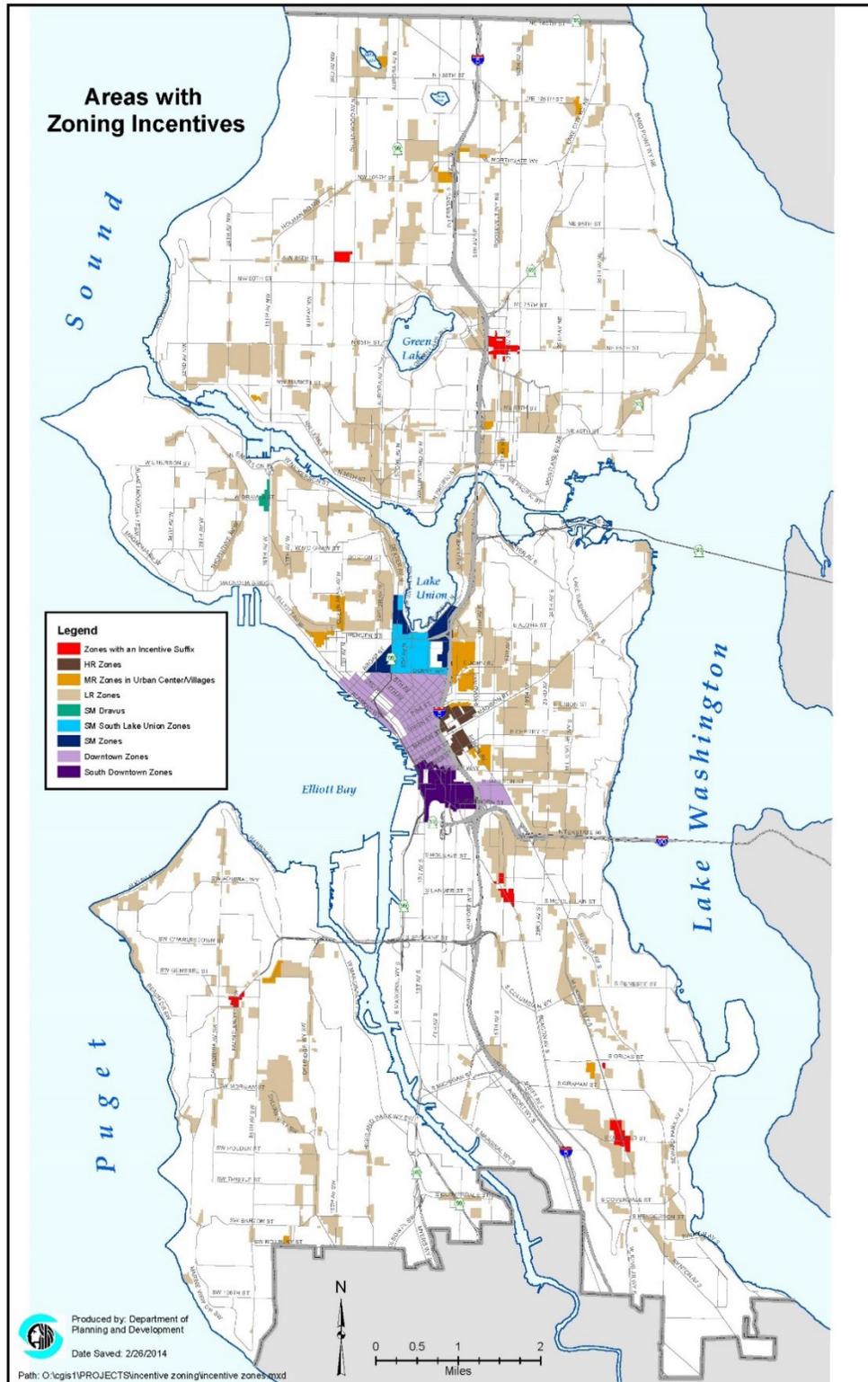
We define discrepancies as projects whose extra floor area and/or affordable housing contribution could not be verified due to conflicting, missing or inaccurate information on one or more of the following sources of information used in our analysis: building plans, declarations and/or covenants, data from Hansen (permit tracking system) or SDCI's Permit and Complaint Status System. We did not include in this table discrepancies between these documents and the spreadsheets that SDCI and the Office of Housing used to track Incentive Zoning for affordable housing projects. In addition, this table lists an application fee to cover Office of Housing administrative costs that was not collected for seven projects since 2013.

Project Address	Discrepancy related to Payment Projects	Building Permit Date (COO: Certificate of Occupancy)
815 Pine St Previously Deferred	The commitment letter issued by the Office of Housing shows extra floor area as 105,923, and the permitting system shows 10,648. No declaration and no building plan provided.	8/3/2012 COO: 2/6/2015
801 5th Ave	The declaration shows extra floor area as 254,346, and the building plan shows 261,384.	11/22/2013
1823 Minor Ave Currently Deferred	The declaration and permitting system show the extra floor area as 106,366, and the building plan shows 108,430.	2/2/2015
501 Fairview Ave. N	Building plan image and declaration show 71,907 extra floor area, the permitting system shows 72,034.	12/31/2014
399 Fairview Ave N (North Tower) 300 Boren Ave N (South Tower)	The building plan and declaration shows extra floor area as 147,122, and the permitting system shows 149,141.	11/13/2014
1321 Seneca St	Calculation error in determining payment amount.	1/21/2015
802 Seneca St Previously Deferred	Calculation error in determining deferred payment amount.	5/30/2013 COO: 3/24/2015
Application Fee Not Collected	7 projects were not charged the \$550 application fee since 2013.	Since 2013

Source: Seattle Office of City Auditor generated based on SDCI and Office of Housing data.

APPENDIX D

Areas in Seattle with Zoning Incentives



APPENDIX E

Seattle Incentive Zoning Consultant Reports

Cornerstone Partnership. (2014). [Policy Options for Refining Seattle's Incentive Zoning Program.](#)

Cornerstone Partnership. (2014). [Seattle Incentive Zoning: Analysis of data relating to the historical production under Seattle's Incentive Zoning Program.](#)

David Rosen & Associates. (2014). [Seattle Affordable Housing Incentive Zoning Program Economic Analysis.](#)

Otak Inc, & Peninger Consulting. (2014). [Seattle Workforce Housing - Programs and Policies Related to Meeting Workforce Housing Needs in Seattle: A Survey and Analysis of Best Practices in Comparative Jurisdictions.](#)

City of Seattle. (2015). [Background Report for Affordable Housing Mitigation Program and Incentive Zoning Update Options.](#)

APPENDIX F

Departments' Response



City of Seattle

Edward B. Murray, Mayor

Department of Construction and Inspections

Nathan Torgelson, Director; and

Office of Housing

Steve Walker, Director

Response to City Auditor's Findings by Seattle Department of Construction and Inspections and Office of Housing

The City Auditor's office undertook an audit of Seattle's Incentive Zoning program for affordable Housing at the request of Councilmember O'Brien. The objective of the audit, which occurred in 2016, was to:

1. *Provide a list and map of the projects that have elected to participate in Incentive zoning for affordable housing since 2006;*
2. *Verify whether the extra floor area and commensurate affordable housing public benefit were accurately calculated and tracked, and whether the city was implementing the program as required by the Land Use Code; and,*
3. *Determine whether commitments to affordable housing benefits were adequately obtained, how they were secured and at what stage in the permitting process they were secured.*

The Auditor has produced a draft report and shared the report with the Seattle Department of Construction and Inspections (SDCI) and the Office of Housing (OH) for review. The audit summarized several key findings and provided 22 recommendations for program improvements. Most of the findings relate to work performed by SDCI, with only a few findings related to OH practices. The departments have reviewed the report and would like to address the key findings as well as provide further explanation for a few of the issues identified as part of the audit.

*A detailed response to each of the Auditor's recommendations can be found in **Table A**, included at the end of this response.*

One notable finding from the Auditor's report confirmed by SDCI and OH is that the Incentive Zoning (IZ) provisions of the Land Use Code are overly complex, at times inconsistent, and in a few cases impractical to implement. SDCI, OH and the Office of Planning and Community Development (OPCD) have sought to remedy these complexities in the Land Use Code with the development of the Mandatory Housing Affordability (MHA) program that will largely replace and simplify the affordable housing requirements of the IZ code. Work still remains, however, to update other incentive provisions to improve consistency and implementability.



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Department Response to Auditor findings based on the first Audit objective

The Auditor's finding relating to the first objective of providing "a list and map of the projects that have elected to participate in Incentive zoning for affordable housing since 2006" indicates that "the two departments did not maintain accurate lists or complete project records therefore, we cannot be sure that the 63 projects they identified is a complete list of all the projects that should have provided affordable housing."

The SDCI and OH cooperated with the City Auditor to produce information as requested. SDCI's data for affordable housing projects is documented in the department's permit tracking system. Our permit tracking system was designed to require the project planner to input the data at the end of the review process just prior to approving the project. Prompts were also included as part of the design to specifically ask whether incentive zoning applied to the project. Planners are not able to approve the project without documenting the answer to this question in the system, and inserting information into fields designed to contain data about all the incentive zoning options that apply. These technology prompts were designed to help ensure the information was captured, but relies on people to input data.

SDCI does not currently have pre-programmed reports that provide information specific to affordable housing, therefore the lists given to auditor were the result of system queries and it took more than one query by the management systems analyst before producing the right set of data details to form a complete list of projects. It is SDCI's belief that since the system has a prompt that requires an answer to the question of whether incentive zoning applies to the project, the odds should be high that the list that was generated was accurate. However, since data input is not required until just before approval, a query of the system, which provides a list of projects at a "snapshot" in time, might not capture projects that are under review and not yet approved for zoning.

As a separate department, OH does not have access to SDCI's permit tracking system, and therefore kept information used for their tracking purposes in a separate spreadsheet. Because each department has a different role in the process, each system is tracking slightly different information and this is one of the primary reasons why the lists were not completely the same. Both departments agree that it would be valuable to share the same data, and have already worked with city IT staff to integrate our data needs into the new Accela permit tracking system that will be implemented in 2017. In the meantime, both departments have started to document current MHA project information in a shared spreadsheet that is being kept in SharePoint, and are working together to document the process as well as roles and responsibilities that would later be formalized into a Memorandum of Agreement between the departments.

One other assertion made in the audit report was that the departments did not maintain complete project records. For most of the projects where this was identified, the reason can be attributed to the fact that SDCI does not require architects to demonstrate compliance to applicable codes (land use, environmental, or building codes) in a standardized format. This is common among jurisdictions. Because this is not a requirement, the information can be presented in numerous ways in a plan set. Experienced plan reviewers know where to look for this information, but for some projects the information may not be obvious to a layperson. In the cases that the auditor questioned, the information was in the plan set but required an experienced plan reviewer to read the detailed building plans themselves to identify and validate the information. In response to this finding, SDCI is designing a standard "table" of affordable housing compliance information that will be required in the future to be included in a standard location in plan sets. The table will include relevant information the city needs to track, including vested code information so that it is clear to a layperson which code provisions apply to

the project. Once designed, planner staff will be trained, and the development community will be informed of requirement.

Both departments agree that data integrity and compliance with regulations is important for projects utilizing the affordable housing incentive provisions. Historically, the number of projects developed using the affordable housing incentives has been a drop in the bucket compared to the total volume of development permitting. Our data indicates that 65 projects out of a total of more than 54,000 building permits granted in the period of 2006 – 2015 utilized the incentive zoning for affordable housing provisions. This small percentage – *one tenth of one percent of the total volume of permits* - reflects the infrequency in which these code provisions were applied. With this perspective, SDCI believes that staff have implemented the affordable housing code provisions with general success. The Auditor identified five projects with accuracy issues – meaning 60 of the 65 projects were found to be generally accurate – a 92% success rating. For the most significant accuracy issues identified, we have already corrected for no loss in affordable housing benefit. We discuss details of accuracy issues later in this response, and acknowledge the importance of improving this success rate to ensure that the city collects all the affordable housing benefits that are owed.

SDCI and OH also understand that the volume of projects will increase beginning in 2017 when the Mandatory Housing Affordability code requirements will start to be implemented across the city. Both departments are actively preparing for the increase in numbers of projects that will be required to contribute to the affordable housing. We have already begun work on changes that align with the auditor's recommendations as outlined later in this response. These changes include: hiring a supervisory level planner to provide secondary reviews on affordable housing projects; working with SDCI technology staff to identify additional data fields to support tracking of affordable housing benefits; creating a standardized template that architects will use in the future to document affordable housing benefits in building plan sets; and documenting the process, roles and responsibilities related to the review and validation of affordable housing benefits. Though much of this work is not yet complete, we are well on our way toward improving the existing review process.

Department Response to Auditor findings based on the second Audit objective

In response to the second audit objective - Verify whether the extra floor area and commensurate affordable housing public benefit were accurately calculated and tracked, and whether the city was implementing the program as required by the Land Use Code –

The Auditor identified numerous projects with inconsistent data, which contributed to the difficulty in validating whether the benefits were calculated accurately. In these cases, SDCI asked a supervisory level planner to review these projects again to validate whether calculations were accurately performed and in all but one case, we found that the calculations were made correctly. In the one instance where the amount was miscalculated, it resulted in under-collecting the affordable housing payment by \$30. This secondary review helped SDCI understand that reviewers need to be more thorough during review to ensure that information on plans or in the computer system are updated to reflect the final calculations and building design.

The audit also noted that 7 projects were not charged an administrative fee of \$550, however these fees are not money that is added to the affordable housing fund, but rather an administrative fee collected on behalf of OH to help cover administrative costs. In response to this finding, staff refresher training has been delivered, to help ensure the fee is collected in the future.

*Detailed information on each of the discrepancies identified in the draft Auditor Report can be found in **Table B**, included at the end of this response.*

The audit findings related to this objective reinforce the importance of ensuring that accurate information is documented on the plans and in the permit tracking system. One change that SDCI is currently implementing to help ensure the accuracy of future calculations is the requirement of a secondary supervisory level review for projects required to provide affordable housing contributions. SDCI has added a supervisory level review to all projects that are currently in our system to ensure the integrity of plan information, affordable housing calculations and data entry in the permit tracking system.

*Additional context for some of the Auditor's findings can be found in **Table C**, included at the end of this response.*

Department Response to Auditor findings based on the third Audit objective

The third audit objective was to determine whether the city secured the developer affordable housing commitments from the projects receiving extra floor area. For ten projects electing the payment option, the audit confirmed the City received payment later in the permitting process than directed by code. SDCI leadership gave direction to staff to allow later payments after learning from attorneys for developers that the code required timing of payment did not coincide with the timing of financing for development projects. SDCI has updated the timing provision in the code to align with our practice of allowing for these later payments as part of the Mandatory Housing affordability framework regulations that have recently been adopted.

The auditor also found two instances where a discrepancy had occurred. For one project, and through no fault of the project developer, a procedural oversight resulted in not collecting a significant affordable housing payment before the building permit was issued. Once this finding was identified in the draft audit report, SDCI quickly contacted the developer of the project and collected the affordable housing payment, plus interest, that was due. SDCI understands the gravity of this oversight and has researched the project history to understand what occurred. What we learned from the system information and the timing of approvals is that one of our senior planners performed the review of the project. The plan documentation included calculations for the required affordable housing payment, which is normally collected just prior to permit issuance. At the time the plans were approved by all other review locations, the senior planner was on an extended medical leave. Another reviewer, unfamiliar with the project was asked to finish the review, and because there were no notes in the system that clearly indicated the housing payments were required prior to issuance, the second reviewer inadvertently approved the project. This situation highlights to SDCI the importance of clear documentation and procedures which might have helped to avert this oversight.

For the other project, SDCI inadvertently issued the building permit without having finalized the recorded affordable housing covenant that is required for projects that commit to providing affordable units within the new development. In this case, the covenant had been drafted and was under review but should have been finalized and recorded prior to issuance of the building permit.

As previously mentioned, SDCI has already implemented a procedure requiring a secondary supervisory review for every project using affordable housing incentives in the future. The second review will ensure that we double check data, calculations, receipt of payment and recorded covenants before permit issuance occurs on future projects.

As the city embarks on the implementation of Mandatory Housing Affordability requirements for new development, both the OH and SDCI understand the importance of working more closely together to ensure that we have structure around our record keeping, our work practices, and our important role in ensuring developer contributions to Seattle’s Affordable Housing program. As such, we intend to fully consider the Auditor’s recommendations for change and will provide periodic updates on our progress to implement changes to our system.

Table A – Agency Response to Auditor’s Recommendations

	<i>OCA Recommendation</i>	<i>Agency Response</i>
1.	<p>The City should develop a program management framework for the Incentive Zoning program for affordable housing, and report a plan for implementation to the City Council, including:</p> <ul style="list-style-type: none"> • Identifying a leadership structure accountable for program results, • Developing performance measures and a process for monitoring results, • Developing a process to propose and enact policy and procedural changes to the program, • Defining roles and responsibilities, and enhancing department collaboration and coordination, • Instituting more oversight, and • Improving and increasing reporting and transparency. 	<p>OH and SDCI concur that a framework for interdepartmental program management can be beneficial.</p> <p>OH and SDCI believe that many of the specific outcomes of having a program management framework, as identified by the Auditor, will be resolved with two actions: 1) Adoption of the Mandatory Housing Affordability program (MHA) citywide and 2) Implementation of the Accela permit tracking system. Both actions are already underway; both efforts have included significant participation by OH and SDCI.</p> <p>First, the citywide implementation of the MHA program will incrementally consolidate the existing Incentive Zoning program requirements for affordable housing contributions under a single program framework. MHA created new chapters in the Land Use Code, which established a mandatory program as opposed to voluntary. MHA clarifies and improves many of the existing inconsistencies and complication present in the Code. Once in place citywide, rather than having</p>

	<i>OCA Recommendation</i>	<i>Agency Response</i>
		<p>many disparate requirements for different zones and geographies that apply uniquely to projects, the MHA program will be more widespread and consistent. This consistency would foster effective administration, and improve transparency, reporting and customer service.</p> <p>Second, implementation of Accela in 1Q, 2017 will improve coordination, collaboration, oversight, and reporting. Both OH and SDCI will have access to the new Accela program. Clear roles and responsibilities will be created to identify those data fields to be completed by OH and those by SDCI. The information currently in an OH spreadsheet will be incorporated into the permit record in Accela. Additionally, if subsequent permits are filed on a property, the affordable housing data will be readily available to review against the current proposal to help track changes that occur throughout the building process. In addition, SDCI recently filled a FTE position responsible for providing oversight and tracking the affordable housing contributions under the new MHA program for SDCI.</p>
2.	SDCI and the Office of Housing should use the same system (e.g., a centralized database) to track incentive zoning properties and regularly check for data inaccuracies.	<p>OH and SDCI concur. Implementation of the Accela permit database system, which is already underway, will accomplish this recommendation. A better tracking mechanism that aligns with the code requirements will be built into Accela to facilitate future reporting and tracking. Presently, the IZ program is administered without an adequate permit tracking system that supports OH and SDCI in stewarding projects through the program. There is no tool that allows the two departments to track a single project across departments. Accela implementation will solve this problem for MHA with improvements to IZ tracking, modeled on the MHA tools, at a later phase.</p> <p>In addition, OH may continue to operate its own list for departmental purposes.</p>
3.	SDCI and the Office of Housing should update, coordinate, and finalize Incentive Zoning procedures for their respective departments.	OH and SDCI concur and will finalize department procedures for IZ and MHA following implementation of Accela.

	<i>OCA Recommendation</i>	<i>Agency Response</i>
		<p>The OH payment processing policy has management approval. OH will be sure to add a date to make that clear.</p>
4.	<p>SDCI and OH should assess the discrepancies we identified to determine their impact, if any, on extra floor areas developers achieved and their affordable housing contributions and commitments and report their results to the City Council.</p>	<p>SDCI will continue to issue training and improve procedures to reduce the number of data entry errors associated with developer contributions. The departments completed a forensic analysis and strengthened the internal procedures to prevent future errors of timing, including a secondary supervisor review of all IZ and MHA projects.</p> <p>Calculation of the required affordable housing contributions to achieve extra floor area is the responsibility of SDCI. OH collects payments and/or secures the covenants. Both departments understand that coordination between the two departments is critical.</p>
5.	<p>The City should change the Land Use Code to require that the bonus amount used to determine the affordable housing contribution be based on the final bonus floor area granted. Until a change in the Land Use Code occurs, SDCI and the Office of Housing should establish a procedure to ensure the final bonus floor area is used to calculate payment and performance amounts.</p>	<p>Using the final square footage as the basis for determining the affordable housing contributions is the current interpretation and business practice. The departments are committed to documenting clear department procedures and issuing training to staff. OH and SDCI will continue to communicate the need to update the IZ Code as needed for consistency.</p> <p>This is further clarified under MHA frameworks. Code changes require action by the City Council.</p>
6.	<p>SDCI should modify its incentive zoning permit review procedures and implement a control to ensure a consistent process for when developer payments are required to be made or covenants executed before issuing applicable permits.</p>	<p>SDCI concurs and is committed to documenting clear department procedures and issuing training to staff. SDCI will continue to communicate the need to update the IZ Code as needed for consistency.</p> <p>This is clarified under the MHA frameworks. Code changes require action by the City Council.</p>
7.	<p>The City should change the Land Use Code to require all incentive zoning projects to have written agreements recorded with the King County Recorder’s Office for all incentive zoning projects.</p>	<p>OH and SDCI concur that consistent documentation is important. This is current practice and is explicit only for projects electing the performance option in the new code language for the MHA frameworks. SDCI, in consultation with OH, is committed to establishing a standard for plan set documentation and support future updates to the Land Use Code to establish consistent requirements for all IZ projects. OH and SDCI are also committed to documenting clear</p>

	<i>OCA Recommendation</i>	<i>Agency Response</i>
		<p>department procedures and issuing training to staff.</p> <p>Development of standard plan documentation templates is underway for MHA, and IZ changes will be modeled from those.</p> <p>Code changes require action by the City Council.</p>
8.	<p>The Land Use Code should be updated to require all incentive zoning projects to include the bonus calculation on the building permit application plans, and SDCI should consistently enforce this requirement.</p>	<p>This is the current practice and clarified in the new code language for the MHA frameworks. SDCI recognizes the need to update business rules and establish well-documented department procedures as well as issue training to staff. Code changes require action by the City Council.</p>
9.	<p>SDCI should ensure that the new permitting system (Accela) includes a field to document vesting dates for incentive zoning projects and ensure that all recorded project documents (declarations and covenants) include the vesting date.</p>	<p>SDCI concurs that documenting the vesting date is important. The current practice is to include vesting dates on all recorded declarations and covenants. The new permit tracking system may not be able to automate the calculation needed to establish the vesting date. SDCI will review this recommendation to find ways to clearly document vesting dates for projects making an affordable housing contribution.</p>
10.	<p>SDCI should improve the permit application intake process to assess and collect the incentive zoning review fee.</p>	<p>SDCI concurs. SDCI will establish a clear and well documented process and department procedure.</p>
11.	<p>SDCI should determine whether uncharged fees can be retroactively collected.</p>	<p>SDCI will investigate this recommendation with Law.</p>
12.	<p>The Land Use Code should require developers to directly submit payments to FAS, and the Office of Housing should establish a policy and procedure to reflect this change.</p>	<p>OH will investigate this recommendation and will continue to work closely with FAS to consider this change.</p>
13.	<p>If the Office of Housing demonstrates a reason for keeping check copies and continues to do so, it should redact personally identifiable information from the copies it retains.</p>	<p>OH concurs. The Office of Housing has implemented a policy of redacting personally identifiable information from the copies it retains.</p>
14.	<p>SDCI and Office of Housing staff responsible for verifying or approving Incentive Zoning bonus amounts and affordable housing commitments should annually complete a Financial Interest Statement Form.</p>	<p>OH and SDCI concur and are committed to reviewing and completing a Financial Interest form as applicable.</p>

	<i>OCA Recommendation</i>	<i>Agency Response</i>
15.	SDCI should modify the permit review process to include additional oversight of all incentive zoning projects.	SDCI commits to creating clear department procedures and additional oversight during initial staff training of incentive zoning. We will provide routine refresher training to ensure staff is using the most up to date procedures to complete reviews. Continued oversight of the program is not a financially sustainable solution due to the volume of projects associated with IZ.
16.	The Office of Housing should provide program reports more frequently than every two years. At minimum, reports should be annual and should be posted on the City's website.	OH concurs and is committed to providing transparency on the programs we administer. OH will establish protocol for regular reporting. Existing reporting on the Incentive Zoning program has been included in OH Annual Reports dating back at least to 2005. Code changes require action by the City Council. Per CB 18854, under MHA, OH and SDCI will report annually on the performance of MHA, including the number of affordable units produced and preserved through the payment and performance options. The 2018 report will compare changes in the CPI with changes in multifamily rents and other variables used to determine initial payment amounts. The 2019 report will include an assessment of past and anticipated program performance, including an assessment of whether a developer building outside of DT and SLU would be economically indifferent between performance and payment.
17.	SDCI should provide a list and details of projects participating in Incentive Zoning for affordable housing on the City's website and update this list regularly.	SDCI concurs and will investigate ways to make IZ information readily available on a regular basis. Any proposal that involves technology updates may take several years to complete. The OH website already includes a list of all private apartment building with IZ and MFTE units available for rent.
18.	<p>The Office of Housing should expand its reporting as recommended in the 2014 Policy Options Incentive Zoning consultant report, to include:</p> <ul style="list-style-type: none"> • The share of projects that selected the performance, off-site development, and payment-in-lieu of fee options. • The total dollar amount of fees pledged, collected, committed to a project, and spent in the past year. 	OH will consider this recommendation.

	<i>OCA Recommendation</i>	<i>Agency Response</i>
	<ul style="list-style-type: none"> • The number of housing units at each relevant affordability level in projects receiving commitments of payment fee revenue. • For payment fee funds expended in a given year, the average number of months that each dollar was held by the City before expenditure. • For all off-site projects approved in the past year, the number and affordability level of affordable units in the proposed off-site project compared with the number and affordability levels that would have otherwise been required under the on-site performance option. 	
19.	<p>City Stakeholders should examine various methods for determining how many units are created with incentive zoning payments and formally agree on the methodology to be used long term.</p>	<p>City stakeholders have already thoroughly vetted the MHA program, through the HALA process. There remains no disagreement about the value of the two methods for counting units, as established in the Consultant report cited in this audit.</p>
20.	<p>SDCI should provide developers with online information and resources, including basic program information, application instructions, a customer service contact, and an affordable housing contribution plan template.</p>	<p>SDCI concurs. New TIPs are being created and applicant tools for the MHA program that will increase the awareness of the code requirements and identify the required documentation for the plans. SDCI commits to creating similar TIPs for the IZ program. Until the IZ code is updated, the process will continue to be convoluted and challenging to describe to applicants. The IZ program would benefit from similar standard plan sheets that are being developed for MHA so that the data provided by the applicant is the same data that is entered by staff at each stage of the process (i.e. MUP and building permit).</p>
21.	<p>On its website SDCI should publish the fee schedule for payment and other fees related to incentive zoning for affordable housing projects. They should include fee information for the current year and the prior two years. For example, for 2016, the fee schedule should be for 2016, 2015, and 2014.</p>	<p>SDCI concurs and will investigate ways to make this information available to staff and the public through the website or possible director’s rule.</p>

	<i>OCA Recommendation</i>	<i>Agency Response</i>
22.	The City should use a more a more relevant economic index, such as local and regional construction costs, to adjust affordable housing payment in-lieu of fees and to determine deferred payment fees. This would require a change to the Land Use Code.	The departments will consider this recommendation. Code changes require action by the City Council.

Table B – SDCI Annotated Table from Appendix D of Auditor’s Report (Summary of Project Discrepancies)

The following table has been edited and updated to accurately provide the circumstance of these “discrepancies”. Underlined text was added or edited from the original table to provide additional background or facts for each project. The impact on the affordable housing payment for one project could not be verified. All others should not be categorized as “discrepancies” as defined in the report.

Project Address	Discrepancy related to Payment Projects	Accurate Affordable Housing Payment Made?	Building Permit Date
815 Pine St – Previously Deferred	The commitment letter issued by the Office of Housing shows extra floor area as 105,923, and the permitting system shows 108,648*. No declaration and no building plan provided.	<p style="text-align: center;"><u>YES</u></p> <p><u>Data entry into permit tracking system did not result in an inaccurate payment.</u></p> <p><u>The permit tracking system shows the total amount of extra floor area in the project instead of the square footage amount (80% of total) used in the calculation to determine the amount of affordable housing. This is not inaccurate information; it is a difference in the construct of the data entry fields in the permit tracking system and the Land Use Code requirements. The payment amount matches the documented calculation and is accurate. In addition, the code did not require a recorded declaration in this zone. Our records also indicate that a building plan was provided, which can be shared again if needed.</u></p>	8/3/2012 COO: 2/6/2015
801 5th Ave	The declaration shows extra floor area as 254,346, and the building plan shows 261,384.	<p style="text-align: center;"><u>Yes</u></p> <p><u>The affordable housing contribution for this project could not be verified as of the date of the Audit because the project changed scope and a revision permit review is underway. A new declaration has been recorded which accurately reflects proposed revisions. Payment is to be made at issuance of revised building permit.</u></p>	11/22/2013

Project Address	Discrepancy related to Payment Projects	Accurate Affordable Housing Payment Made?	Building Permit Date
1823 Minor Ave – Currently Deferred	The declaration and permitting system show the extra floor area as 106,366, and the building plan shows 108,430 because the plans were not updated to reflect a change from the performance option to the payment option.	<u>YES</u> <u>Data entry into the permit tracking system was based on correspondence between SDCI staff and the developer without updating the plans prior to issuance.</u>	2/2/15
501 Fairview Ave. N	Building plan image and declaration show 71,907 extra floor area, the permitting system shows 72,034.	<u>YES</u> <u>Data entry was not accurately updated when building plans were issued.</u>	12/31/2014
399 Fairview Ave N (North Tower) 300 Boren Ave N (South Tower)	The building plan and declaration shows extra floor area as 147,122, and the permitting system shows 149,141.	<u>YES</u> <u>Data entry was not accurately completed.</u>	11/13/2014
Application Fee Not Collected	7 projects were not charged the \$550 application fee since 2013.	<u>N/A</u> <u>This is not a missed affordable housing contribution. It is an administrative project fee for OH, applicable in some zones.</u>	Since 2013
1321 Seneca St	Calculation error in determining payment amount.	<u>NO</u> <u>Calculation error resulted in an underpayment of \$30.00. The floor area used in the payment calculation changed in the Land Use Code from net to gross.</u>	1/21/2015
802 Seneca St Previously Deferred	Calculation error in determining deferred payment amount.	<u>NO</u> <u>The floor area used in the payment calculation changed in the Land Use Code from net to gross, resulting in a minor difference in the amount of payment. The payment was based on the applicable CPI.</u>	5/30/2013 COO: 3/24/2015

Table C – Additional Context in Response to Auditor’s Findings

Summary of Auditor Findings	Agency Response
<p><u>Further context and description of the timing errors found in the Auditor’s Report.</u></p> <p><i>“SDCI and the Office of Housing maintained separate lists with conflicting data. As of April 2016, we found two additional projects with no affordable housing contribution which may have been a result of a breakdown in communication, as the Office of Housing believed the projects were on hold, yet SDCI had already issued the building permits.” (pg.1)</i></p> <p><i>“For projects electing the payment option...we confirmed that the City received the payments. ...For the two projects that received a bonus but provided no affordable housing contribution, the departments did not report having received affordable housing contributions and we found no evidence that developers committed to providing affordable housing contributions as of April 2016.” (pg. 4, with footnote 5)</i></p>	<p>Over the course of the Audit, the project participation list increased from 63 initial projects to 65 projects as new reports were pulled from the permit tracking system. Of the 65 audited projects, the Auditor identified only two projects with meaningful timing errors; permits were issued prior to receipt of affordable housing contributions. Both errors have been corrected and there was no loss in affordable housing contribution. In the future, a Supervisory review will be applied to all IZ and MHA projects to provide an additional check prior to issuance of a permit.</p> <ul style="list-style-type: none"> • Project 1: The Auditor identified one project that had not yet made the required payment even though the permit had been issued. When the lack of payment was identified, the City sought payment and within a week of contacting the developer, received the original \$3.4 million plus interest for a total contribution of \$3.7 million. Evidence of the developer’s required payment was included through calculations in the plan set. This error is an issue of timing that resulted from a lack of clear documentation and extraordinary circumstances that are not typical of the permit review process. A typical permit process maintains a single zoning reviewer from start to finish. In this case, a senior planner was assigned to review the permit application for compliance with the Land Use Code, including the IZ provisions; however, at time of permit issuance, the assigned reviewer was on extended medical leave and a secondary reviewer was assigned to complete the permit reviews. Without the project background or notes of the initial zoning reviewer and given the inadequacy of the permit tracking system, the secondary reviewer issued the permit without first obtaining the affordable housing contribution.

Summary of Auditor Findings	Agency Response
	<ul style="list-style-type: none"> • Project 2: The Auditor identified a project with an issued building permit that did not have a recorded housing covenant in place. A draft covenant that specified the accurate affordable housing requirement had been reviewed as part of the permit process; final recording occurred after the permit was issued and is currently in place. • Implementation of Incentive Zoning had been largely successful in the remaining projects.
<p><u>Further context and response to the assertion that there is no process in place to allow revision to affordable housing documentation.</u></p> <p><i>“There was no formal process for the City to revise affordable housing contribution agreements when building plans change. Thus, developers may not have provided the City an accurate affordable housing contribution.” (exec summary)</i></p> <p><i>“After agreements to provide affordable housing were in place, there was no formal process to address changes in building plans that resulted in a different housing contribution.” (Pg. 4)</i></p>	<p>Application of Incentive Zoning for affordable housing is a nondiscretionary review based on requirements in the Land Use Code that is completed through the iterative plan review process by SDCI staff in consultation with OH. When building plans change after issuance of a building permit, a revision permit is required. This is a standard process, understood by SDCI staff.</p> <p>Within the permit revision process, there is no specific instruction for how to update affordable housing contribution agreements; however, it is handled in a similar fashion to any other development standard in the Land Use Code and documented in the revised plan set (tables, diagrams, calculations). If needed, the legal documents (declarations and housing covenants) are also updated as part of the permit revision process. Declarations and covenants are legal documents that run with the land and are recorded through the County Recorder’s Office. Developers/owners use standard processes and language to repeal and replace previously recorded documents with new documents.</p>

APPENDIX G

Seattle Office of City Auditor Mission Statement

Our Mission

To help the City of Seattle achieve honest, efficient management and full accountability throughout City government. We serve the public interest by providing the City Council, Mayor and City department heads with accurate information, unbiased analysis, and objective recommendations on how best to use public resources in support of the well-being of Seattle residents.

Background

Seattle voters established our office by a 1991 amendment to the City Charter. The office is an independent department within the legislative branch of City government. The City Auditor reports to the City Council, and has a four-year term to ensure her/his independence in deciding what work the office should perform and reporting the results of this work. The Office of City Auditor conducts performance audits and non-audit projects covering City of Seattle programs, departments, grantees, and contracts. The City Auditor's goal is to ensure that the City of Seattle is run as effectively, efficiently, and equitably as possible in compliance with applicable laws and regulations.

How We Ensure Quality

The Office's work is performed under the Government Auditing Standards issued by the Comptroller General of the United States. These standards provide guidelines for audit planning, fieldwork, quality control systems, staff training, and reporting of results. In addition, the standards require that external auditors periodically review our office's policies, procedures, and activities to ensure that we adhere to these professional standards.