Seattle City Council Approves Upzones in Urban Villages Citywide, in Exchange for Mandatory Housing Affordability

Legal Alert
March 21, 2019

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Councilmember Rob Johnson Resigns After Spearheading Successful Legislative Push

After years of process, the Seattle City Council adopted the cornerstone of the Grand Bargain and HALA recommendations: Mandatory Housing Affordability, or "MHA." Since 2017, MHA has governed select areas in the City, including Downtown, Uptown, South Lake Union and the University District, and on March 18, 2019, the City Council voted 9-0 to implement MHA in the other 27 urban centers and villages throughout the City. The legislation will take effect 30 days after the Mayor signs, and then it will be subject to legal challenge.

Three days after the City Council voted to approve the upzones, *The Seattle Times* reported that the chair of the Council's Planning, Land Use, and Zoning Committee ("PLUZ"), Councilmember Rob Johnson, who spearheaded the legislative effort to adopt MHA, announced his resignation effective April 5, 2019. The first-term Councilmember had already declined to seek re-election in November. Councilmember Lorena González will assume the Chair of the PLUZ Committee, and the Council will appoint an interim member to represent District 4 until the November election results are certified.

The zoning districts in all urban villages will receive a small amount of additional development capacity specific to the districts and the type of development anticipated. Most districts will allow one floor of additional height, but in those zones where practicalities preclude the use of additional height, such as when additional height requires switching to prohibitively expensive high-rise construction, the upzones give capacity in other ways, such as larger maximum floorplates or increased floor area ratio ("FAR"). In exchange, developers must either provide affordable housing units as part of the project or pay

MHA on all new square footage, regardless of whether the project uses the additional capacity.

The City is mapped into low (yellow), medium (teal), and high (pink) zones, with the MHA fees varying accordingly.

MHA rates also vary with upzone intensity. For example, a low-rise zone that gets one additional floor of capacity would likely have an "M" suffix and the lowest fees, whereas a rezone from single family to LR2 might get M2 and the highest fees.

For **commercial development**, the fee schedule is as follows:

For the "performance" option, percentage of floor area that must be provided as affordable housing (either on- or off-site) is as follows:

For **residential projects**, the fees can be as high as $32.75/square foot:

The percentage of affordable units that must be provided (either on- or off-site) is as high as 11%:

MHA does not apply in Industrial General or Industrial Buffer zones, or in Yesler Terrace.

In several areas in the City, the additional capacity may not support the additional cost of MHA. Because it was intended to be an exchange of value between landowners/developers and the City, the Grand Bargain sought to impose fees roughly commensurate with those previously imposed by the City's incentive zoning regime. For those areas subject to incentive zoning (Downtown and South Lake Union), the City largely succeeded, with performance rates on the order of 3%-5%, and payment up to $13.25/sq. ft. But that part of the Grand Bargain did not guide MHA legislation in other parts of the City, and as a result the new legislation imposes performance rates of 5%-11% and fees up to $32.75/sq. ft.

The framework, adopted in 2015 and now effective through Monday's legislation, included certain "escape valves." See SMC 23.58B.030B-D, 23.58C.035B-C. However, these escape valves may not work economically, and may not provide meaningful relief.

MHA does have legal vulnerabilities under state law, and the substantially higher MHA requirements adopted this week may put MHA itself at risk as developers who did not participate in the Grand Bargain consider their legal options. In addition, a coalition including community councils and other neighborhood activists, previously (albeit largely unsuccessfully) challenged the SEPA review of the MHA upzones. Some or all of those groups may choose to challenge the legislation, as well. Depending on the issues presented, an appeal might go to the state Growth Management Hearings Board or straight to superior court.

MHA is an immensely complicated regulatory regime, but the Real Estate and Land Use lawyers of Foster Pepper have been studying it for years. If you have any questions about how MHA might affect your project, please contact Steve Gillespie at steve.gillespie@foster.com or

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