



February 6, 2017

RE: Council Bill 118862 (University District rezone)

Dear Councilmembers:

We are writing to strongly urge members of the Seattle City Council to reject Council Bill 118862 (University District rezone) unless the Mandatory Housing Affordability (MHA) performance and payment amounts are substantially reduced. In short, the proposed MHA amounts would undermine the City's affordable housing goals and place the MHA framework on tenuous legal footing. Our reasons are detailed in the attached Sightline article (dated 2/2/17, [link](#)) and we offer further supporting evidence in two additional Sightline articles also attached (dated 1/23/17, [link](#); and 1/10/17, [link](#)).

Sightline has been a fervent supporter of MHA since I (Alan Durning) served on HALA and helped make the case for it. Unfortunately, the city's draft MHA Upzones for the U District badly botch the implementation of the program's founding principle of upzones and mandates that are financially balanced—where the enlarged buildings pay for the additional subsidized housing.

Our analysis shows that the proposed SM-UD240 upzone under MHA would not create any value whatsoever under the city's published assumptions for current market conditions in the U District. The resulting loss of return on investment caused by MHA would quash the production of housing, threatening the city's ability to meet its targets for creating subsidized homes, and also subvert the city's goal of putting new homes near the U District light rail station.

The proposed SM-UD240 upzone also faces grave risk of legal challenge. Because all development must pay or perform, RCW 36.70A.540 ([link](#)) requires the jurisdiction to provide an "incentive." But our economic analysis shows that the SM-UD240 upzone would not provide any incentive for developers to participate because it creates so little financial value compared to the cost of the affordability mandates. Accordingly, we believe it would not meet the legal requirements of RCW 36.70A.540.

Furthermore, Washington State law cannot supersede US Supreme Court Nollan/Dolan/Koontz law that establishes nexus and proportionality requirements and applying such requirements to monetary exactions. Thus we believe that the mandatory program under the MHA SM-UD240 upzone would also violate the statutory nexus and proportionality requirements of RCW 82.02.020 ([link](#)).

We have also published economic analysis showing that value created by both the proposed NC75 and NC95 MHA upzones ([link](#)) are well below the cost of the mandated extraction for affordable housing. Though we haven't run the numbers, based on our prior analysis, the proposed MHA upzone from NC65 to SM-UD85 in the U District is likely to create relatively little value because of higher construction costs necessary to reach 85 feet in height. Our review of all the proposed MHA upzones ([link](#)) indicates a capriciously and widely varying amount of development

capacity granted and value created. We believe that these factors also render the MHA program, as currently drafted, vulnerable to legal challenges.

Our conclusions were based on before-MHA versus after-MHA economic analysis, which is the only way to assess the value created by an MHA upzone and how it compares to the affordability exaction. To our surprise and disappointment, the City of Seattle has not conducted any such before-and-after analysis. In fact, stakeholders were told by city staff that the city was avoiding conducting this type of analysis precisely because the results could make the city more vulnerable to a legal challenge. The city's legal strategy appears to be "look the other way and hope no one else does the analysis." Unfortunately, choosing not to conduct before/after analysis also makes it impossible for policymakers to know whether MHA will impose such a heavy a cost on homebuilding that it backfires on affordability.

The before-and-after analysis that would shed light on MHA's legality is the very same analysis that would reveal how effective MHA would be in achieving the city's affordability goals. In other words, if the program establishes a balanced value exchange between the upzone's incentive and the affordability exaction, it will be both legal *and* effective. In the case of the SM-UD240 upzone, our analysis shows that for it to be both legal and effective, the performance and payments must be reduced to roughly one half of the currently proposed numbers. Performance and payments amounts of 4 percent and \$10 per square foot would match similar MHA upzones proposed for South Lake Union, and because rents are lower in the U District, even lower mandates than that for the U District may be most successful at achieving the program's goals.

In summary, although Sightline strongly supports the concept of MHA and its great promise to leverage growth for affordability and create inclusive neighborhoods, regrettably we must oppose it as proposed in the U District rezone (Council Bill 118862). We believe that the MHA as currently proposed for highrise upzones in the U District would not only be ineffective for improving affordability, but also illegal. The city's intention to move ahead with MHA without vetting it first through before-and-after economic assessment is a recipe for failure twice over.

Fortunately the recipe for success is straightforward: Conduct before-and-after economic analysis for the U District upzones and set the MHA performance and payment amounts accordingly---even if, as our analysis indicates, it means a reduction in the requirements is necessary to bring the program into economic balance. A balanced MHA program will not only maximize the creation of both subsidized housing and market-rate housing, it will also stand on strong legal footing.

Thank you for your consideration.



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