117 E. Louisa St. #1
Seattle, WA 98102-3278

February 23, 2019

City Councilmembers Sally Bagshaw, Lorena Gonzalez, Rob Johnson, Debora Juarez, Bruce Harrell, Lisa Herbold, Teresa Mosqueda, and Mike O'Brien, and Kshama Sawant
601 Fifth Ave., Floor 2, P.O. 34025
Seattle, WA 98124-4025

Mayor Jenny Durkan
601 Fifth Avenue, Floor 7, P.O. Box 94749
Seattle, WA 98124-4749

AMENDMENTS NEEDED IN THE TEXT OF COUNCIL BILL 119444 AND OTHER ORDINANCES AND RESOLUTIONS RELATED TO MHA

To Councilmembers Johnson, Sawant, Bagshaw, Gonzalez, Juarez, Harrell, Herbold, Mosqueda, and O'Brien, and Mayor Durkan:

This message is to follow up on the Eastlake Community Council's Dec. 20, 2018 letter and Feb. 8 e-mail to all of you. It is a reminder and restatement of improvements that we suggest are needed in the text of the Mandatory Housing Affordability ordinance (Council Bill 119444) and related ordinances and resolutions. In a separate letter also dated today, we provide our priority improvements for the proposed Eastlake zoning map that is a part of CB 119444.

1. Include in the MHA ordinance a "clawback" provision that, should the courts invalidate its affordable housing requirements (e.g. to build on-site or to pay in-lieu fees), the MHA upzones and rezones will revert to the previous zoning.

Explanation. As it is well documented that the proposed upzones will cause significant displacement of affordable housing, it is essential that these upzones not be kept if MHA's affordable housing requirements are invalidated. Otherwise, there will be an irresistible incentive for members of the development community to mount a legal challenge of the affordable housing requirements. A "clawback" provision that automatically repeals the upzones and rezones in the event of a legal reversal would discourage a possible legal challenge from the development community. Adopting a "clawback" provision will also reassure the public that the City Council is truly concerned about affordable housing and displacement, not just about adopting upzones and rezones.

2. Reduce the proposed MHA rezones and upzones to the heights and acreages needed to ensure the production of the number of affordable housing units that City plans call for in the neighborhoods affected by the MHA ordinance. Do not rezone or upzone beyond what is needed to reach this affordable housing target.

Explanation: As currently proposed, the proposed MHA rezones and upzones are well beyond what is needed to produce the proposed number of affordable units. In a neighborhood like Eastlake, the zoning changes will have severe negative consequences for livability, affordability, and displacement, and should not be more than is needed to produce the affordable housing proposed.

3. No net loss policy for low income and affordable housing

Explanation. MHA has a numerical goal to provide low income and affordable housing stock. However, MHA does not have a policy that calls for no net loss of such stock in each neighborhood, nor a mechanism to track its effectiveness. In the less than two years since MHA was adopted for the University District, it has become clear that the City grossly underestimated the level of displacement that is now resulting from the increase in development capacity brought by the rezones and upzones. CB 119444 needs to require no net loss of low income and affordable housing in each neighborhood, and needs to provide the tools to uphold that result, within each neighborhood affected.

4. Increase in-lieu fees to encourage on-site affordable housing performance.

Explanation: As has been clear since the moment that the "Grand Bargain" ensured a low level of in-lieu fees, these low fees will incentivize developers to contribute to the housing fund rather than build affordable units on-site. This is concerning in that it assists and will accelerate Seattle's racial and economic re-segregation. MHA's current proposed level of in-lieu fees is far lower than with similar programs in other cities.

A substantial increase in the in-lieu fees is needed in order to raise sufficient funds for subsidized housing projects and to create a greater incentive for developers to build affordable units into their projects. The current level of in-lieu fees is so low as to encourage developers to buy out of on-site affordability requirements, making it likely that neighborhoods like Eastlake with high property values will lose their existing affordable housing without it being replaced in the new construction that destroyed the previously affordable units.

5. Require that the affordable and low income housing funded by "in lieu" fees be located in the neighborhood where the in-lieu fees were raised, or within a quarter mile of that neighborhood's boundary unless the payer is willing to pay a higher in-lieu fee. As is done in Los Angeles, increase the in-lieu fee as the replacement subsidized housing is built farther from the very neighborhood where the development occurred.

Explanation. The MHA ordinance as currently proposed does not provide sufficient incentive for affordable housing to be built in to new construction. As in-lieu fees would be the preference of developers especially in neighborhoods like Eastlake with high property values, such neighborhoods will become cash cows to generate funds that nonprofit housing developers will use to build subsidized housing in areas with more affordable land cost, as has been their practice for decades. It is a practice reinforced by per-unit cost ceilings embodied in local, state, and federal sources of funding for subsidized housing.

PROPOSALS FOR RELATED LEGISLATION AND RESOLUTIONS

Passage of the MHA ordinance must not occur without other improvements such as the following that can be adopted through related ordinances and resolutions.

6. Restore on-site parking requirements for new residential buildings that are currently waived by City ordinance except for those buildings which have at least 15 percent of units that are affordable to those with incomes below the citywide median income. If that change is regarded as too far-reaching, restore on-site parking requirements for new buildings only in neighborhoods like Eastlake where SDOT sells more Restricted Parking Zone (RPZ) permits than the number of on-street parking spaces, a clear indication that on-street and on-site parking supply is already extremely tight.

Explanation: Revised Code of Washington section 26.70A.540 which gives Seattle the authority to act under MHA specifically mentions "parking reductions" as one of the items of value which municipalities can convey to developers in order to empower the municipalities to impose on developers an inclusionary zoning requirement or an in-lieu fee. Indeed, the parking reductions and exemptions first made in Seattle's Land Use Code many years ago were for non-profit housing projects, specifically to provide an incentive to produce affordable housing units.

However, in recent years the City has in many neighborhoods unselectively reduced or eliminated on-site parking requirements for all development. In doing so, the City gave away this benefit without getting any affordability in return such as RCW 26.70A.540 would allow the City to do. What the City gave away it can also take back, and then convey in a more selective way that creates value under RCW 26.70A.540 as an incentive for affordable housing.

Without the proposed restoration of on-site parking requirements, the MHA upzones and rezones will further degrade the availability of on-street and on-site parking without using the carrot of reduced or eliminated on-site parking requirements to produce more affordable housing. The ordinance change proposed here would restore parking reductions as an incentive for affordable housing that the City can use under RCW 26.70A.540 to impose inclusionary zoning for on-site affordable housing or to impose in-lieu payments to produce affordable housing elsewhere. Doing so would make it possible for the City to impose inclusionary zoning and in-lieu fees without need for upzones both in the areas now proposed for upzones and rezones, and in multi-family zoned areas that are not proposed for upzones and therefore are not currently proposed for MHA requirements. See the Dec. 20, 2018 ECC letter for a possible variation of this proposal.

7. Restore setback requirements (yards) for new construction in multi-family zoned areas to a size that will allow large trees. The Land Use Code should require a minimum side setback of 5 feet; a minimum front and rear setback of 15 feet; and a minimum side setback of 10 feet above 21 feet in height. The Land Use Code should also require lowrise and NC zone projects to set aside at least one 20' x 20' area at grade for landscape and a large tree planted in natural soil.

Explanation: When considering the proposed MHA ordinance, it is easy to forget that the "L" in HALA stands for livability, reflecting an unfulfilled promise that MHA was to pursue affordability in a way that protects and enhances livability. Indeed, science and everyday experience tell us that trees, landscaping, urban wildlife and open space and sunlight promote psychological and physical health. The very choice of the term "urban village" and the City's explanation of what the urban village designation would bring to the neighborhoods that were induced to welcome it, embody a promise that growth will occur only with improved livability, not a decline.

Unfortunately, past City Councils have amended the Land Use Code to successively reduce required setbacks in multi-family zoned areas down to a size that can no longer be dignified with the name "yard", and certainly to a size too small to accommodate large trees. The result is to deny to the families and others who dwell in multi-family zoned areas the beauty, shade, noise reduction, air cleaning, and songbirds that large trees provide in single family zoned areas.

The virtual elimination of setbacks (yards) and therefore of large trees and their many benefits is just one of the many ways that the livability of multi-family zoned areas is being degraded at the very time when the City wishes to move to these areas more people, including families and children. Restoring required setbacks will bring back to multi-family zoned areas the balancing protections for village-like livability that they were promised in the 1994 Comprehensive Plan and in the neighborhood planning process under which the urban villages were established and confirmed.

Under the MHA proposals, inclusionary zoning requirement and the in-lieu fee to buy out of it would apply whether or not a new building maxes out the allowable space. Thus unless required setbacks and yards are restored, developers will (more so than without MHA) have every incentive to use up with buildings every square inch of the upzone's new development capacity, causing the destruction of existing large trees and leaving no room for their replacement by other large trees.

8. Strengthen the SMC 25.11.090 regarding tree replacement and site restoration by adding the following language:

"Each exceptional significant tree (six inches DBH and larger) and over two (2) feet that is removed in association with development in all zones shall be replaced by one or more new trees, the size and species of which shall be determined by the Director; the tree replacement required shall be designed to result, upon maturity, in 20 years, in a canopy cover volume that is at least equal to the canopy cover volume prior to tree removal. Preference shall be given to on-site

replacement. When on-site replacement cannot be achieved, or is not appropriate as determined by the Director, preference for off-site replacement shall be on public property a fee-in-lieu shall be paid to the City to replace and maintain the tree or trees in the neighborhood where they were removed or elsewhere as needed in the city. The City shall enter all significant trees on site, trees removed, and trees replaced into SDCI's current database system; noting tree species, common name, DBH, height, condition and location."

9. We thank the City Council for, we believe, already committing to include in a companion resolution the following language to support action toward the following goals, and we urge that this resolution language be adopted:

"Improve tree regulations
a. Retain protections for exceptional trees
b. Create permitting process for removal of significant trees (trees 6 inches in diameter in breast height or larger)
c. Establish replacements requirements and in-lieu fee option
d. Fund administration and enforcement of tree regulations".

Conclusion**.** The Eastlake Community Council urges the City Council to adopt the above proposals which we suggest are needed before the Mandatory Housing Affordability program can actually merit its claims for affordability and livability. Please recognize that MHA as currently proposed in CB 119444 will in significant ways undermine affordability and livability, and that this problem needs to be fixed before the ordinance is adopted.

The above message was unanimously authorized at a meeting of the Eastlake Community Council board of directors.

Sincerely,

Ann E Prezyna

Ann Prezyna, President
Eastlake Community Council
info@eastlakeseattle.org
http://eastlakeseattle.org