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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of
WALLINGFORD COMMUNITY
COUNCIL, ET AL.

Of Adequacy of FEIS Issued by the
Director, Office of Planning and
Community Development

Hearing Examiner File:
W-17-006 through
W-17-014

JUNCTION NEIGHBORHOOD ORGANIZATION'S
MOTION FOR SUMMARY JUDGMENT
REGARDING CITY'S FAILURE TO PROVIDE
ADEQUATE NOTICE OF DETERMINATION OF
SIGNIFICANCE RELATING TO MHA EIS

The West Seattle Junction Neighborhood Organization ("JuNO"), appellant in the above-captioned appeal (the "EIS Appeal") respectfully moves the Hearing Examiner for an order granting summary judgment in its favor and finding the notice of the Determination of Significance and Request for Comments on Scope of EIS (the "DS Notice") provided by the Office of Planning and Community Development (the "City") failed to meet the statutory requirements described herein.

I. SUMMARY OF ARGUMENT

During the eight months prior to the City's issuance of the DS Notice on July 28, 2016, the City was careful not to alert urban village residents that it intended to rezone all single-family

COPY

1 neighborhoods in 21 of the City's urban villages¹ to multi-family zoning designations. The City knew
2 that the rezones would immediately and directly impact thousands of single-family homeowners and
3 renters in urban villages in every corner of the city, and at every socioeconomic level.

4 The City's deliberate attempts to fly under the radar are evidenced by its false assurances,
5 misrepresentations and intentional silence at the very community events at which it should have been
6 educating the public as to its true intentions prior to issuing its DS Notice. Just enough information
7 was given to allow the City to claim it had engaged with the public but it is abundantly clear from the
8 transcripts and written materials that its intention was to lull residents into a false sense of security
9 while it pushed its plan forward internally.

10 The DS Notice issued by the City is consistent with this pattern. The DS Notice carefully
11 describes the City's intent to generate affordable housing through new multi-family development and
12 developer fees related to that development. It equally carefully fails to disclose the primary element
13 of the proposal: the new multi-family development generating the affordable housing and/or fees
14 **would be created largely through rezoning every single-family parcel in 21 urban villages**
15 **throughout the City of Seattle.**

16 Notwithstanding the massive geographic and demographic reach of the proposal and the
17 thousands of diverse Seattle residents to be impacted, the City chose to publish the DS Notice in the
18 Seattle Daily Journal of Commerce, a publication with 4,000 print subscribers, geared toward
19 businesses.

20 Then, rather than organizing and hosting a public meeting at which impacted individuals could
21 congregate and share thoughts, ideas and concerns with the City and each other as required by the
22

23 ¹ The remaining five urban villages do not have existing single-family zoning.

1 Seattle Municipal Code, the City simply made staff available at two summer festivals to collect
2 comments from individuals.

3 In short, having long pursued its course of action unimpeded by public interference, the City
4 made no real attempt to satisfy the letter or the spirit of the law requiring notice and legitimate
5 consideration of community input.

6 II. RELIEF REQUESTED

7 JuNO Requests that the Hearing Examiner enter summary judgment in favor of JuNO, and
8 against the City, finding that (1) that the DS Notice failed to adequately describe a main element of
9 the City's MHA proposal as required by WAC 197.11.360 and SMC 25.05.360A; (2) that the City
10 failed to provide notice of the determination of significance by a reasonable method as required by
11 WAC 197.11.510(1); and (3) that the City failed to hold a public scoping meeting as required by SMC
12 25.05.409.

13 III. BACKGROUND FACTS

14 A. Neighborhood Plan Policies to Maintain Single Family Zoning are Included in the Seattle 15 2035 Comprehensive Plan.

16 1. The City Adopted Neighborhood Plan Policies to Retain Single-Family Zoning.

17 Seattle's 1994 Comprehensive Plan designated a number of areas across the City as "urban villages."
18 See Tobin-Presser Decl., Ex. A. Under the City's Plan, these areas would plan for and accept greater
19 density and the City, in turn, would commit to direct investment in infrastructure, services and
20 amenities to serve the denser populations in these neighborhoods. Id.

21 At the same time, the 1994 Comprehensive Plan initiated a neighborhood planning process
22 under which neighborhoods designated as urban villages conducted intensive and largely autonomous
23 community-led outreach and planning in order to shape the development of their own urban village

1 neighborhoods. *Id.* at 6. Each urban village prepared its own neighborhood plan (each, a
2 “Neighborhood Plan”). All of the plans can be viewed on the City’s website.² Throughout 1998 and
3 1999, the City adopted portions of each of the Neighborhood Plans, which were then incorporated into
4 the 1994 Comprehensive Plan by amendment. *Id.* Nine of the Neighborhood Plans, including that of
5 the West Seattle Junction Urban Village (“Junction Urban Village”) contained language, which the
6 City adopted and incorporated into the 1994 Comprehensive Plan, making it a policy for the subject
7 urban villages to retain some or all of their then-existing single-family zoned areas. Tobin-Presser
8 Decl., Ex. B at Attachment 2.

9 The City adopted the following Junction Urban Village neighborhood plan policy, among
10 others:

11 Housing and Land Use Policies: WSJ-P13 Maintain the character and integrity of
12 the existing single-family areas.

13 Tobin-Presser Decl., Ex. J.

14 **2. Mayor Murray Enters Into Grand Bargain Contrary to Neighborhood Plans.** On
15 July 13, 2015, then-Mayor Murray and Seattle City Councilmember Mike O’Brien entered into an
16 agreement with eight individuals including a well-known attorney for developers, a paid lobbyist for
17 developer Vulcan, the director of the Bill and Melinda Gates Foundation, the executive director for
18 the Housing Consortium, the executive director for Plymouth Housing Group, the president of Mercy
19 Housing Northwest, and the hand-picked co-chair of Mayor Murray’s Housing Affordability and
20 Livability Advisory Committee. Tobin-Presser Decl., at ¶ 6; Ex. C.

21 The July 13, 2015 agreement is referred to as the “Grand Bargain.” Notwithstanding the
22 contrary provisions of the Neighborhood Plans incorporated into Seattle’s Comprehensive Plan, the

23 ² <https://www.seattle.gov/neighborhoods/programs-and-services/neighborhood-planning>.

1 interested parties to the Grand Bargain privately agreed among themselves to pursue the upzone of all
2 single-family neighborhoods in urban villages as follows:

3 2. For residential property, there will be a new Mandatory Inclusionary Housing³
4 program with an upzone with the following characteristics.

5 c) This would change roughly 6% of all single-family zoned land – that in
6 Urban Villages and along corridors – to Lowrise (LR1 and in some cases LR2
7 and LR3)

8 4. Other commitments:

9 a) The Mandatory Inclusionary Housing and the Commercial Linkage fee are
10 but two parts of a larger set of HALA-endorsed strategies All parties
11 will need to work together to advance the entire agenda, including . . . iv) the
12 zoning changes required for Mandatory Inclusionary Housing.

13 Tobin-Presser Decl., Ex. C.

14 It is abundantly clear what the parties to the Grand Bargain would receive, i.e., wholesale
15 upzones of desirable areas and significant opportunities for development of both affordable and
16 market-rate housing. It is equally clear that the interests of the residents whose neighborhoods would
17 bear all of the burdens of the plan had no seat at the table and no opportunity to “bargain.”

18 3. **OPCD Releases Draft MHA Maps on October 20, 2016.** On October 20, 2016, over
19 16 months after execution of the Grand Bargain by the mayor, OPCD revealed the draft maps (each a
20 “Draft MHA Map”) it had been working on internally to implement the mayor’s Grand Bargain.
21 Tobin-Presser Decl., Exs. D and E. There were 26-plus individual Draft MHA Maps, including one
22 for each of the City’s 26 urban villages. Each Draft MHA Map reflected significant proposed changes

23 ³ The term Mandatory Inclusionary Housing was ultimately changed to Mandatory Housing
Affordability (“MHA”).

1 to the existing zoning designations within the given urban village, notwithstanding the Neighborhood
2 Plan policies in the Comprehensive Plan.

3 With respect to the 21 urban villages containing single-family neighborhoods, the Draft Maps
4 provided for changing the zoning designation of every single-family parcel to multi-family. The City
5 identified the areas in which the zoning changes were to occur as “Mandatory Housing Affordability”
6 (“MHA”) areas. It was explained that in these areas, a developer building a commercial or multi-
7 family project would be required to include some affordable housing in the project or pay a fee to the
8 City so that the City could build affordable housing elsewhere. Counterintuitively, it would not be
9 mandatory for the affordable housing to be located within the MHA areas themselves.

10 The multi-family zoning designations included Residential Small Lot and Lowrise (“LR”) 1, 2
11 or 3. These RSL, LR1, LR2 and LR3 multi-family zoning designations already exist within the Land
12 Use Code. See SMC 23.34.012 – 23.34.020. However, under the MHA plan, the allowed height and
13 bulk associated with such zoning designations would be significantly increased relative to the pre-
14 MHA limits. In an urban village, a home on a single-family zoned parcel slated to be changed to an
15 MHA LR2 designation could be demolished and replaced with a 40-foot apartment building
16 substantially filling the lot, as opposed to the 30-foot single-family structure with required yard
17 previously allowed.

18 The Junction community was blindsided. The director of the Junction Neighborhood
19 Organization who was actively involved in Junction land use matters had no knowledge of the
20 proposed rezoning prior to the draft map release. Commons Decl. While the City assured stunned
21 Junction-area residents that the Draft MHA Maps were the result of community input, the City had
22 provided no advance warning to the Junction Urban Village and the community had provided no input
23 with respect to the proposal. Tobin-Presser Decl., Ex. F; Section III.B infra.

1 In January 2016, a Jesseca Brand of the City’s Department of Neighborhoods, a key member
2 of the HALA outreach team, informed JuNO that the City would consider no alternatives to the Draft
3 MHA Maps that did not involve changing all single-family zoning within urban villages to multi-
4 family zoning. Commons Decl.; Tobin-Presser Decl., Ex. G and Ex. H at 2 (emphasis added); ¶ 10.

5 **4. Seattle 2035 Adopts Existing Neighborhood Plan Policies, Affirms Neighborhood**
6 **Planning and Does Not Mandate Urban Village Upzones.** On October 28, 2016, over 16 months
7 after the mayor’s execution of the Grand Bargain, the City Council adopted the Seattle 2035
8 Comprehensive Plan.⁴ The Seattle 2035 Comprehensive Plan renewed the City’s promise to
9 neighborhoods that a community’s vision for its own neighborhood would be respected:

10 Moving forward, community planning will be an integrated and equitable approach
11 to identify and implement a community’s vision for how their neighborhood will
12 grow. Plans will reflect the history, character, and vision of the community but also
13 remain consistent with the overall citywide vision and strategy of the
14 Comprehensive Plan. Creating and implementing community plans ... can provide
15 more specific guidance than the citywide policies do for areas where growth and
16 change are occurring or desired. . . .The City will undertake community planning to
17 review and update current neighborhood plans, as well as to address ongoing and
18 emerging issues

15 Tobin-Presser Decl., Ex. I at 165-66 (emphasis added). Thus, while “community” can be defined in
16 many ways, it is clear that in terms of neighborhood planning, the Comprehensive Plan is referring to
17 the community of people geographically located within a neighborhood.

18 On October 28, 2016, the City Council voted to adopt Seattle 2035, including all of the
19 Neighborhood Plans and their policies regarding maintaining the character and integrity of single-
20 family areas within the urban villages without change. Ex. J. The Neighborhood Plans, including the
21

22 ⁴ See Seattle City Council Bill 118683, available at seattle.legistar.com.
23

1 Junction Neighborhood Plan continue to be the largest section of the Comprehensive Plan today,
2 comprising over one-third of the document.

3 The Housing section of the Seattle 2035 Comprehensive Plan also provides the following
4 policy:

5 H 3.5 Allow additional housing types in areas that are currently zoned for single-
6 family development inside urban villages; respect general height and bulk
7 development limits currently allowed while giving households access to transit hubs
8 and the diversity of goods and services that those areas provide.

9 Tobin-Presser Decl., Ex. K. Significantly, Seattle 2035 § H 3.5 does not require or provide that all
10 single-family areas in urban villages should undergo zoning designation changes. While it contains
11 no specifics as to the additional types of housing to be allowed, it is clear that the additional housing
12 types are to be consistent with the existing general height and build limits.

13 **5. DEIS and MHA EIS Upzone Every Urban Village Single-Family Neighborhood.**

14 Like the Draft MHA Maps, the MHA proposals set forth in the City's June 8, 2017 Draft
15 Environmental Statement (the "DEIS") and its November 9, 2017 Final Environmental Impact
16 Statement (the "MHA EIS") provide for upzoning every single family zoned parcel within every
17 urban village in the City of Seattle.⁵

18 **B. Pre-Notice Outreach Obscured City's Plan to Rezone All Single Family Parcels in Every**
19 **Urban Village.**

20 There are five urban villages in City Council District 1, all of which include single-family
21 neighborhoods. The five urban villages are Admiral, Morgan Junction, South Park, West Seattle
22 Junction and Westwood-Highland Park. See MHA EIS at Appendix H.

23

⁵ The DEIS and MHA EIS, and the zoning maps included therein, can be viewed at
[http://www.seattle.gov/hala/about/mandatory-housing-affordability-\(mha\)/mha-citywide-eis](http://www.seattle.gov/hala/about/mandatory-housing-affordability-(mha)/mha-citywide-eis).

1 In November 2015, four months after the mayor's execution of the Grand Bargain, the City
2 began what it characterizes as its outreach to District 1 with respect to MHA rezones. Prior to the
3 September 9, 2016 deadline to submit comments in response to the DS Notice, the City participated in
4 a total of seven events within District 1 at which it represents that it provided residents meaningful
5 information with respect to the MHA Proposal. Tobin-Presser Decl., Exs. L, M, N and O. The City
6 identifies these events as "Meetups." Id.

7 At each of the seven District 1 Meetups, the City misled the community with respect to MHA,
8 by either affirmatively misrepresenting, or implying by omission, that single family areas would not
9 be upzoned, or by failing to discuss the issue at all.

10 **1. First Meetup - City Assures No Changes Will be Made to Neighborhood Plans.**

11 On November 12, 2015, the City hosted a workshop at the West Seattle Senior Center about the then-
12 proposed updates to the City's Comprehensive Plan. Tobin-Presser Decl., Ex. M and O. The City
13 identifies this as its first MHA "Meetup" for District 1. The workshop materials (the "Comprehensive
14 Plan Materials") were sharply misleading with respect to the City's plan to rezone single-family
15 neighborhoods.

16 a. Critically, the Neighborhood Planning slide specifically advises that "[N]o
17 changes are proposed to specific neighborhood plans" and "no changes to policies for individual
18 neighborhoods." Tobin-Presser Decl., Exs. P and Q. As discussed supra, nine urban village
19 neighborhood plans, including that of the WSJ Urban Village, make it a policy to maintain the single-
20 family zoned areas within the urban village. At this time, Mayor Murray had already signed the
21 Grand Bargain.

1 b. The Growth Strategy slide includes the following quote: “Growth should be
2 guided to Multi Family Zoned areas. No need to upzone or rezone SF zoned neighborhoods at this
3 point.” Tobin-Presser Decl., Ex. Q9 (emphasis added).

4 c. The Housing slide indicates that the City proposes to “[i]ncrease the Diversity
5 of Housing Types in Lower Density Residential Zones in Urban Villages.” Tobin-Presser Decl., Ex.
6 Q15. The three accompanying illustrative scenarios each depict utilizing existing single-family homes
7 and zoning to accommodate density. Id.

8 d. The proposed actions set forth on the Housing slide include eliminating
9 “duplicative” single-family rezoning criteria and “encouraging” accessory dwelling units and
10 backyard cottages. Tobin-Presser Decl., Ex. Q15. There is no mention of eliminating single-family
11 zoning in urban villages entirely.

12 e. The Housing slide describes “low-rise housing types” as “duplexes, triplexes,
13 cottage housing.” Tobin-Presser Decl., Ex. Q15. No reference is made to the 40-50 foot-plus
14 apartment buildings which are a hallmark of the proposed MHA low-rise zoning.

15 In short, an attendee of this District 1 Meetup would have every reason to understand that
16 single-family zoned areas within urban villages would retain their single-family zoning designation
17 consistent with the Junction Neighborhood Plan, notwithstanding any other changes that may occur.

18 **2. Second Meetup – Powerpoint Presentation Excludes Any Mention of Rezoning.**

19 On December 2, 2015, Robert Feldstein, Director of the City Office of Policy and Innovation,
20 provided a purported overview presentation of HALA to the Southwest Community Council. Tobin-
21 Presser Decl., Ex. O. Attendees consisted of approximately 20 neighborhood representatives from the
22 southwest neighborhoods in District 1. Id.

1 Prior to the meeting, Director Feldstein was directly advised that the City's own data identified
2 "preservation of single-family homes" and "fairness in growth and density" as critical issues to the
3 community. Tobin-Presser Decl., Exs. R and S. Nonetheless, at this Meetup, Mr. Feldstein's power-
4 point presentation did not address these issues or refer to rezoning at all. Tobin-Presser Decl., Exs. R
5 and T. The slide relating to "Housing" stated as follows:

6 **Create New Affordable Housing as We Grow**

7 Action Items Include

8 √ Require New Affordable Housing as part of all new multi-family development

9 √ Expand on Successful Incentive Programs

10 Id. at 6.

11 Absent from the materials is any indication that much of the new multi-family development
12 would be derived by rezoning all single-family neighborhoods in urban villages.

13 **3. Third Meetup – City Fails to Advise of Plans to Rezone All Single Family.** On
14 January 26, 2016, Jesseca Brand of the City's Department of Neighborhoods gave a presentation to
15 the Morgan Junction Community Association regarding HALA. Tobin-Presser Decl., Ex. O. Ms.
16 Brand's prepared presentation failed to refer to single-family zoning at all, or to describe the City's
17 planned changes thereto. Tobin-Presser Decl., Ex. U. When the issue did come up in the question
18 and answer period, Ms. Brand said only the following:

19 It's just Mandatory Housing Affordability. It's the program that we're talking about
20 implementing. I will say that **within urban villages**, the places we've said that over
21 the last 20 years through the Comprehensive Plan, we want to grow there, **there is**
22 **single family in there**. It is not all mid-rise, low-rise, whatever. So **the**
23 **conversation is that we would grow in those areas which would mean changes.**

Id. at 14-15 (emphasis added).

1 In light of the City's ultimate MHA proposal, it appears from the emphasized language that
2 Ms. Brand was well aware that the City intended to pursue rezoning all single family in urban
3 villages. This would have been a natural point for Ms. Brand to simply state that the City intended to
4 rezone all single-family areas within urban villages. She did not do so and attendees would have had
5 no reason to draw such a conclusion from Ms. Brand's vague comments.

6 **4. Fourth Meetup - Mayor Murray Assured 350+ People that No Single Family**
7 **Areas Would be Rezoned.** On February 4, 2016, seven months after he had executed the Grand
8 Bargain, Mayor Murray held a "Telephone Town Hall" with respect to HALA for the District
9 southwest neighborhoods, attended via telephone by 350 individuals according to the City. Tobin-
10 Presser Decl., Ex. O. The recording of this fourth District 1 Meetup, in which Mayor Murray assured
11 the 350 attendees that single-family neighborhoods would not be rezoned, was placed on the City's
12 HALA website, for countless others to listen to. Tobin-Presser Decl., Exs. V and W. Mayor Murray
13 stated the following:

14 **There is no plans [sic] in our proposal to change or upzone our single-family**
15 **neighborhoods.** So, it affects urban villages, **it does not affect our single-family**
16 **neighborhoods.** That is-- this may sound like I'm equivocating, but I'm not. **There**
17 **is no plans [sic] in our single family neighborhoods to upzone.** There are some
18 arterials, as you know, that are already mixed use next to single-family homes
19 where there are maybe another floor or two possible. Again, that's on an arterial.
20 That's already used, that's already mixed use in many of our neighborhoods. **Again,**
21 **not single-family neighborhoods,** our urban villages, particularly those urban
22 villages that have a transit capacity.

19 Tobin-Presser Decl., Ex. V at 3-4 (emphasis added).

20 Mayor Murray's statements are both inaccurate and misleading. His statements could only be
21 true if (a) there were no single-family neighborhoods within urban villages or (b) the City was only
22 proposing to upzone existing multi-family and commercial areas within urban villages. However,
23

1 Mayor Murray was aware that neither of those scenarios was true while at the same time making
2 inaccurate assurances.

3 **5. Fifth Meetup – City Representative Declines to Discuss MHA.** On February 23,
4 2016, the City held an event entitled “Housing Levy & HALA” in West Seattle. Tobin-Presser Decl.,
5 Ex. O. There was no information or discussion with respect to rezoning single-family areas. In fact,
6 the Director of the Office of Housing declined to address questions relating to HALA’s developer-
7 related program (MHA). Tobin-Presser Decl., Exs. X at 8.

8 **6. Sixth Meetup – HALA Panel is Silent on Rezoning.** On March 12, 2016, a group
9 called Visualizing Increased Engagement West Seattle (ViewS) put on a non-City sponsored event
10 comprised of a number of panels, one of which included Michelle Chen of the Office of Planning and
11 Community Development (“OPCD”) as a HALA representative. Tobin-Presser Decl., Exs. O, Y and
12 Z. Ms. Chen (and the remainder of the panel), said nothing about rezoning single-family or any other
13 areas. Her sole remarks with respect to MHA in residential areas were as follows:

14 Now we are working on the residential enabling legislation. The residential
15 component basically requires that any new residential multi-family residential
16 development, either perform, by building those affordable units in the building, or
17 pay in lieu a fee so that that fee then can be used to build affordable housing. So
that's in my world, in my kind of policy world, what's happening with respect to the
intersection between commercial and residential.

18 Tobin-Presser Decl., Ex. Z at 13.

19 The critical omission is that the means by which the City intended to spur new multi-family
20 development would be through rezoning all of the single-family neighborhoods within urban villages.

21 **7. Seventh and Final Meetup – Handouts at Farmers Market Obscure City’s Intent.**
22 On August 21, 2016, one or more City representatives attended the Sunday West Seattle Farmers
23 Market, which the City identifies as the seventh District 1 Meetup. Tobin-Presser Decl., Ex. O. Even

1 assuming a Farmer's Market attendee knew that land use planning was being addressed at a
2 neighborhood produce market, the materials the City representatives had on hand neither outline nor
3 disclose the City's plan to upzone all single-family neighborhoods in 21 urban villages, including the
4 Junction Urban Village in which the Farmer's Market takes place. Tobin-Presser Decl., Exs. AA, BB
5 and CC.

6 Discussion of MHA is buried on page five of a seven-page brochure containing information
7 about a multitude of unrelated HALA programs. Tobin-Presser Decl., Ex. AA at 5. The topic of
8 MHA is next to a picture of a downtown skyscraper, not a single-family home. The brochure includes
9 the familiar disclosure that MHA is applicable to new commercial and multifamily buildings, and
10 again excludes any reference to the fact that a 100% rezone of single-family neighborhoods in urban
11 villages is a central component in generating that projected new multifamily development. Id.

12 The City also had a "HALA - Myth vs. Fact" sheet on hand, the primary message of which
13 was clearly to assure residents that changes to single-family zoned areas would be minimal and
14 confined to less than 6% of current single-family zoning. Tobin-Presser Decl. at CC. The sheet fails
15 to identify to the reader the location of the "designated growth areas," i.e., 21 urban villages:

MYTH	vs.	FACT
HALA is eliminating all Single Family Zoning		HALA is an affordable housing strategy, which includes some zoning changes. These zoning changes allow us to require developers to contribute affordable housing. Zoning changes will only occur in our designated growth areas which affects less than 6% of our current Single Family Zoning. All other Single Family will remain as is.

16 Tobin-Presser Decl., Ex. CC.

17 **C. City's Notice of Determination of Significance and Deadline for Scoping Comments.**

18 On July 28, 2016, prior to the seventh District 1 Meetup, the City published a Determination of
19 Significance and Request for Comments on Scope of EIS (the "DS Notice"). Tobin-Presser Decl., Ex.
20 DD.
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1 **1. Description of Proposal Omits Any Reference to Changing Single-Family Zoning**
2 **Designation to Multi-Family.**

3 The stated purpose of the DS Notice was to allow interested parties to provide input upon the
4 matters that the City should consider in connection with its Environmental Impact Statement on its
5 proposed course of action. The following is the entirety of the City's description of the zoning
6 implications of its MHA proposal (the "Proposal Description"):

7 Description of proposal: The City of Seattle is proposing amendments to Land Use
8 Code (Seattle Municipal Code Title 23) to implement a proposed new program,
9 Mandatory Housing Affordability (MHA). MHA would require that all new
10 multifamily and commercial developments meeting certain thresholds to either build
11 affordable housing units on-site or make an in-lieu payment to support the
12 development of new affordable housing. The MHA program would focus primarily
13 on creating housing reserved for community members earning 60% of the Area
14 Median Income (AMI) or below. MHA is expected to created a total of 6,000
15 affordable housing units over the next 10 years. In order to implement the new
16 MHA program, **the City is considering zoning code amendments to allow**
17 **developments to build slightly higher or slightly more floor area in certain**
18 **zones.**

19 Alternatives to be addressed in the EIS include No Action, or continued growth as
20 guided by the City's Comprehensive Plan and Land Use Code standards; and two
21 action alternatives that will consider growth under different development patterns
22 and Land Use Code standards. Both action alternatives will evaluate **increased**
23 **allowable height and floor area in commercial and multi-family zones, as well**
as single family zones in designated urban villages and potential urban village
expansion areas identified in the Seattle 2035 Comprehensive Plan. It is likely that
one action alternative will consider MHA implementation, and one alternative will
consider MHA implementation with program measures seeking to reduce potential
for displacement in high risk areas.

24 Id. (Emphasis added).

25 The Proposal Description fails to mention one of the most significant, immediate and directly
26 impactful aspects of the proposal, namely, that each and every single-family zoned property in any
27 urban village would undergo an immediate change to a multi-family zoning designation upon

1 enactment of the MHA legislation. A natural reading of the Project Description would be that within
2 the single-family zoning designation, homes with greater height and/or floor area would be allowed in
3 order to, for example, allow for greater potential of ADU's, etc.⁶

4 In the Junction Urban Village alone, the MHA Project Proposal would change the single-
5 family zoning designation of over 350 parcels to a multi-family zoning designation. Tobin-Presser
6 Decl., Ex EE. Given that there are 21 urban villages containing single-family neighborhoods, the
7 single-family parcels that would receive new zoning designations under the MHA Project Proposal
8 number well into the thousands.

9 At the time it issued the DS Notice, the City was well aware of its intention to change the
10 urban village single-family zoning designations. The Myth vs. Fact Sheet states that “[z]oning
11 changes will only occur in our designated growth areas which affects less than 6% of our current
12 Single Family Zoning.” Tobin-Presser Decl., Ex. BB. Given its specificity, the City clearly knew
13 which areas it was referring to in its handout, even if residents did not.

14 **2. City's Methods of Providing Notice**

15 The rezoning of single-family properties as part of the City's MHA Project Proposal would
16 directly impact the properties where thousands of Seattle residents of all ages, including children,
17 young adults, singles, families and senior citizens currently live. From South Park, to Beacon Hill, to
18 the West Seattle Junction to Wallingford and beyond, the zoning changes would directly impact
19 residents of all ages and races and from all socioeconomic levels.

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21
22 ⁶ In its own In the Environmental Scoping Report in the MHA EIS, the City acknowledges that it received
23 comments that the “[s]coping notice did not make clear that the EIS would involve zoning changes.” Tobin-
Presser Decl., Ex. LL.

1 a. **Seattle Daily Journal of Commerce.** In 2016, OPCD estimated the City of
2 Seattle’s population at 608,660. Tobin-Presser Decl., Ex. FF. The City published the DS Notice in
3 the Seattle Daily Journal of Commerce. According to the Seattle Daily Journal of Commerce website,
4 the newspaper serves the “business community” and has 4,000 print subscribers. Tobin-Presser Decl.,
5 Ex. GG. It cites a 4 to 1 “pass-a-long ratio,” and thus extrapolates a daily readership of 16,000. *Id.*
6 Presumably, this would consist largely of the newspaper being passed along from its business
7 subscribers to their business colleagues. In contrast to the Seattle Daily Journal of Commerce, the
8 Seattle Times estimates that its daily newspaper reaches 607,000 adults each day. Tobin-Presser
9 Decl., Ex. HH.

10 b. **Land Use Information Bulletin Website and Department Websites.** The
11 City also published the DS Notice in its Land Use Information Bulletin which is accessible through
12 the internet. Tobin-Presser Decl., Ex. II. In response to discovery requests, the City also states it
13 posted the DS Notice on its own HALA website and that it “advertised opportunities to comment” on
14 the City’s OPCD and Department of Neighborhood (“DON”) websites. *Id.* The City gives no
15 indication of how an individual, having previously been assured that its single-family zoning would
16 remain intact, would become aware that it should check these City websites for a DS Notice.

17 3. **Summer Parkways Events**

18 The DS Notice characterizes the Rainier Valley and Ballard Summer Parkway events as a
19 “scoping meeting” as follows:

20 Provide written or verbal comments at the public **scoping meetings** on:

21 Saturday, August 16, 2016

22 Rainier Valley Summer Parkways Event

23 Rainier Avenue South between 29th Ave. S. and 42nd Ave. S

 1:00PM-3:00PM

1 Saturday, August 27, 2016

2 Ballard Summer Parkways Event

3 Ballard Ave. NW between NW Market Street and 22nd Ave NW

4 1:00PM-3:00PM

5 Tobin-Presser Decl., Ex. DD (emphasis added).

6 Rather than convening an actual meeting, in the City's own words, the City merely made staff
7 "available . . . to receive scoping comments" at the two events. Tobin-Presser Decl., Ex. II at 32:11-
8 12.

9 A meeting would be an organized gathering of interested individuals organized for purposes of
10 facilitating a discussion of the matters to be considered in an MHA EIS. In contrast, the Rainier
11 Valley Summer Parkway Event was titled the "Big Day of Play" and advertised by the City as an
12 event including free bike giveaways, a pie eating contest, live music, passport challenge, food trucks,
13 fitness games, parades, bouncy houses "and more!" Tobin-Presser Decl., Ex. JJ. Similarly, the City's
14 advertising for the Ballard event promised to "bring the fun back to Ballard!" Tobin-Presser Decl.,
15 Ex. KK.

16 Neither of the advertisements indicated that the Summer Parkway festivals would include an
17 opportunity to have an organized, serious discussion regarding the rezone of all single-family areas in
18 urban villages across the City.

19 **D. Key Concerns Were Missed as a Result of Inadequate Notice.**

20 Had residents of the impacted areas received the required notice, valid concerns not addressed
21 by the EIS could have surfaced when the City could still have incorporated them into its review
22 process. The City published a summary of comments it received in response to its notice. Tobin-
23 Presser Decl., Ex. LL.

1 Ready examples of concerns that the scoping comments gathered by the City failed to capture
2 include, but are in no way limited to, consideration of impacts on water runoff and/or absorption
3 arising from the loss of permeable ground due to increased density in development and impacts on air
4 quality from the release of asbestos as a result of anticipated demolition of older buildings.

5 Given the opportunity, residents may have specifically requested the study and/or development
6 of alternatives that (1) minimize the displacement of all populations, including the elderly and families
7 with children, not just those populations identified by the City; (2) produce different mixes of 3+
8 bedroom (family) units; (3) contain preservation incentives for existing low-rent housing; and/or (4)
9 provide for different levels of MHA fees.

10 These concerns and ideas were not identified in the scoping process and thus, substantially lost
11 the ability to be considered as part of the EIS.

12 IV. STATEMENT OF ISSUE

13 Whether the City's DS Notice complied with the requirements of WAC 197.11.360, SMC
14 25.05.360A and WAC 197.11.510(1) and whether the City complied with the requirements of SMC
15 25.05.409.

16 V. EVIDENCE RELIED UPON

17 JuNO relies upon the Declaration of Christine M. Tobin-Presser, the exhibits attached
18 thereto, the Declaration of René Commons and the files and records herein.

19 VI. LEGAL ARGUMENT

20 A. Summary Judgment Standard

21 As a supplement to the Hearing Examiner Rules of Practice and Procedure, Washington Rule
22 of Civil Procedure 56(c) provides in relevant part that "[t]he judgment sought shall be rendered
23 forthwith if the pleadings . . . together with the affidavits . . . show that there is no genuine issue as to

1 any material fact and that the moving party is entitled to a judgment as a matter of law.” Facts and
2 inferences are reviewed in the light most favorable to the nonmoving party. See Lybbert v. Grant
3 County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

4 **B. Omission of Primary Element of Proposal is Fatal to the Purpose of a DS.**

5 If a determination of significance (DS) is required for a proposal, WAC 197.11.360 provides
6 that such DS “shall describe the main elements of the proposal” in a notice to be provided to the
7 public. The language is mandatory. The reasons for such a mandate are self-evident, as a notice that
8 does not actually describe a proposal’s most impactful features would be virtually useless to the
9 reader. SMC 25.05.360A contains identical language.

10 A resident of a single-family zoned parcel in an urban village would have no reason to
11 understand from the DS Notice that the City was proposing to change its zoning designation to multi-
12 family. In fact, a resident in District 1 would have every reason to believe the opposite given the
13 City’s misrepresentations, false assurances and/or silence with respect to its intentions at each of the
14 seven District 1 Meetups preceding and concurrent with the pendency of DS Notice.

15 Members of the public relying solely upon the DS Notice for a proposal description would
16 have missed the opportunity to provide comments and suggestions regarding potentially significant
17 impacts to be studied in their neighborhoods resulting from the main elements of the proposal which
18 the City failed to disclose.

19 The City’s intentional failure to include or accurately describe the centerpiece of its proposal –
20 changing single-family zoning to multi-family zoning in all urban villages – undercuts the entire
21 purpose of the DS Notice.

1 C. The City's Method of Providing Notice Was Not Reasonable Under the Circumstances.

2 WAC 197.11.360(3) provides that after issuance of a determination of significance (DS), the
3 responsible official is required to commence scoping by circulating copies to various groups "and to
4 the public." WAC 197.11.360(3) further provides that "[n]otice shall be given under WAC 197-11-
5 510.

6 WAC 197-11-510(1), in turn, provides the following with respect to notice of a DS:

7 [T]he lead agency must use **reasonable methods** to inform the public and other
8 agencies that an environmental document is being prepared or is available and that
9 public hearing(s), if any, will be held. The agency may use its existing notice
10 procedures.

10 Id. (Emphasis added).

11 While the lead agency is permitted to use its existing notice policies, it is implicit that those
12 policies must, in turn, be reasonable under the circumstances. It would be nonsensical to allow an
13 agency to escape the requirement of reasonableness simply by enacting its own notice procedures.
14 Likewise, no one method of notice would be reasonable under every set of circumstances.

15 The MHA Proposal involves a massive rezone that would directly and immediately impact
16 thousands of homeowners and renters of all ages and socioeconomic levels living in single-family
17 zoned neighborhoods in urban villages across the City. The City could easily have published notice in
18 the most widely read newspaper in Seattle. Nonetheless, the City asserts that publication in the online
19 Land Use Bulletin and in the Seattle Daily Journal of Commerce, a newspaper directed to businesses
20 with a daily readership of less than 3% of Seattle's population constituted a reasonable method of
21 notice. Tobin-Presser Decl., Ex. FF.

1 Under the circumstances, particularly the expansive reach of the MHA Proposal and the
2 diversity of the thousands of individuals to be directly impacted, the City's method of providing
3 notice was not reasonable.

4 **D. The City Failed to Provide the Required Scoping Meeting.**

5 SMC 25.05.409 provides in relevant part that when the City is the lead agency for the
6 proposed action, "the department shall hold a public scoping meeting to determine the range of
7 proposed actions, alternatives, possible mitigating measures, and impacts to be discussed in an EIS."

8 There is no genuine issue of fact that the City did not organize a meeting where concerned
9 individuals could gather to discuss scoping consideration with respect to the EIS. Rather, the City
10 made staff members available to receive comments from those who took the time to travel to a
11 crowded street fair to submit comments. Simply stationing City staff at a preplanned carnival-type
12 event among the bouncy houses and pie-eating contests to receive comments does not constitute a
13 public scoping meeting of the type contemplated in SMC 25.05.409. Impacted residents were
14 deprived of what should have been a meaningful opportunity to gather with other impacted
15 individuals, share thoughts and concerns with each other, collectively brainstorm ideas regarding
16 mitigation and alternatives and to present those ideas to the City within the context of an organized
17 meeting. Similarly, the City was deprived of the thoughts, concerns and ideas that such a meeting
18 would have brought forth to and which should have been added to the City's analysis.

19 **VII. CONCLUSION**

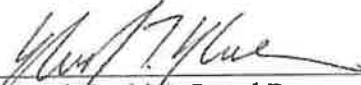
20 Based upon the foregoing, JuNO respectfully requests that the Hearing Examiner enter
21 summary judgment in JuNO's favor and finding (1) that the City's DS Notice failed to meet the
22 requirements of WAC 197.11.360 and SMC 25.05.360A in; (2) that the City failed to provide notice
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of the determination of significance by a reasonable method as required by WAC 197.11.510(1); and
(3) that the City failed to hold a public scoping meeting as required by SMC 25.05.409.

DATED this 1st day of May, 2018.

JUNCTION NEIGHBORHOOD
ORGANIZATION

By 
Richard Koehler, Legal Representative
Christine M. Tobin-Presser, Member