

## Attachment B. Key Questions related to the Draft MFTE Code Language

This document reviews policy topic areas within the draft ordinance where there is discretion to the local jurisdiction. To assist council's review, for each topic area, background context for the proposed draft language, and/or options for the council's consideration is provided. The topics are presented in the order in which they occur in the draft ordinance.

**1. Applicable neighborhoods.** (Section 4.52.030 [D]) *Does council want any refinements to the proposed Residential Target Areas (RTA) (see maps in Attachment C) and/or to add any other areas of the city?*

**The draft ordinance lists four areas for the program, and Attachment C provides maps identifying the specific area for each RTA.** There are other areas of the city in which an MFTE could apply (e.g. Factoria), but the four that are included are based on input from the Council at their October 20th study session, and appear to be appropriate areas to start a program. Council can always modify or add RTA areas in the future. For Bel-Red and Downtown, the entire planning areas were included; for Eastgate, the area where future growth is targeted is included; and for Newport Hills, the commercially zoned area is included.

**2. Existing Housing.** *Should the program apply to new and existing residential projects?*

**The draft ordinance is written to apply only to new construction.** State legislation allows the MFTE program to apply to rehabilitation of existing housing, but only if it is uninhabited or a building does not meet current code requirements. Staff had several reasons for not including provisions for existing housing. First, to staff's knowledge, this circumstance does not presently exist in the proposed RTAs. Second, council interest in the program seemed focused on ways to increase housing availability to a range of incomes, which would not be achieved through existing housing. Third, it may appear to be an incentive for building to reach a condition the city would not want to encourage (i.e. buildings being uninhabitable). If there were interest in allowing the program for existing buildings, language would need to be added to section 4.52.040, Project Eligibility, and staff would look to language in Seattle's ordinance.

**3. Ownership housing.** *Should the program be used for ownership housing, and if so, should the exemption apply only to affordable ownership units in a project, or all ownership units in a project?*

**The draft ordinance does not include program eligibility for ownership housing.** Seattle and Kirkland do allow for ownership housing, but the exemption is only for the affordable ownership units. There are several considerations related to ownership housing. First, for ownership housing the exemption would apply to the future homeowner with no direct economic benefit to the developer, other than potentially assisting with marketing. Second, for cities with affordability requirements on a portion of the units, it is impractical to offer exemptions to the market rate portion because if any of the affordable units were in non-compliance, then all the units in the development would be subject to property tax payment and potential penalties. Third, cities that have used exemptions for all ownership units are typically cities trying to encourage housing in emerging market areas and do not have explicit affordability requirements. This doesn't appear to be a need in the Bellevue market, and doesn't achieve the primary objective of increasing housing affordability in the city. If there is interest in including ownership housing, it is recommended the exemption apply only to the affordable ownership units and staff would look to add language in Section 4.52.040 similar to that used in Seattle's and Kirkland's ordinance.

**4. Displacing existing residents.** (Section 4.52.040) *Should there be any language related to displacement of existing housing or residents?*

**The draft ordinance addresses displacement such that no existing subsidized housing will be lost.** Seattle has language regarding assistance to displaced residents and creating affordable replacement housing when existing housing is torn down to create new housing. Kirkland did not explicitly address creating replacement housing, but does include language that no existing subsidized housing will be lost. The draft ordinance includes language similar to Kirkland (Section 4.52.040 [C]). For the proposed RTA areas, there appears to be limited existing older rental housing, with potentially a couple properties in the downtown area. If council is interested in expanding the provisions regarding relocation and/or replacement housing, staff will need to do further research on appropriate code language. (Note: Seattle's MFTE ordinance references another chapter of the Seattle code for implementing these provisions. Additional code language other than what is in Seattle's MFTE ordinance may be needed.)

**5. Duration of affordability.** (Section 4.52.040 [E]) *What should be the requirement for the duration of affordability?*

**The draft ordinance requires the affordable units to remain affordable for 50 Years.** The 50 year time frame was selected for consistency with other affordable housing programs within Bellevue and other cities that are members of ARCH. Cities typically have used a 50 year affordability requirement when funding assistance is provided, and 'life of the permitted use' for land use incentive programs for rental housing. This program seems to fit into the funding assistance category. This time period also appeared consistent with comments from the council that the city should receive comparable public benefit from this program as with other direct assistance programs. If a shorter time period is used, it would be hard to demonstrate that the public benefit from the MFTE program would be comparable to other forms of direct assistance.

**6. Application fees.** (Section 4.52.050 [B]) *Should the MFTE program have application fees, and if so, should it be based on trying to recover the full costs of administering the program?*

**The draft ordinance has language that city application fees will be set by ordinance.** (Note: there is also a separate fee for the county assessor as required by the RCW). The RCW states 'the governing authority may establish an application fee. This fee may not exceed an amount determined to be required to cover the cost to be incurred by the governing authority and the assessor in administering this chapter'. This language does not require that a fee be charged, but if there is a fee, it should be based on no more than the projected administrative costs. In Kirkland the application fee is just under \$1,100 with additional fees for extensions and amendments. In Seattle, the application fee is \$3,000 - \$3,400 with additional fees for extensions and amendments. Staff is seeking comment from council on the basic philosophy that should be used to set application fees, if any.

**7. Approval of individual projects** (Section 4.52.060[A]) *Should individual projects be approved administratively or by Council?*

**Draft ordinance has administrative approval of MFTE applications and contracts.** Cities have established different approaches for approving individual MFTE projects; for example, Seattle uses an administrative process, and Kirkland requires council approval. The ordinance is drafted to use an administrative approval process. This seemed reasonable because the ordinance includes specific language regarding project eligibility criteria (Section 4.52.040). In addition Section 4.52.120 provides for annual reports to council describing the previous year's activity and recommendation for program refinements. This provides a regular opportunity for council

to review and if necessary update the program. This overall approach seems consistent with council preference to focus more on overall program elements and not specific projects. In the event council wants to approve individual projects Section 4.52.060 would need to be edited (see alternative text below). In addition there may be other places in the ordinance that requires added reference to the council's approval.

#### 4.52.060 Application review

A. The director shall approve or deny an application under this chapter. If the application is approved, the applicant shall enter into a contract with the city, subject to approval by resolution of the city council, regarding the terms and conditions of the project and eligibility for exemption under this chapter. The city council's resolution to approve the applicant's contract with the city shall take place within ninety days of the director's receipt of the completed application. Upon city council approval of the contract, the director shall execute the contract as approved by the city council, and shall issue a conditional certificate of acceptance of tax exemption. The conditional certificate shall expire three years from the date of approval unless an extension is granted as provided in this chapter.

B. If the application is denied, the director shall state in writing the reasons for the denial and send notice of denial to the applicant's last known address within ten days of the denial.

C. An applicant may appeal the director's denial of the application to the city council by filing a notice of appeal with the city clerk along with the appeal fee as established by ordinance within thirty days of the date of the denial. The appeal before the city council shall be based upon the record before the director, and the director's decision shall be upheld unless the applicant can show that there is no substantial evidence on the record to support the director's decision. The city council's decision on appeal is final.

### **8. Affordability requirements** (Section 4.52.090) *What affordability levels should be required for the MFTE program?*

#### **The draft ordinance proposed different requirements in different neighborhoods.**

<b>Proposed Residential Target Area</b>	<b>Minimum % of Project Units</b>	<b>Affordable at or below % of KC Median Income</b>
DT Bellevue // Eastgate	20%	45% for 'micro' units 70% for studio units 75% for one-bedroom units 80% for two-bedroom and larger units
Bel-Red	10% + 10%	10% of units at the affordability levels required in DT Bellevue / Eastgate <i>and an additional 10% of units</i> 40% for 'micro' units 50% for studio units 60% for one-bedroom units 65% for two-bedroom and larger units
Newport Commercial	20%	80% for all unit sizes

There are a variety of ways cities have approached affordability. Potential considerations include:

- Offer 8 and 12 year exemption options and require different affordability for each time period.
- When other affordable housing incentives are available, account for the other incentive when setting the affordability levels for the MFTE program.
- In areas with weaker market conditions, modify affordability requirements to help encourage new development.

At the October 20 council study session there was discussion of looking at Seattle's program to help guide the Bellevue program. Seattle only provides a 12 year exemption program, and requires different affordability levels depending on the unit size. Similar to Seattle, the draft ordinance provides for only a 12 year exemption. Also similar to Seattle, in all areas except for Newport Hills, the draft ordinance includes different affordability levels for different sized units. In addition, in the Bel-Red area a portion of the affordable units must provide deeper affordability. This was done to account for the affordable housing FAR land use incentives available in Bel-Red, and basing the affordability on the combined value of both the MFTE and land use incentives. For Newport Hills a more relaxed definition of affordability is used – all affordable units at 80% of area median income. Redevelopment in the Newport Hills commercial center is an objective of the city and has faced more market challenges than other areas of the city. A more relaxed approach to affordability is proposed to help offset these market conditions. The affordability level proposed appears to be relatively close to what the market might currently achieve in this area, however if market conditions significantly change in the future, this requirement ensures that some of the units will be preserved for long term affordability. The affordability level proposed for Newport Hills still meets the state minimum requirements in order to offer a 12 year exemption. Finally, the draft ordinance provides for a separate affordability requirement for 'micro units'. This was done in response to results in Seattle showing little public benefit in terms of reduced rents for projects with micro units using their MFTE program.

Other approaches to affordability are possible. Many programs, including the city's land use incentives, require the same affordability level for all unit sizes. For Newport Hills, another approach could be to offer an 8 year exemption option with a more limited affordability requirement. Based on council direction staff can modify the provisions for one or all of the RTAs in Section 4.52.090.

**9. Income recertification** (Section 4.52.090[A][4]) *Should households living in affordable units continue to have income recertified during their residency?*

**The draft ordinance includes language for households to recertify their income annually.** This is consistent with all other Bellevue and ARCH member affordable housing programs created through either direct funding assistance and/or land use incentive programs that serve affordable income levels. In these programs there is some flexibility in income limits for existing residents, but if their income goes over a certain level, the resident is expected to pay market rent and another unit is made available as an affordable unit. The same approach is proposed for this program. This helps to ensure that the public benefit of the affordable units is serving those most in need. It is noted that currently Seattle does not do recertification, but it is something that they are considering doing in the future.

**10. Program limitation / Expiration.** (Section 4.52.130) *How should duration or overall use of the program be limited?*

**The draft ordinance caps the program's duration by setting an end date to the MFTE program at the end of 2019.** There are several approaches to limiting the use of a MFTE program: restrict the areas or number of properties that can utilize the program; have an explicit end date of the program that requires council action to extend; or have no explicit limitation beyond the definition of the RTAs. Cities have used all these approaches – Kenmore limits the program to specifically identified sites, Seattle limits the program's duration, and Kirkland has no explicit restrictions other than through its definitions of RTAs which include most of the city's mixed use/multifamily zones. The draft ordinance uses the same approach as Seattle and sets the program to expire at the end of 2019 (~ 4 years). It also limits the program to four areas of the city. In addition, from a practical point of view, a city can modify a program, including stopping a program at any point in time. If the council wanted to use a more open ended approach, it could remove Section 4.52.130 and rely on the annual report process in Section 4.52.120 to review and decide on changes to or stopping the program. The council could also limit the program by adding language in Section 4.52.130 that caps the number of units allowed to use the program. This could create confusion for developers as the limit is approached and therefore staff recommends the time limit approach.