

## Chapter 17.76 - Inclusionary Housing

### Sec. 17.76.010. - Findings, purpose, and authority.

- A. The regional trend toward increasing housing prices will, without intervention, result in inadequate supplies of affordable housing in Louisville for low, moderate, and middle income households. This trend has a negative effect on the ability of local employers to maintain an adequate workforce, adversely impacting the economy of the city.
- B. The primary objective of this chapter is to increase the number of permanently affordable units available within the city. Consistent with state law, provisions of this chapter provide for various approaches to creating additional affordable housing units. Those provisions recognize the fact that individual site, legal, and economic factors have an impact on which alternatives will work for different developments.
- C. The inclusionary housing requirements in this chapter are based on the city's power to enact zoning regulations that promote the health, safety, and welfare of the community, and promotion and maintenance of a diverse housing stock within the city is an important component of the city's zoning regulations.

(Ord. No. 1809-2021, § 1, 6-15-2021)

### Sec. 17.76.020. - Inclusionary housing requirements.

Because land appropriate for residential development within the city is limited, it is essential that a reasonable proportion of such land be developed into housing units that are affordable to low, moderate and middle income households. All development of market-rate housing should therefore include affordable housing, and the city council finds that 12 percent is the reasonable proportion at this time, given economic indicators and community need. For purposes of this chapter, "affordable" shall mean dwelling units that are restricted to ownership or rental by those persons meeting the income qualifications as set forth in section 17.76.070. A minimum of half of the affordable housing shall be limited to those households at or below 60 percent of the area median income ("AMI"), with the remainder limited to those persons between 60 percent and 80 percent AMI, as calculated by the United States Department of Housing and Urban Development ("HUD").

(Ord. No. 1809-2021, § 1, 6-15-2021)

### Sec. 17.76.030. - Applicability, administration, and violations.

- A. This chapter shall apply only to any development receiving approval of a final plat, final planned unit development (PUD), or other similar planning approval after the enactment of this chapter, or, when an amendment to such approvals is requested after the enactment of this chapter, this chapter shall apply to the increase in residential units approved with such amendment. This chapter shall not apply to a development for which a complete application for a site-specific development plan, as defined in section 17.54.020, has been submitted prior to the effective date of this chapter, provided the development approved by such site-specific development plan is commenced within the timeframe provided by this

Code for issuance of a building permit for such plan. Developments for which an affordable housing restrictive covenant agreement has been entered into with the city prior to the effective date of this chapter may develop in compliance with the affordable housing conditions contained in those agreements.

- B. The provisions of this chapter apply to any dwelling unit that is removed and rebuilt, except as follows:
  - 1. *Calamity*. The provisions of this subsection shall not apply to non-affordable dwellings that may have been removed or caused to be removed by fire, flood, wind, act of nature or another calamity. Such dwelling units may be replaced without meeting the inclusionary housing requirements of this chapter at the time preferred by the property owner. Deed restricted affordable dwelling that may have been removed or caused to be removed by fire, flood, wind, act of nature or other calamity must be replaced and include the deed restriction.
  - 2. *Safe and habitable*. The provisions of this subsection shall not apply to dwellings to be removed, if, at the time of removal, such unit is considered to be an unsafe structure, a structure unfit for human occupancy, or a dangerous structure under the building codes adopted by the city.
- C. Provisions of this chapter to be implemented by the city manager, and authority conferred on the city manager by this chapter, may be performed by the city manager's designee, which designee may include a housing authority or other local government pursuant to intergovernmental agreement with the city.
- D. All revenues received by the city under this chapter shall be deposited and kept in a separate account established by the city's finance department for such purpose. Monies received into such account will be utilized solely for the construction, purchase, and maintenance of affordable housing, and for the costs of administering programs consistent with the purposes of this chapter.
- E. It shall be unlawful for any person to violate any provision of this chapter, any rule or regulation adopted by the city manager pursuant to this chapter, any agreement executed as described in this chapter, or any deed restriction recorded as described in this chapter.

(Ord. No. 1809-2021, § 1, 6-15-2021)

Sec. 17.76.040. - Satisfaction of requirements by unit type.

- A. *For sale*. Developments of units for sale may satisfy the requirements of this chapter using any of the options listed in section 17.76.050, below.
- B. *For rent*. Developments of units for rental may satisfy the requirements of this chapter using any of the options listed in section 17.76.050, below.
- C. *Live/work*. Live/work units shall be considered residential development for the purposes of this chapter.

(Ord. No. 1809-2021, § 1, 6-15-2021)

Sec. 17.76.050. - Options to satisfy requirements.

- A. *On-site location*. The developer or builder may satisfy its obligations under this chapter by providing affordable housing at the same location as market-rate units.

1. *Quantity and design.* At least 12 percent of the dwelling units in the development shall be affordable. The methods and materials used for construction of affordable units shall be equivalent in quality to the market rate units.
  2. *Phasing.* Phasing of construction of affordable units and securities for each phase shall be detailed in an affordable housing agreement approved by the city council or may be included in a subdivision or other agreement executed by the city and developer at the time of land use approval.
  3. Affordable units shall have equal access as market-rate units to all amenities within the development, including, but not limited to, common areas, indoor and outdoor facilities for convenience or recreation, and parking facilities.
  4. *Homeowner associations.* Affordable units must be placed on a fair and equal footing as market-rate units within the governing documents of any homeowner association or similar entity.
- B. *Fee in lieu.* A developer may pay a fee in lieu of providing affordable units.
1. *Amount.* The city council finds that studies performed by municipalities within the vicinity of the city reasonably calculates the impact to the city, including the city's finances and the welfare of the city's residents, of market-rate dwelling units being developed in the city. Accordingly, the fee in lieu is set initially at \$9.24 per square foot of finished market-rate for-sale housing, and \$4.72 per square foot of finished market-rate rental housing. The fee in lieu of providing any required fraction of a unit shall be pro-rated based on its proportional share (fractional quantity divided by total number of units required) of the amount of fee in lieu that would be required for the whole development. The City Manager shall periodically recalculate the fee in lieu and present the recalculation to the city council.
  2. *Timing of payment.* A developer or builder shall pay the fee in lieu for each market-rate unit as a prerequisite for receiving the building permit for that unit. The fee paid shall be the fee in effect at the time of the submittal of a complete building permit application for the development, whichever is later.
- C. *Off-site location.* A developer or builder may seek to provide affordable units within the city in a different location than the development of the market-rate units.
1. *Quantity required.* The developer or builder shall provide no less quantity of affordable housing than would have been required on-site.
  2. *Location restrictions.* The affordable units may not be located in a low to moderate income area as designated by the U.S. Department of Housing and Urban Development, unless an exception is granted by the city council pursuant to subsection H of this section.
  3. *Existing housing.* Existing homes may be acquired and deed restricted as affordable if they are in good repair in the determination of the city manager based on an inspection paid for by the developer but commissioned by the city, carry a warranty of sufficient scope and duration to protect the resident from significant preexisting deficiencies, and are not already burdened by restrictions requiring them to be kept affordable or restrictions similar in effect.
  4. *Timing of off-site construction.* No final plat or site plan shall be executed for the location of the market-rate units until a final plat sufficient to facilitate the development of the affordable units, and final PUD if necessary, have been recorded. Phasing and security shall be governed in the same

manner as on-site locations as described in subsection A.2 of this section. The affordable housing agreement shall run with the land and shall be recorded against the off-site location.

5. Approval of the use of this option does not guarantee approval of any land use application or building permit for the off-site location. The developer risks forfeiture of security if unable to build the off-site units as proposed.

D. *Land dedication.* A developer may seek to provide land to the city in lieu of the development of affordable units. Dedicated land must meet the following standards:

1. All off-site infrastructure necessary or proper for the development of the land as affordable housing either: (i) must already be in place, and any outstanding obligations paid to neighboring landowners for public infrastructure they installed, (ii) the developer must agree to build the infrastructure within a time frame that will not delay the development of the affordable housing and the developer may be required to post securities for the infrastructure via a public improvement agreement, or (iii) the land donation must be accompanied with additional compensation to the city sufficient to construct such infrastructure.
2. The land must be able to support at least the quantity of affordable housing as would be required on-site, without the need for a variance, modification, rezoning, or reliance on any incentive for affordable housing found in this Code, such as a density or height bonus. The developer shall submit a concept plan illustrating how it complies.
3. The land must not be encumbered in any manner including, but not limited to, any lien, outstanding tax or fee accrued, or floodplain, which in any way jeopardizes the city's ability to develop that quantity of housing.
4. The land may not be located in a low to moderate income area as designated by the U.S. Department of Housing and Urban Development, unless an exception is granted by the city council pursuant to subsection H of this section.
5. The land must be dedicated to the city at the time of execution of the plat or plan allowing the development of the market-rate units.
6. The developer and the owner of the land shall comply with all environmental site assessment provisions of the Louisville Municipal Code applicable to dedications via plats or site plans, and associated development.
7. The land dedication must be in fee simple and by general warranty deed. At the time of conveyance, the developer shall provide title insurance in the full value of the land conveyed to the city.
8. The land dedication plus any fee in lieu contributed must be of equivalent or greater value to the total fee in lieu contribution amount. The value of the land to be dedicated will be determined, at the cost of the developer, by an independent appraiser, who will be selected from a list of Colorado Certified General Appraisers provided by the city, or by such alternative means of valuation to which a developer and the city may agree. If the land does not equal the full amount of the fee in lieu owed, the developer shall contribute fees in lieu to make up any gap between the value of the dedicated land and the total fee in lieu contribution amount.

- E. *Redemption of credits.* A developer may acquire, and redeem with the city, credits generated as described in section 17.76.090, from the prior development of affordable housing, to offset an equivalent quantity of required affordable housing.
- F. *Voluntary alternative agreement.* A developer may propose an alternative manner in which the development will satisfy its obligations under this chapter. Such an agreement need not meet the otherwise applicable substantive requirements of this chapter, but must be approved by the city council. The applicant for an alternative agreement shall provide all documentation and any other material requested by the city that demonstrates the proposed method of compliance:
1. Will result in additional affordable housing benefits for the city consistent with the purposes of this chapter; or
  2. Will result in additional affordable housing benefits that are equivalent to or greater than the fee in lieu contribution set forth in subsection B of this section; or
  3. Is necessary to prevent an unlawful taking of property without just compensation.
- G. *Combination.* A developer or builder may pursue any combination of the allowable options in this section.
- H. *City council approval required.*
1. Developments seeking to use options other than on-site location of affordable housing must seek approval of their proposed use of such options from the city council. The city council's decision on such proposals is discretionary and legislative. The city council will consider whether the proposal will result in more affordable housing, providing more of a benefit to the city, than would the provision of the affordable units on-site under subsection A of this section, whether practical difficulties prevent the inclusion of the affordable units on-site under subsection A of this section, whether the proposal would better benefit the inhabitants of the city than requiring the provision of affordable housing on-site, or any other factors that may be relevant to these considerations.
  2. Exception to restrictions on placement of affordable housing in low to moderate income areas. The city council may, in its discretion and as a legislative act, grant an exception to the restrictions of subsections C and D of this section on provision of off-site affordable housing and land dedication within low to moderate income areas. The city council will generally consider whether the placement of the required affordable housing in such areas would result in clustering of low-income housing in a way that would negatively impact the inhabitants of the area, the surrounding community, or the city as a whole, and whether positive elements of redevelopment or investment in the area outweigh any potential negative impacts.
  3. The city manager shall recommend approval or denial of each proposal before the city council based on compliance with the applicable provisions of this chapter and adopted city policy.

(Ord. No. 1809-2021, § 1, 6-15-2021)

Sec. 17.76.060. - Deed restrictions.

All required affordable housing shall carry deed restrictions and covenants in a form as directed by the city manager.

1. *When required.*
  - a. *Ownership covenant.* Deed restrictions shall be required for each affordable for-sale unit at the time the unit passes to a qualifying owner.
  - b. *Rental covenant.* Deed restrictions for affordable rental units shall be required prior to issuance of the first certificate of occupancy for any rental unit in the development.
2. *Content.* The deed restrictions shall contain all terms determined by the city manager to be appropriate to ensure the affordability of the unit and compliance with this chapter.
3. *Deed of trust.* The deed restrictions shall be secured by a deed of trust on the property, which may be subrogated to other deeds of trust on the property.
4. *Term.* All ownership and rental covenants shall be perpetual or virtually so; they shall require affordability of the affected unit for the greatest duration allowed by law.
5. *Sale.*
  - a. *Ownership covenants.* Ownership covenants shall allow sale to another homeowner qualifying under section 17.76.070. These covenants shall allow for appreciation of the home at a rate determined based on changes in the area median income, plus an allowance for the value of capital improvements to the home installed by the owner. The rate may be capped so as to ensure the continued affordability of a unit to a new purchaser, to ensure that unit price does not fall unreasonably below the level at which a unit would be considered affordable, and to facilitate the economically practical sale of a unit once its owner's income increases sufficiently for the owner to afford a market-rate unit. The seller of the home shall charge to the buyer no other special or unusual fees, including any finder's fee. The city council may consider allowing an owner of an affordable unit to sell to a buyer who does not meet the qualifications of section 17.76.070, below, in exceptional circumstances involving significant disruption to the local economy or individual financial hardship. In exchange, the owner would transfer equity to the city at that time. The city manager may specify in the deed restriction the amount of such equity. The amount shall be based on the difference between the initial sale price and the estimated market price of the unit at the time of initial sale.

(Ord. No. 1809-2021, § 1, 6-15-2021)

Sec. 17.76.070. - Income qualification and local live/work preference.

Affordable units may be sold or rented only to a person selected by the city manager who meets the city's qualifications. Such qualifications shall be based on the person's income and assets, and shall be intended to ensure that only those who require affordable housing shall be eligible. In selecting particular qualified applicants for particular affordable units, the city manager shall consider applicants' household size compared to the size of available affordable units. If more qualified applicants of the appropriate household size request housing in an affordable unit than there are affordable units available, the city manager shall give priority to applicants who prove their residency or employment within Louisville to the satisfaction of the city manager. If applicants are equally so prioritized, the city manager may select among the applicants by lottery.

(Ord. No. 1809-2021, § 1, 6-15-2021)

Sec. 17.76.080. - Restriction on rental of for-sale units.

No owner of a for-sale affordable unit may fail to continuously occupy the unit as a primary residence, or lease or rent out the unit to any person. The city manager may grant an exception to this restriction if the owner proves to the satisfaction of the city manager that the lease or rental is directly necessitated by a bona fide hardship, the property has no outstanding down payment assistance loan from the city, and the lessee or renter will be a person approved by the city manager as meeting the qualifications of a purchaser of an affordable unit under section 17.76.070. The owner must notify the city manager at least 90 days prior to leasing or renting out the unit, to give the city manager adequate time to consider the proposed exception.

(Ord. No. 1809-2021, § 1, 6-15-2021)

Sec. 17.76.090. - Credits for excess affordable housing.

A. *Award of credit.*

1. *By agreement.* At the time of final plat or final PUD, a developer may enter into an agreement with the city to memorialize that the developer shall develop more affordable housing than would otherwise be required under this chapter.
2. *Certificate of credit.* Provided that such housing is actually developed and a certificate of occupancy issued, the city shall award the developer a credit for the excess number of units provided.
3. *Exceptions.* No credit shall be available for any affordable housing built on land donated or sold at a significant discount, for the purpose of developing affordable housing, in satisfaction of this chapter or any prior affordable housing requirements of the city; or for any affordable housing receiving any city-funded or city-administered assistance whether financial subsidy, tax relief or other credits or incentives from the city. However, a development's use of a loan from the U.S. Department of Housing and Urban Development shall not disqualify its affordable housing from generating a credit.

- B. *Redemption of credit.* The credit may be redeemed to offset an equivalent number of affordable housing units that would otherwise be required under this chapter. Such credit shall be freely transferable to any other developer, but shall be transferred in a manner acceptable to the city manager so as to ensure accurate tracking of the transfer of credits by the city. A credit shall expire five years after it is awarded unless, within that time, the city executes an agreement with the holder of the credit to apply the credit to a specified development. Before the credit expires, the city manager may, upon request, in writing, and for good cause, extend the term of the credit by one additional term of two years.

(Ord. No. 1809-2021, § 1, 6-15-2021)

Sec. 17.76.100. - Marketing and sale of units.

Rules and regulations under section 17.76.110, below, may address marketing and sale of units to ensure that the community has sufficient notice of available affordable housing.

(Ord. No. 1809-2021, § 1, 6-15-2021)

Sec. 17.76.110. - Rules and regulations.

The city manager may adopt such reasonable rules and regulations as may be necessary for the purpose of administering, interpreting, or enforcing the provisions of this chapter.

(Ord. No. 1809-2021, § 1, 6-15-2021)

Sec. 17.76.120. - Objections and appeals.

- A. It is the intention of the city that the application of this chapter shall comply with all statutory and constitutional requirements, including not resulting in an unlawful taking of private property without the payment of just compensation.
- B. Any applicant for the development of a housing project who believes that the application of this chapter would affect such an unlawful taking may apply to the city manager for an adjustment of the requirements imposed by this chapter. Such application must state with specificity the adjustment requested and the legal basis therefor.
- C. If the city manager determines that the application of the requirements of this chapter would result in an unlawful taking of private property without just compensation, the city manager may alter, lessen or adjust permanently affordable dwelling unit requirements as applied to the particular development under consideration such that there is no unlawful uncompensated taking.
- D. If, after reviewing such application, the city manager denies the relief sought by an applicant, the applicant may request an administrative hearing to seek relief from the provisions of this chapter. Any such hearing shall be conducted by a hearing officer retained by the city. At such hearing, the burden of proof will be upon the applicant to establish that the fulfillment of the requirements of this chapter would affect an unconstitutional taking without just compensation pursuant to applicable law of the United States and the State of Colorado. If it is determined at such administrative hearing that the application of the requirements of this chapter would effect an illegal taking without just compensation, the city manager will alter, lessen or adjust permanently affordable dwelling unit requirements as applied to the particular development under consideration such that no illegal uncompensated taking takes place.

(Ord. No. 1809-2021, § 1, 6-15-2021)