

Originator Planning	Item <b>City Code Amendment - Opportunity Housing Ordinance</b>
Date 02/25/19	

Description

## GENERAL INFORMATION

Applicant: City of Bloomington

Request: Review and Public Hearing – Draft Housing Opportunity Ordinance – Amendment to chapters 2, 9, and 14 of the City Code

## CHRONOLOGY

12/20/18 Planning Commission (study)  
 01/14/19 City Council (study)  
 01/22/19 Bloomington Housing and Redevelopment Authority  
 01/22/19 Bloomington Board of Health  
 01/24/19 Planning Commission – public hearing (continued)  
 01/28/19 Bloomington Human Rights Commission  
 02/14/19 Planning Commission – public hearing  
 02/25/19 City Council – public hearing

## STAFF CONTACT

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## REQUEST

In 2018, the City Council directed staff to prepare a comprehensive ordinance to encourage creation of new affordable housing units and preservation of existing affordable housing in Bloomington. During preparation of the ordinance, input was obtained from housing developers, affordable housing advocates, the chamber of commerce, various city commissions and the City Council.

On January 24, 2019, the Planning Commission opened the public hearing. Discussion and comments received are summarized in the attached meeting minutes. The public hearing was help open until the Planning Commission meeting on February 14, 2019, where one additional comment was received. The Planning Commission discussed the ordinance, noting some items and recommended approval.

At the meeting, staff will provide a brief overview of the draft Housing Opportunity and Preservation Ordinance, which is included in the attachments. Modifications to the ordinance since the February 14, 2019 Planning Commission meeting include: minor revisions to incorporate language related to promoting health,

clarifying the effective date, and linking the requirements of 9.06(d) with the provision of financial assistance (red text). The effective date proposed for the ordinance is September 1, 2019.

## **BACKGROUND**

The City recognizes that providing housing opportunities for all members of the community is fundamental to maintaining a stable, balanced, and equitable community. As housing costs have outpaced income growth, an increasing number of households struggle to find stable housing they can afford. This is not unique to Bloomington; housing affordability is an issue across the region and the nation. It's also not simply a housing issue, businesses are experiencing challenges in recruiting and retaining workers who can't access affordable housing near where they work. Over the past few years, Bloomington has engaged housing advocates, developers, residents, businesses and other community members in discussions about how to address housing affordability and stability. This ordinance is one of several strategies the City has identified to address affordable housing issues.

From the outset, it was determined that the approach should strive to incentivize creation of new affordable housing units without hindering the market for new housing development. To do that, a nexus study was completed to examine the area housing market and identify quantifiable justifications for the ordinance requirements. The nexus study provides the foundation for specific requirements in the ordinance. Key findings include:

- The greatest need is for housing units affordable to households with incomes at or below 60% of area median income (AMI).
- The minimum amount of new affordable units required should reflect the induced demand for affordable units resulting from development of market rate units. This was determined to be 9% [For example: 100 new market rate units creates demand for 9 affordable units]. As such, the ordinance requires at least 9% of units in a housing development to be affordable to households at 60% AMI or below.
- An option to pay a fee into a housing trust fund rather than build affordable units is one means of providing compliance flexibility. The proposed payment in lieu of \$9.60 per leasable square foot reflects an amount supportable by the market and applies to the interior square foot space of the unit.
- It is important to routinely evaluate and update thresholds stated in the ordinance (percent of required affordable units; payment in lieu) to respond to changing market conditions.
- Incentives, such as density bonuses and parking flexibility, offset the costs to create affordable units; however not all incentives provide similar values and the highest returns are achieved when multiple incentives are bundled in a single project. Thus, it is important to provide flexibility to identify the incentives that best fit a specific development proposal and location.

## **ORDINANCE OVERVIEW**

### **Approach**

Two key objectives in structuring the ordinance were to provide flexibility and clarity. Developers will be granted significant flexibility to choose how they want to comply with the ordinance requirements and identify which tools and incentives they propose to use. City staff will work with developers to ensure the tools and incentives fit the specific site and development proposal. Tools and incentives can be applied to all approaches except the payment in-lieu option. The four approaches developers may choose from include:

1. *Build affordable units on site:* Build the required minimum 9% affordable units on the development proposal site.
2. *Pay the in-lieu rather than build affordable units:* Proceed with development proposal for 100% market rate units and make in-lieu payment to the Housing Trust Fund prior to issuance of a certificate of occupancy.
3. *Provide affordable units via other compliance options, including:*
  - Build required affordable units off site
  - Dedicate land to be used for development of required affordable housing
  - Partner with an affordable housing developer who would build the required units
  - Acquisition and conversion/rehabilitation of existing market rate units to affordable units
4. *Purchase, rehabilitate and preserve existing affordable housing.* Developer may purchase and deed restrict existing affordable housing units.

### **Applicability & Minimum Requirements**

The ordinance would apply to both new residential development and substantial rehabilitation as follows:

#### *New Residential Development*

- All new multi-family residential or townhome development with 20 or more units would be required to provide at minimum of 9% of the units affordable to households with incomes at 60% AMI or below.
- All new single-family residential development with 20 or more units would be required to provide a minimum of 9% of the units affordable to households with incomes at 110% AMI or below.

#### *Purchase or Substantial Rehabilitation*

- Naturally Occurring Affordable Housing Units of 20 or more units that receive some form of financial assistance from the city or HRA and that are purchased or undergo substantial rehabilitation must preserve at least 9% of the units as affordable to households with incomes at 60% AMI or below.

### **Tools & Incentives**

The ordinance describes a number of tools the developer may choose to apply to a project. These would be identified in an *Affordable Housing Plan* that must be submitted with the development application. In conjunction with development review, staff would work with the developer to test the proposed tools and incentives to ensure they would be effective for the specific project.

Some of the tools and incentives are structured so that the amount of benefit increases proportionate to the amount of affordable housing proposed. In addition, higher benefits are provided for developments that provide units affordable to a mix of AMI levels (30%, 50%, and 60%).

Available tools and incentives:

#### *Building and Site Design:*

- Density bonus
- FAR bonus
- Height bonus
- Parking Reduction
- Enclosed parking space conversion allowance
- Unit size reduction
- Alternative exterior materials allowance

- Storage space reduction

*Process and Fees:*

- Development fee waivers or deferment
- Landscape fee in-lieu reduction
- Expedited plan review

*Financial:*

- Land write down on city owned land
- Housing TIF
- Project based vouchers

**Other**

The ordinance describes several implementation objectives, including:

- *Dispersion* – opportunity housing units should be provided throughout the city to avoid concentration of low-income households.
- *Integration* – opportunity housing units within a development must be mixed and not clustered to segregate from market rate units.
- *Design* – construction quality and exterior design of opportunity units must be comparable market rate units within the development.
- *Phasing* – if the development proposal and Affordable Housing Plan includes phasing, the opportunity units must be provided proportionately and concurrently with the market-rate units.
- *Timing of Construction* – certificates of occupancy for market-rate units may not be issued until a certificate of occupancy is issued for a proportionate number of opportunity units.

**Documentation and Approval Requirements**

The ordinance spells out requirements for determining compliance. Required documentation varies depending on the approach taken.

- *Affordable Housing Plan* – Any development that results in creation or preservation of affordable housing units must include an affordable housing plan. The plan must be submitted with the development application and describe the proposed compliance approach (e.g., build on site, build off site, preserve existing units, etc.) and the tools and incentives that will be used. The plan will be reviewed by staff in conjunction with the normal development review. The proposed approach, tools and incentives will be evaluated to ensure appropriateness and effectiveness for the specific development. If necessary, the plan may need to be modified to ensure compliance with the ordinance. Developers choosing to make a payment in-lieu of developing affordable units are not required to submit an affordable housing plan.

- *Affordable Housing Agreement* – An affordable housing agreement between the developer/applicant and the City must be executed prior to issuance of building permit. The agreement stipulates the commitments and obligations of both the applicant and City to implement the agreed on compliance approach and tools and incentives. An agreement would also be required for NOAH rehabilitation.
- *Payments In-Lieu of Creating Affordable Units* – Developers choosing the payment in-lieu of approach must submit the required payment to the City after the building permit is issued for their market rate residential development, but prior to issuance of a certificate of occupancy. The in-lieu payment will be deposited into the City’s Affordable Housing Trust Fund, which will be established with this ordinance. The required payment is based on the leasable market rate unit square footage at a rate established in the City’s payment in-lieu policy. As noted earlier, the payment determined to be justifiable for current market conditions is \$9.60 per leasable square foot. This amount will be routinely evaluated to ensure it reflects current market conditions. It is also noted that developers may choose a combination of payment in-lieu and provision of affordable units.

### **Monitoring and Compliance**

As stated above, this ordinance is intended to be responsive to changing economic and market conditions. In addition, to ensure compliance over time, routine monitoring is needed to affirm that opportunity units remain available to the intended households and income levels.

The ordinance describes several ways that compliance will be monitored, including:

- *Annual City Review* – the Community Development Department will update household income limits and rental limits as published by HUD.
- *Annual Report* – the project developer/owner must submit an annual report to City describing the number of opportunity units, vacancy, monthly rent amounts, and monthly incomes for tenants in opportunity units. This report must provide sufficient documentation affirming that opportunity units are leased to eligible households at affordable rents.

### **Implementation and Evaluation**

The ordinance provides for regular evaluation and review of the ordinance requirements to ensure they respond to changing market conditions.

- *Annual Status Report* – staff must provide a report to the City Council by Oct 1 each year that summarizes activity under the ordinance.
- *Comprehensive Evaluation* - Every five years, the City will conduct a more thorough evaluation of the ordinance and its effectiveness.

### **Establish Housing Trust Fund**

The ordinance provides for establishment of an affordable housing trust fund that will collect funds related to the City’s affordable housing programs described in the ordinance. It stipulates that all funds and earnings be expended exclusively on activities that providing housing affordable to households with incomes at or below 60% AMI. Some examples of eligible expenditures include:

- Acquisition and construction of affordable housing units;
- Gap financing for creation of affordable housing units;
- Enhancement/leverage of county, state, and federal affordable housing programs;
- Purchase and/or rehabilitation and preservation of NOAH units;
- Rehabilitation of existing single-family, owner-occupied units to retain affordability;
- Provision of low cost financing or grants to support creation of affordable accessory dwelling units;
- Development fee waivers and/or deferral;
- Land acquisition and/or land banking for affordable housing creation; and
- Relocation assistance.

### **Effective Date**

The ordinance provides for a phase-in period to allow developers, staff, and others time to test, understand, and refine, if appropriate, the ordinance provisions. The ordinance is proposed to go into effect approximately six months after the date of City Council adoption (September 1, 2019). During the phase-in period, staff will develop the policy guidelines and supporting technology associated with the ordinance, and staff will work with applicants to demonstrate how the provisions would apply. This would be voluntary. Any residential development application submitted prior to the effective date would not be required to comply with the ordinance. A developer considering a market rate residential project, who is not ready to submit a formal application by the effective date, could submit a pre-application concept plan for review by City staff within the six month period. If a complete application for final site and building plan or final development plan approval is submitted to the City before September 1, 2021, compliance with the ordinance would not be required.

### **OFFICIAL REVIEW AND APPROVAL**

A public hearing before the Planning Commission was opened on January 24, 2019 and continued to February 14, 2019. The Planning Commission recommended approval of the ordinance and forwarded to the City Council for review, public hearing, and potential adoption.

### **REQUESTED ACTION**

The Planning Commission and staff recommend approval of the Opportunity Housing Ordinance through the following motion:

In Case PL2019-2, I move to adopt an Ordinance amending Chapters 2, 9, and 14 of the City Code to encourage creation of opportunity housing units and preservation of existing affordable housing buildings.