

ORDINANCE NO. 2019-30

AN ORDINANCE AMENDING CHAPTERS 1 AND 9 OF THE CITY CODE TO UPDATE OPPORTUNITY HOUSING STANDARDS AND ADMINISTRATIVE OFFENSES

The City Council of the City of Bloomington, Minnesota does hereby ordain:

Section 1. That Chapter 1 of the City Code is hereby amended by deleting those words within brackets and ~~[stricken through]~~ and adding those words that are underlined, to read as follows:

§ 1.11 CITY CODE PROVISIONS THAT ARE ADMINISTRATIVE OFFENSES.

A violation of the following provisions of the city code shall be an administrative offense that may be subject to the administrative mediation and hearing process of this [Article II](#).

(6) ~~[RESERVED]~~ Chapter 9, Article XI, Affordable Housing Tenant Protection;

Section 2. That Chapter 9 of the City Code is hereby amended by deleting those words within brackets and ~~[stricken through]~~ and adding those words that are underlined, to read as follows:

CHAPTER 9: HOUSING OPPORTUNITY AND PRESERVATION

ARTICLE I: GENERAL PROVISIONS

§ 9.04 DEFINITIONS.

The following words and terms, when used in this chapter, have the following meanings unless the context indicates otherwise.

HOUSEHOLD. One person or more living alone or two or more persons sharing residency [~~whose income is considered to be extremely low, very low, or low income, up to sixty percent (60%) of area median income~~].

NATURALLY OCCURRING AFFORDABLE HOUSING (NOAH). Existing owner-occupied or rental residential housing that is (a) affordable for at least twenty percent (20%) of the units [~~(20%)~~] to a household at or below sixty percent (60%) of AMI, (b) classified in the Class B and C real estate categories, and (c) were constructed between 1940 and 1990.

OPPORTUNITY HOUSING UNIT. A housing unit affordable to a household with income at or below sixty percent (60%) of AMI.

OPPORTUNITY FUND. Private investment vehicle, certified by the United States Department of Treasury, to aggregate and deploy capital for eligible uses on [~~in~~] property in an opportunity zone.

PRIMARY RESIDENCE. The legal and verified permanent residence of a household.

RESIDENTIAL DEVELOPMENT. A residential or mixed use development, that includes [~~at one location of~~] any single family, duplex, townhouse, condominium dwelling, or other residential unit [~~in residential or mixed-use developments~~]. Residential development includes the conversion of rental housing to condominiums or similar residential uses if applicable.

ARTICLE II: DEVELOPER OPTIONS

§ 9.08 OFF-SITE.

(a) In consideration of and as a way of providing the developer with tools and flexibility to meet the requirements of this chapter, a developer may meet its opportunity housing requirement by the construction of opportunity housing units on a site different from the site of the residential development as follows:

(1) *For-sale residential development.* Off-site opportunity housing units equivalent to no less than nine percent (9%) of the total dwelling units in the residential development must be made available for purchase at a housing cost to those households earning no more than one hundred ten percent (110%) of the area median income.

(2) *Rental residential development.* Off-site rental opportunity housing units numbering no less than nine percent (9%) of the total dwelling units in the residential development must be made available for rent with a housing mix of extremely low, very low and up to sixty percent (60%) AMI households.

(3) *Additional requirements.* All opportunity housing units constructed off-site of the residential development must also comply with all of the following requirements:

(A) The site of the opportunity housing conforms to the city's affordable housing dispersion objective set forth in section 9.36;

(B) The site has a comprehensive plan designation authorizing residential uses and is zoned for residential development at a density to accommodate at least the number of required opportunity housing units within the residential development;

(C) The site can accommodate the development of the opportunity housing units;

(D) Environmental review for the site has been completed for the presence of hazardous materials and geological hazards, and all such hazards are or must be mitigated to the satisfaction of the city prior to acceptance of the site by the city;

(E) The construction schedule for the off-site opportunity housing units must be included in the affordable housing plan pursuant to section 9.32 and the opportunity housing agreement pursuant to section 9.35; and

(F) Construction of the off-site opportunity housing units must be completed prior to or concurrently with the market rate residential development pursuant to section 9.36(e).

~~[(b) Off-site. As an alternative to providing opportunity housing units upon the same site as the market rate residential development required by section 9.06, the developer may select any of the compliance options in sections 9.08 through 9.14 of this chapter.~~

~~(1) If the developer selects any of the off-site compliance options in this Article, the basis for the opportunity housing requirement will be no less than nine percent (9%) of the total of all units in the residential development.~~

~~(2)] (4) Location. Where the market rate residential development is located in a district plan area, the following will apply:~~

~~(A) The off-site opportunity housing units for the residential development must be located within the same district plan area.~~

~~(B) If at the time of submission of the affordable housing plan pursuant to section 9.32, the developer has petitioned and provided credible documentation in writing to the community development department that there is insufficient available land within the district area plan to construct the off-site opportunity housing units, the opportunity housing units may be constructed upon a site approved by the city in another area in the city.~~

~~(5) Incentives. In cases where opportunity housing units are constructed off site, the tools and incentives described in Article III apply only to the site hosting the opportunity housing units.~~

§ 9.10 DEDICATION OF LAND IN LIEU OF CONSTRUCTION OF OPPORTUNITY HOUSING UNITS.

(a) The opportunity housing requirement in section 9.06 may be satisfied by the dedication of land in lieu of constructing opportunity housing units within the development when the community development department determines that all of the following requirements will be met:

(1) Marketable title to the site(s) is transferred to the city, or an affordable housing developer approved by the city, prior to the commencement of construction of the residential development pursuant to an agreement between the developer and the

city, and such agreement is determined by the city council, at its sole discretion, to be in the best interest of the city;

- (2) The site(s) has a comprehensive plan designation authorizing residential uses and is zoned for residential development at a density to accommodate at least the number of otherwise required opportunity housing units within the residential development and conforms to city development standards;
- (3) The site(s) can accommodate development of the opportunity housing units;
- (4) Sufficient infrastructure to serve the site(s) proposed to be dedicated including, but not limited to, streets and public utilities, must be available at the property line with adequate capacity to serve the maximum allowable residential development pursuant to zoning regulations;.
- (5) Environmental review of the site(s) has been completed for the presence of water, hazardous materials, radon, lead, environmental toxins, and geological hazards and all such hazards are or will be mitigated to the satisfaction of the city prior to acceptance of the site by the city;
- (6) The assessed value of the site(s) upon the date of dedication is equal to or greater than the in lieu of payment in effect at the date of dedication;
- (7) The site(s) proposed to be dedicated complies with the dispersion objective pursuant to section 9.36; and
- (8) [~~The site is more than 1,000 feet from a tobacco, medical cannabis, or alcohol retailer; and~~]
- [(9)] any applicable requirements in the opportunity housing guidelines.

(b) The city will not be required to construct opportunity housing units on the site(s) dedicated to the city, but may sell, transfer, lease, or otherwise dispose of the dedicated site(s). Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the city under this section will be deposited into the city's affordable housing trust fund and used in accordance with the provisions of section 9.38 and city charter.

§ 9.13 COLLABORATION WITH AN AFFORDABLE HOUSING DEVELOPER.

The opportunity housing requirement in section 9.06 may also be satisfied through partnership with an affordable housing developer, wherein the developer or a related interested party negotiates a financial contribution to an affordable housing developer that is equal to or no less than the equivalent in lieu of payment set forth in section 9.09 in exchange for construction and deed restriction of the required opportunity housing units within the city. This option may only be used when the city is not providing any other additional funds to the same affordable housing developer for the same development. In cases where opportunity housing units are constructed off site, the tools and incentives described in Article III apply only to the site hosting the opportunity housing units.

ARTICLE III: AFFORDABLE HOUSING TOOLS AND INCENTIVES

§ 9.15 AFFORDABLE HOUSING TOOLS AND INCENTIVES.

(a) The developer of any of the following types of development that [~~preserve or create twenty (20) or more residential dwelling units as determined by the calculation described in section 9.06(b)~~] creates twenty (20) or more total dwelling units or preserves twenty (20) or more NOAH units is eligible to use any of the following affordable housing tools and incentives for which it qualifies:

(b) For developments that include existing units affordable to households with incomes at or below sixty percent (60%) of AMI, to qualify for the tools and incentives of this article a development must have a net gain in total housing units on the site(s) of the development affordable to households with incomes at or below sixty percent (60%) of AMI that is equivalent or greater than the number required in Section 9.06.

(c) A development that complies with the requirements of this chapter by payment pursuant to section 9.09 is not eligible to use the affordable housing tools and incentives described in this article.

([e]d) To use the tools and incentives described in this article, prior to issuance of a certificate of occupancy, the developer of a qualifying development must provide the city with record evidence of a covenant that maintains the opportunity housing units as affordable rental housing to households at or below sixty percent (60%) of AMI or affordable owner-occupied housing to households at or below one hundred ten percent (110%) of AMI, or both as applicable, for a period of no less than twenty (20) years.

(e) Use of an individual tool or incentive described in this article is prohibited if the City Council determines that the resulting development has the potential to negatively impact the surrounding neighborhood and that the negative impacts outweigh the positive benefits of the opportunity units created.

§ 9.20 ENCLOSED PARKING SPACE CONVERSION ALLOWANCE.

(a) To incentivize the creation of opportunity housing units, a residential development that includes at least nine percent (9%) of its total dwelling units affordable to households at or below sixty percent (60%) of AMI may convert required enclosed parking spaces to carport covered parking spaces depending on the level of affordability provided as follows:

- (1) A development with nine percent (9%) of its units qualifying as extremely low income affordable housing qualifies to convert fifty percent (50%) of required enclosed parking spaces to carport covered parking spaces provided that the affordable housing agreement required pursuant to section 9.32 provides that the owner will make enclosed or carport covered parking spaces accessible to [not charge] the opportunity housing units without charge~~[for access to enclosed or carport covered parking spaces]~~;

- (2) A development with nine percent (9%) of its units qualifying as very low income affordable housing qualifies to convert twenty-five percent (25%) of required enclosed parking spaces to carport covered parking spaces provided that the recorded affordable housing agreement required pursuant to section 9.32 provides that the owner will make enclosed or carport covered parking spaces accessible to [~~not charge~~] the opportunity housing units without charge[~~for access to enclosed or carport covered parking spaces~~];or
- (3) A development with nine percent (9%) of its units qualifying as low income affordable housing qualifies to convert ten percent (10%) of required enclosed parking spaces to carport covered parking spaces provided that the recorded affordable housing agreement required pursuant to section 9.32 provides that the owner will make enclosed or carport covered parking spaces accessible to [~~not charge~~] the opportunity housing units without charge[~~for access to enclosed or carport covered parking spaces~~].

(b) The enclosed parking space conversion allowances provided in this section are not cumulative. Each qualifying development is eligible for only one (1) enclosed parking space conversion allowance of ten to fifty percent (10 to 50%) depending on the level of affordability provided.

§ 9.23 STORAGE SPACE REDUCTION.

To incentivize the construction of opportunity housing units, a multiple-family development that includes at least nine percent (9%) of its total dwelling units affordable to households at or below sixty percent (60%) of AMI may reduce the required number of storage spaces outside the dwelling unit by fifty percent (50%) provided that the affordable housing agreement pursuant to section 9.32 provides that the owner will make storage space accessible to [~~not charge~~] the opportunity housing units without charge[~~for access to storage space~~].

§ 9.25 DEVELOPMENT FEE REIMBURSEMENT [~~WAIVERS~~].

For any development located within the area bounded by Interstate 35W, Interstate 494, Trunk Highway 77, and the Minnesota River, upon a showing of demonstrated need, the city will consider reimbursing [~~waiving~~] all or a portion of the zoning application fees, building permit fees, park dedication fees, sewer availability charge (SAC) fees and related infrastructure fees from available funds in the housing trust fund, not to exceed the fees for a cumulative total of three hundred twenty (320) [~~opportunity~~] housing units, within the geographic area, for a development in which a minimum twenty percent (20%) of units are affordable to a mix of households with incomes at or below sixty percent (60%) of AMI, as follows:

Developer provides at least: 20% Affordable Units per building 25% Affordable Units per building 30% Affordable Units per building	The city <u>may provide[s] up to:</u> 30% Fee <u>Reimbursement</u> [Waivers] 40% Fee <u>Reimbursement</u> [Waivers] 50% Fee <u>Reimbursement</u> [Waivers]
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40% or More Affordable Units per building
50% or More Affordable Units per building

75% Fee Reimbursement [~~Waivers~~]
100% Fee Reimbursement [~~Waivers~~]

§ 9.26 DEVELOPMENT FEE DEFERMENT.

(a) The city may offer development fee deferrals for zoning application fees, building permit fees, park dedication fees, sewer availability charge (SAC) fees and related infrastructure fees to a qualifying development under the following circumstances:

- (1) When a residential development includes more than the required nine percent (9%) of its total dwelling units as opportunity housing affordable to households at or below sixty percent (60%) of AMI, when calculated before any applicable density bonus, the development [~~is~~] may be eligible to defer up to the full amount of its development fees until twelve (12) [~~twenty-four (24)~~] months after the development obtains its certificate of occupancy. The city will charge an annual interest of five percent (5%) during the deferral period.
- (2) When a residential development includes at least a twenty percent (20%) of its total dwelling units as opportunity housing affordable to households at or below sixty percent (60%) of AMI, when calculated before any applicable density bonus, the development [~~is~~] may be eligible to defer up to the full amount of its development fees until twenty-four (24) [~~twelve (12)~~] months after the development obtains its certificate of occupancy. The city will charge an annual interest of five percent (5%) during the deferral period.

§ 9.28 LAND WRITE-DOWN FOR AFFORDABLE HOUSING ON CITY-OWNED LAND.

For a developer proposing a development with a mix of opportunity housing affordable to households at or below sixty percent (60%) of AMI for multiple-family developments and moderate income up to one hundred ten percent (110%) of AMI for home ownership projects, at a minimum threshold of twenty percent (20%), the city may, upon a showing of demonstrated need, reduce land costs to achieve the twenty percent (20%) threshold to support the development reaching affordability. Any sales price reduction must be allowed by the city charter and city code and approved by the city council. Where a land write-down is approved, the city will require at least a twenty (20) year deed restriction on those units identified as affordable for extremely low, very low, and low income households to ensure long-term affordability.

§ 9.30 HOUSING TAX INCREMENT FINANCING (TIF).

Where eligible under applicable state laws and when consistent with the city's TIF policy, the city may, upon a showing of demonstrated need, [~~will~~] consider the use of a housing TIF district as a way to incentivize the creation of housing developments that are affordable at a minimum twenty percent (20%) of units which include a mix of opportunity housing units affordable to households at or below sixty percent (60%) of AMI. TIF will only be used proportionately in exchange for more affordable units or a greater level of affordability or both, and will not be used to finance market rate projects.

ARTICLE IV: AFFORDABLE HOUSING PLAN.

§ 9.32 AFFORDABLE HOUSING PLAN REQUIREMENTS.

(b) *Content.* The affordable housing plan must include the following:

(13) Written documentation of how the development meets the Objectives described in Section 9.36.

§ 9.33 RENTAL PRICE LEVELS FOR AFFORDABLE UNITS AND ECONOMIC STABILITY.

(b) After the signing of the initial lease with an eligible household, to support economic sustainability of the household and the development, and to minimize turnover of an otherwise qualifying household due to income growth or loss, the lease may be renewed to the same household as follows:

- (1) An extremely low, very low, or low income household whose household income rises may remain in the unit for which the household originally qualified for one additional period of up to five (5) years provided the household income does not [~~to~~] exceed one hundred forty percent (140%) of the applicable median income adjusted for family size thirty percent (30%) of AMI for extremely low, fifty percent (50%) of AMI for very low and sixty percent (60%) of AMI for low).
- (2) An extremely low, very low, or low income household whose household income falls below the income level for which the household originally qualified due to loss of employment that is not the result of a local, state or federal crime and the household is otherwise in good standing as a tenant, may qualify to receive partial rent assistance from the Housing Trust Fund for [~~may remain for one additional period of~~] up to two (2) years provided the household can meet the requirements of the opportunity housing guidelines. [~~After that two (2) year period has ended, the unit rent price shall return to the original level at which it was leased to the tenant plus any rent increases incurred during the period.~~]
- (3) As a household transitions out of an opportunity housing unit, the opportunity housing unit must return to a household whose income is at or below sixty percent (60%) of AMI.

(c) Upon the request of the city, a household must submit documentation in a form acceptable to the city that the household remains eligible for an opportunity housing unit.

ARTICLE VI: DISPERSION, INTEGRATION, DESIGN, PHASING, AND CONSTRUCTION OF OPPORTUNITY HOUSING UNITS OBJECTIVES

§ 9.36 OBJECTIVES.

Developments with opportunity housing units must meet the following objectives:

ARTICLE X: IMPLEMENTATION EVALUATION AND ENFORCEMENT

§ 9.44 PENALTY.

Violation of any provision of this chapter shall be a misdemeanor. Civil penalties may also be issued pursuant to § 12.15 of the city charter and § 1.19 of this city code. However, nothing in this ordinance shall be construed to limit the city's other available legal remedies for any violation of the law, including without limitation, criminal, civil and injunctive actions.

ARTICLE XI: AFFORDABLE HOUSING TENANT PROTECTION

§ ~~9.44~~ 9.45 AFFORDABLE HOUSING BUILDING SALE.

(a) *Definitions.* The following definitions apply in this article of the city code. Defined terms remain defined terms, whether or not capitalized.

- (1) CAUSE means the tenant or a member of [~~or~~] the tenant's household materially violated a term of the lease or violated a provision of Division D, Crime-Free Rental Housing, of Article VIII of Chapter 14.

(c) *Notice to tenants.* Whenever ownership of an affordable housing building is transferred or is otherwise conveyed to a new owner or member of the prior owner, the new owner must within thirty (30) days after the real estate closing that transfers or conveys ownership of the affordable housing building deliver written notice to each affordable housing unit tenant of the building that the property is under new ownership and all of the following information:

- (1) The name, mailing address, and telephone number of the new owner.

- (2) The following statement: "Bloomington City Code Section ~~9.44~~ 9.45 provides for a three (3) month tenant protection period for affordable housing unit tenants. Under Section ~~9.44~~ 9.45, an affordable housing unit tenant may be entitled to relocation assistance from the new owner if the new owner terminates or does not renew the tenant's rental agreement without cause within the three (3) month tenant protection period. An affordable housing unit tenant may also be entitled to relocation assistance from the new owner if the tenant terminates his or her rental agreement because the new owner raises the rent or initiates a tenant rescreening process within the three-month tenant protection period."

Passed and adopted this 5th day of August, 2019.

/s/ Gene Winstead

Mayor

ATTEST:

APPROVED:

/s/ Denise M. Christenson

Secretary to the Council

/s/ Melissa J. Manderschied

City Attorney