

# **Title 19 - Inclusionary Housing**

## **Chapters**

19.02 – Inclusionary Housing Ordinance

## 19.02 – Inclusionary Housing Ordinance

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### 19.02.010 – Purpose and Intent

To provide opportunities within the City for affordable housing, either within new residential developments by requiring Developers to provide a proportionate share of affordable housing, or fees in lieu thereof, to ensure that an adequate stock of affordable housing is, and remains, available in the City of St. Charles.

(2016-M-7 : § 2)

### 19.02.020 – Implementation

The Director of Community and Economic Development or Director's designee shall promulgate regulations and forms as may be necessary for the implementation of this Chapter. Said regulations shall be reported to the Housing Commission and City Council.

(2016-M-7 : § 2)

### 19.02.030 – Enforcement

1. The provisions of this Chapter shall apply to all agents, successors and assignees of an Applicant.
2. The City of St. Charles may institute injunction, mandamus, or any other appropriate legal actions or proceedings for the enforcement of this Chapter. In addition, any person, firm, or entity, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by the payment of a fine of not more than \$750.00 dollars per day. Such person, firm, or entity shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this Chapter is commenced, continued, or permitted by such person, firm, or entity, and shall be punishable as herein provided.

(2016-M-7 : § 2)

### 19.02.040 – Definitions

The following words and phrases shall have the meanings set forth in this Section. Words and phrases not defined in this Section, but defined elsewhere in the St. Charles Municipal Code, shall have the meanings set forth therein. In the event that a word or phrase is not defined, it shall have the common and ordinary meaning ascribed thereto. In interpreting the provisions of this Chapter, in the event there is a conflict between a definition in this Section and one found elsewhere, the definition in this Section shall apply.

1. Affordable Housing: Housing that has a sales price or rental amount that is within the means of an “Eligible Household” as defined herein. In the case of Dwelling Units for sale, housing that is affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. In the case of Dwelling Units for rent, housing that is affordable means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit.
2. Affordable Unit: A Dwelling Unit of Affordable Housing that satisfies the requirements of this Chapter.
3. Affordable Housing Agreement: Any agreement between the City and an Applicant as required by Section 19.02.140 of this Chapter.
4. Applicant: Any Developer who applies to the City to receive approval of a Residential Development pursuant to this Chapter.
5. Area Median Income (AMI): The median income level for the Chicago Primary Metropolitan Statistical area, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, and adjusted for household size.
6. Base Density: The number of Dwelling Units permitted to be constructed on a parcel in conformance with the requirements of the Zoning District in which it is located, prior to applying any applicable density bonus.
7. Developer: Any person, firm, corporation, partnership, limited liability company, association, joint venture, or any entity or combination of entities that develops a dwelling or units, not including any governmental entity or a Housing Provider as defined herein.
8. Director: The Director of the Community and Economic Development Department, or his or her designee.
9. Dwelling Unit: A Dwelling Unit as defined in Chapter 17.30, “Definitions”, of Title 17 “Zoning”. For purposes of this Chapter, the term Dwelling Unit includes Affordable Units and Market Rate Units.
10. Eligible Household: A household with an income at or below eighty percent (80%) of the Area Median Income (AMI) for for-sale units and at or below sixty percent (60%) of the AMI for rental units, based on the size of the household.
11. Housing Provider: An entity approved by the City of St. Charles to develop, manage or own Affordable Dwelling Units.
12. Market Rate Units: All Dwelling Units in a Residential Development that are not Affordable Units as defined herein.
13. Residential Development: The establishment of one or more Dwelling Units in any of the following instances:
  1. Construction of one or more Dwelling Units pursuant to a Final Plat of Subdivision, where the Preliminary Plat is approved by the City Council after February 15, 2008.
  2. Construction of one or more Dwelling Units within a Planned Unit Development, where the Preliminary PUD Plan is approved by the City Council after February 15, 2008.
  3. Construction of one or more Dwelling Units on a lot created after February 15, 2008 by means other than a Plat of Subdivision or Planned Unit Development, including but not limited to a division conforming to the Statutory Plat Act Exemptions.
  4. Issuance of a building permit for a new Dwelling Unit following demolition of a Dwelling Unit on the lot, when the last sale price prior to demolition of the Dwelling Unit was at or below the price of an Affordable Unit with the same number of bedrooms; if the last sale occurred more than two years prior to demolition, then the equalized market value assigned by the Township Assessor as of the date of demolition shall be used.
  5. Issuance of a building permit for alteration of an existing building, in whole or in part, that increases the number of Dwelling Units from the number that existed prior to its alteration.

(2016-M-7 : § 2)

### **19.02.050 – Applicability**

1. The provisions of this Chapter shall apply to any Residential Development, as defined herein. Residential Developments undertaken in phases, stages, or otherwise constructed in distinct parts by one or more developers, but which are located within the same Planned Unit Development or Subdivision, or which are otherwise approved as a whole, shall be considered a single Residential Development.
2. The requirements of this Chapter shall not apply in the following instances:
  1. Moving a building containing one or more Dwelling Units from one location to another within the City.
  2. Construction of a single Dwelling Unit on a lot that was of record prior to February 15, 2008 and upon which no Dwelling Unit or part thereof has existed for a period of ten years or more prior to issuance of a building permit.
  3. Upon issuance of a building permit for a new Dwelling Unit following demolition of a Dwelling Unit on the lot, when the new Dwelling Unit is intended to be occupied by the same household or individual that occupied the Dwelling Unit that was demolished, and the demolition occurred more than one (1) year after the date of purchase by said household or individual.
  4. When a Dwelling Unit is destroyed by fire or other casualty or act of God, by any means not within the control of the property owner or tenant.
  5. When an application for Special Use for Planned Unit Development, Preliminary Plat of Subdivision, and/or Final Plat of Subdivision in relation to a Residential Development was filed with the City on or before February 16, 2016.
  6. When an application for building permit for a Residential Development was filed with the City on or before February 16, 2016.

(2016-M-7 : § 2)

### **19.02.060 – Affordable Units and Fee In-Lieu Required**

1. General requirement. Affordable Units, and/or a fee in lieu thereof, shall be required for every Residential Development. The City Council may permit the Applicant to provide Affordable Units or pay a fee in lieu of constructing some or all of the required Affordable Units within a Residential Development.
2. Number of Affordable Units Required:
  1. Calculation. The number of Affordable Units required for a Residential Development shall be a percentage of the total number of Dwelling Units to be constructed within the Residential Development, but not including any bonus Market Rate Units permitted by Section 19.02.080. The minimum requirement shall be calculated as follows:
    - 1 to 15 Dwelling Units: 5 percent
    - More than 15 Dwelling Units: 10 percent
  2. Fractions. In the event that the calculation of the number of required Affordable Units results in a fraction, the following rules shall apply: For that portion of the requirement that is to be satisfied by the construction of Affordable Units, the fraction shall be rounded to the nearest whole number; a fraction of exactly  $\frac{1}{2}$  shall not be counted as a required Affordable Unit. For that portion of the requirement that is to be satisfied by payment of a fee in-lieu, any fraction shall be used in calculating the total fee in lieu to be paid by the Developer.
3. Amount of Fee In-Lieu Per Unit. The amount of the per-unit fee in-lieu of Affordable Units shall be determined annually by the City Council. If no fee has been determined by the City Council for the current year, the fee most recently determined by the City Council shall apply.
4. Calculation of Total Fee In-Lieu. For purposes of determining the total fee in-lieu payment amount, the per unit fee in-lieu shall be multiplied by the required number of Affordable Units, including any fractional units.
5. Payment of Fee In-Lieu. Unless otherwise approved by the City Council in the Affordable Housing Agreement, for Residential Developments constructed in multiple phases the fee in-lieu payments due under the provisions of this Chapter shall be paid for the entire phase to be developed prior to issuance of the first building permit for the applicable phase. For Residential Developments constructed in a single phase the fee in-lieu payment shall be paid for the entire Residential Development prior to issuance of the first building permit.

(2016-M-7 : § 2)

### **19.02.070 – Alternative Affordable Housing Plan**

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### A. Alternative Affordable Housing Plan Criteria

As an alternative to compliance with the provisions of Section 19.02.060, the Developer may request the City Council to approve, concurrent with the approval of the overall development and after receiving a recommendation from the Housing Commission, one or more of the alternatives listed in this Section. The City Council shall not approve an Alternative Affordable Housing Plan unless the Developer demonstrates and the City Council finds in the affirmative that the Alternate Affordable Housing Plan is justified based on one or more of the following criteria:

1. A demonstrated financial hardship exists that is not of the developer's own making. Items to be considered shall include but shall not be limited to:
  - a. The financial hardship must be equal to or greater than 10% of the total project cost and purchase price, but cannot include any costs incurred as part of the normal and orderly development of the property.
  - b. Environmentally sensitive or natural areas to be protected are equal to or greater than 20% of the total development site area (not including stormwater retention/detention facilities or park sites related to the construction of the project).
2. The development site does not allow for the density bonus as stated in Section 19.02.080 due to limitations on development capacity. Items to be considered shall include but shall not be limited to:
  - a. Insufficient water or sewer utility capacities.
  - b. Unique parcel configurations, which shall include but shall not be limited to steep slopes above an 8% grade or irregular shaped parcels that create unbuildable areas equal to or greater than 20% of the development site.
3. The development will fulfill an alternative City Policy or goal such as redevelopment of a vacant, underutilized, or blighted parcel that cannot otherwise be readily redeveloped and comply with all other applicable requirements.
4. The creation of the Alternative Affordable Housing Plan represents an equal or greater opportunity to create Affordable Housing in the City. Examples of these greater opportunities shall include but shall not be limited to:
  - a. Providing units below the maximum affordability thresholds established by Illinois Housing Development Authority for rental or owner-occupied units. (Example: Pricing rental units at or below 50% of area median income)
  - b. Providing offsite affordable units in vacant or foreclosed homes.
  - c. Providing affordable units for a period of time longer than the fifteen year minimum affordable period stated in Section 19.02.110 Maximum Price of Affordable Units.

### B. Alternative Affordable Housing Plan

For instances in which the Developer is requesting to utilize an Alternative Affordable Housing Plan, the Developer shall submit the proposed Alternative Affordable Housing Plan. This plan shall detail the Developer's course of action chosen to create Affordable Housing opportunities in St. Charles. This plan is required to be submitted in writing and must detail how the Alternative Affordable Housing Plan fulfills the criteria listed in Section 19.02.070.A.

One or more of the following options shall be utilized by the Developer:

1. External Funding Sources – The Developer will apply for grants, tax credits, and/or any other applicable funding mechanism each year that the project is under construction. These funds will be used to subsidize the costs associated with the construction of onsite or offsite Affordable Housing Units.
2. Purchase Offsite Units – The Developer shall purchase for-sale or foreclosure properties and then sell or rent them at the established Affordable Housing price.
3. Construction of a portion of the required Affordable Units onsite and/or payment of a portion of the

required fee in-lieu, and any combination of the two options listed above.

(2016-M-7 : § 2; 2013-Z-3 : § 4)

### **19.02.080 – Density Bonus**

A. A density bonus shall be permitted when Affordable Units are constructed within the Residential Development in accordance with Section 19.02.060 (B). One bonus Dwelling Unit shall be permitted for each Affordable Unit constructed within the Residential Development; however, in no event shall the total number of Dwelling Units constructed within the Residential Development exceed one hundred twenty percent (120%) of the Base Density.

B. In implementing this density bonus, the following requirements of Title 17 of the St. Charles Municipal Code, the St. Charles Zoning Ordinance, may be varied without additional justification:

1. Lot area.
2. Lot width.
3. Building coverage.

(2016-M-7 : § 2)

### **19.02.090 – Development Cost Offsets**

An Applicant that fully complies with the requirements of this Chapter, including any rules or regulations promulgated thereunder, shall, upon written request to the City, receive a waiver of all building permit, demolition, and plan review fees required by Title 15 of the St. Charles Municipal Code, sewer and water connection fees required by Title 13 of the St. Charles Municipal Code, and cash contributions (when required in lieu of park and school land dedications) as required by Title 16 of the St. Charles Municipal Code, but only relative to the required Affordable Units constructed within the Residential Development.

(2016-M-7 : § 2)

**19.02.100 – Location, Phasing and Design.**

Affordable Units shall be integrated into the Residential Development by location, construction phasing, and design as described below. Waivers or variances as to the location, construction phasing, or appearance of Affordable Units may be granted by the City Council following a review and recommendation by the Housing Commission, based on supporting evidence that demonstrates that said waiver(s) or variance(s) will further affordable housing opportunities to an equal or greater extent than compliance with otherwise applicable requirements, or that integrating the Affordable Units will create a hardship.

A. Location of Affordable Units. Affordable Units shall be dispersed among the Market-Rate Dwelling Units throughout the Residential Development

B. Phasing of Permits. The Affordable Units shall be constructed concurrently with the Market-Rate Units within the Residential Development. Building and occupancy permits for Market-Rate Units shall be issued only if building and occupancy permits, respectively, for the required Affordable Units have been issued in accordance with the following schedule:

<b>Market-Rate Units (%)</b>	<b>Affordable Units (%)</b>
Up to 50%	At least 30%
Up to 75%	At least 60%
100%	100%

C. Exterior Appearance. The exterior appearance of the Affordable Units in any Residential Development shall be visually compatible with the Market-Rate Units in the development. External building materials and finishes shall be substantially the same in type and quality for Affordable Units as for Market-Rate Units.

D. Interior Appearance and Finishes. Affordable Units may differ from Market-Rate Units with regard to interior finishes and gross floor area, provided that:

1. Bedroom Mix. The number of bedrooms per Dwelling Unit in the Affordable Units within the Residential Development shall be in equal proportion to the number of bedrooms per Dwelling Unit in the Market-Rate Units within the Residential Development. This provision is not intended to require the same floor area in Affordable Units as compared to Market-Rate Units.

2. Energy Efficient Improvements. Affordable Units and Market-Rate Units shall have the same type and quality of improvements related to energy efficiency, including plumbing, insulation, windows, and heating and cooling systems.

(2016-M-7 : § 2)

**19.02.110 – Maximum Price of Affordable Units**

A. Affordability Controls; Waivers. All Affordable Units developed in accordance with this Chapter shall be subject to restrictions as provided in this section.

B. For-Sale Affordable Units. Affordable Units shall be offered for sale in conformance with the following principles:

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1. The sale of Affordable Units to the first purchaser shall be governed by the following:

a. Affordable Units shall be offered for sale at no more than the maximum price that is affordable to an Eligible Household based on household size in accordance with paragraph D of this Section, using the limits established annually by the Illinois Housing Development Authority (IHDA).

b. The property shall be subject to a deed restriction or other suitable instrument limiting the maximum sale price of the property for a period of fifteen years, and specifying the conditions under which title to the property may be transferred to an entity other than an Eligible Household, including but not limited to transfer of title to heirs.

c. The purchaser shall execute a promissory note in favor of the City in an amount equal to the difference between the purchase price for the Affordable Unit and its fair market value as determined by a licensed appraiser. Said promissory note shall be non-interest bearing and shall be secured by a Mortgage on the property. The City shall subordinate the Mortgage to that of the primary lender. (Said promissory note shall be due upon sale of the Affordable Unit after the initial fifteen-year period if the property is sold at market value in accordance with Section 19.02.110.B.3.b.)

2. Subsequent sales of Affordable Units during the first fifteen years following the initial sale shall be governed by following, unless the property owner is granted a waiver by the City Council based upon supporting market-related evidence of undue hardship on the owner of the Affordable Unit:

a. The maximum sale price shall be the initial sale price plus 1) appreciation in the property's value, but not to exceed any increases in the IHDA affordability limit since the last sale of the property; 2) an allowance for the cost of repair and/or replacement of heating, electrical, plumbing, roofs, and structural elements necessary to address safety of the occupants or integrity of the structure.

b. The seller shall receive any of the Affordable Unit's appreciation in value based on the sale price as determined in Section 19.02.110.B.2.a.

c. The purchaser shall execute a promissory note in favor of the City in an amount equal to the difference between the purchase price for the Affordable Unit and its fair market value as determined by a licensed appraiser. Said promissory note shall be non-interest bearing and shall be secured by a Mortgage on the property. The City shall subordinate the Mortgage to that of the primary lender. (Said promissory note shall be due upon sale of the Affordable Unit after the initial fifteen-year period if the property is sold at market value in accordance with Section 19.02.110.B.3.b.)

3. Subsequent sales of Affordable Units after the initial fifteen-year period shall be governed by either (a) or (b) as follows:

a. Resale as an Affordable Unit. If the sale price does not exceed the initial sale price plus 1) appreciation in the property's value, but not to exceed any increase in the IHDA affordability limit since the last sale of the property; and 2) an allowance for the cost of repair and/or replacement of heating, electrical, plumbing, roofs, and structural elements necessary to address safety of the occupants or integrity of the structure, then the property shall be sold as an Affordable Unit in accordance with Section 19.02.110.B.2.

b. Resale at market value. The full amount of the promissory note shall be payable to the City and shall be deposited into the Housing Trust Fund or other fund devoted to providing affordable housing. In the event the amount of the promissory note is in excess of the difference between market value and the purchase price paid by the seller, with allowances granted to the seller for any increase in the IHDA affordability limit since the last sale of the property and for the cost of repair and/or replacement of heating, electrical, plumbing, roofs and structural elements necessary to address safety of the occupants or integrity of the structure, then the excess amount shall be forgiven by the City. Once the promissory note is paid and/or forgiven in accordance with this Section, all restrictions of this Chapter applicable to the Affordable Unit, including its designation as such, shall cease.

C. For-Rent Affordable Units. The maximum gross rent (including a utility allowance for utilities not provided with the rent) for Affordable Units offered for rent shall be calculated using the gross rent limits established annually by the Illinois Housing Development Authority on the basis of thirty percent (30%) of gross monthly income at fifty percent (50%) to sixty percent (60%) of AMI, based on household size in accordance with paragraph D of this Section. The net rent charged by the owner shall not exceed the maximum gross rent minus a utility allowance for any utilities to be paid separately by the tenant. All Affordable Units shall be offered at not



more than the maximum rent calculated in accordance with this paragraph in perpetuity or as long as permissible by law.

D. Household Size. In calculating the maximum sale and rental prices of Affordable Units, the following relationship between the number of bedrooms per unit and household size shall apply:

Size of units:	Affordable for:
Efficiency units:	1-person household
One-bedroom units:	2-person household
Two-bedroom units:	3-person household
Three-bedroom units:	4-person household
Four-bedroom and larger units:	5-person households and larger

E. Sale or Rental to Housing Providers. Every Affordable Unit required by this Chapter shall be offered for sale or rental to an Eligible Household as a primary resident, except for units purchased by Housing Providers. Housing Providers designated by the City of St. Charles shall have the right, but not the obligation, to purchase any for-sale Affordable Units, but only for the purpose of reselling to an Eligible Household.

(2016-M-7 : § 2)

### **19.02.120 – Ownership and Occupancy of Affordable Units.**

Owner-occupied Affordable Units shall only be sold to and occupied by Eligible Households. Affordable Units that are rented shall only be rented to and occupied by Eligible Households. Subletting of Affordable Units shall not be permitted. Priority will be given to Eligible Households where one or more members live or work in St. Charles, and to employees of the City of St. Charles, the St. Charles Park District, and Community Unit School District No. 303, regardless of their initial place of residence, to the extent permitted by law.

1. Increase in Annual Income for Owner-Occupied Affordable Units. If a Household's gross income increases above the maximum Eligible Household income level for a household of its size, the Household may continue to own and occupy the Affordable Unit, and the Affordable Unit shall otherwise remain subject to the limitations set forth in Section 19.02.110.

2. Increase in Annual Income for Renter-Occupied Affordable Units. If a Household's gross income increases above the maximum Eligible Household income level for a household of its size, the Household may continue to lease and occupy the Affordable Unit, and renew said lease, and the Affordable Unit shall otherwise remain subject to the limitations set forth in Section 19.02.110.

(2016-M-7 : § 2)

### **19.02.130 – Development Applications that Include Affordable Units.**

As part of the application for approval of a Residential Development, the Applicant shall submit information describing how the Residential Development will comply with the requirements of this Chapter. The Director of Community and Economic Development may require any or all of the following to be submitted for review:

1. The number and rental/for sale status of Market-Rate Units and Affordable Units to be constructed including type of dwelling, number of bedrooms per unit, proposed pricing, and construction schedule, including anticipated timing of issuance of building permits and occupancy certificates.

2. Documentation and plans regarding locations of Affordable Units and Market-Rate Units, and their exterior appearance, materials, and finishes.

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3. A description of the marketing plan that the Applicant proposes to utilize and implement to promote the sale or rental of the Affordable Units within the development; and,

4. Any proposal to pay fees in lieu of providing the required Affordable Unit, per Section 19.02.060.

5. Alternative Affordable Housing Plan Submittal Requirements

a. The Applicant shall submit a financial statement or pro-forma including the following:

i. Purchase price of the property.

ii. Identification of the financial hardship and cost estimates associated with absorbing and/or remediating the identified hardship.

iii. All non-hardship development costs and expected profits.

b. Where the Applicant will apply for external funding sources, the following is required:

i. An action plan clearly identifying the external funding sources that will be applied for during the construction phase and frequency of application to each funding source. The Action Plan shall clearly demonstrate that the project is eligible for the funding source that will be utilized.

ii. Commitment to providing a copy of all grant applications at the same time the application is submitted to the funding authority.

iii. Statement of the number of Affordable Units targeted to be affordable.

iv. Documentation and plans regarding locations of Affordable Units and Market-Rate Units onsite or offsite, and their exterior appearance, materials, and finishes should external funding be awarded.

c. Where the Applicant will purchase offsite units, the following is required:

i. An action plan or market study identifying the number of offsite units planned for purchase, the location of available offsite units, and purchase price of these units.

ii. Any supplemental information necessary to support the proposed plan such as, anticipated cost of renovations for offsite properties.

iii. The expected timing for the purchase of offsite units.

iv. Commitment to submitting a copy of the home inspection report to the City for review. This report shall include the following:

- Identification of the age and condition of all major systems (plumbing, HVAC, electrical, and structural)

- Identification and condition of all major appliances

- A list of all necessary repairs that the Developer proposes to perform before the offsite unit is resold to an Eligible Household.

The Developer shall provide a copy of this inspection report to the affordable household who has signed a contract to purchase the unit.

(2016-M-7 : § 2; 2013-Z-3 : § 5)

**19.02.140 – Affordable Housing Agreement and Documents**

Prior to issuance of a building permit for any Residential Development in which Affordable Units are to be provided, the Applicant shall have entered into an Affordable Housing Agreement with the City. Said agreement shall set forth the commitments and obligations of the Applicant, including but not limited to the number, timing and location of the required Affordable Units, and/or the amount and payment schedule for any fee in lieu thereof, to ensure that the provisions of this Chapter are met. The Applicant shall execute any and all documents deemed necessary by the City, including without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the Affordable Units in accordance with this Chapter.

(2016-M-7 : § 5)

**Title 19 - Inclusionary Housing Footnotes**

1. (2016-M-7 )