

Originator
Planning

Item
City Code Amendment - Opportunity Housing Ordinance

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

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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.

ORDINANCE NO. 2019-16

AN ORDINANCE AMENDING CHAPTERS 2, 9 AND 14 OF THE CITY CODE TO ENCOURAGE THE CREATION OF OPPORTUNITY HOUSING UNITS AND THE PRESERVATION OF EXISTING AFFORDABLE HOUSING BUILDINGS AND TO ADD PROVISIONS OF CHAPTER 14 TO CHAPTER 9 RELATING TO TENANT NOTIFICATIONS AND TO AMEND CHAPTER 2 TO APPLY TO CHAPTER 9

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

Section 1. That Chapter 2 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 2: ADMINISTRATION

...

Article V: City Boards and Commissions

...

Division G: Planning Commission

...

§ 2.85.05 INTERPRETATION OF ZONING, PLATTING, PLANS, AND SUBDIVISION PROVISIONS.

(a) *Purpose.* To provide a process through which applicants may appeal staff interpretation of provisions in Chapters 9, 19, 21 and 22 of the city code.

(b) *Initiation.* An interpretation appeal may be initiated by any party that disagrees with staff interpretation of provisions in Chapters 9, 19, 21 and 22 of the city code.

(c) *Review.* Interpretation appeals must be reviewed by the Planning Commission and acted upon by the City Council.

(d) *Findings.* Interpretation appeals may only be approved:

(1) When the requested interpretation better matches the spirit and intent of the provision in question; and

(2) When the applicant has provided clear rationale supporting the alternative interpretation.

(e) *Content.* Interpretation appeal applications must include the following information:

(1) An application form and the signed consent of the appealing party.

(2) A \$420 fee.

(3) Written documentation that includes:

(A) A description of the specific provisions that are being appealed;

(B) The interpretation requested by the applicant;

(C) A description of how the applicant's interpretation differs from staff's interpretation;

and

(D) Rationale that supports the applicant's interpretation.

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: [RESERVED] HOUSING OPPORTUNITY AND PRESERVATION

ARTICLE I: GENERAL PROVISIONS

§ 9.01 FINDINGS.

The city council finds and declares the following:

(a) The health, safety and economic welfare of the present and future residents of Bloomington depends on the availability of a range of housing choices affordable to persons and families who comprise the City's workforce ;

(b) Stable, safe, and affordable housing has measureable health benefits for persons and families;

(c) There is a need to encourage and assist in the development of affordable housing for families who are part of the workforce in Bloomington who fall within the extremely low to low income categories;

(d) The preservation of naturally occurring affordable housing (NOAH) is of concern to the City of Bloomington, as rental housing costs are increasing and creating tools and incentives for the redevelopment or substantial renovation of NOAH units, which may impact their relative affordability, is a City priority;

(e) The City of Bloomington's Comprehensive Plan Update Forward 2040, as required by the Metropolitan Council, establishes the portion of Bloomington's regional share of affordable housing under Housing goal #3 at least 842 new units of affordable housing and under Housing Strategy #2.1 states the city will encourage most new housing, especially high density housing, to be located near transit, amenities, services and employment; and

(f) The city council of the City of Bloomington find it to be in the best interests of the residents of this community to develop initiatives to provide various affordable housing programs to aid in the development, financing and acquisition of affordable housing.

§ 9.02 PURPOSE.

The provisions of this chapter are further supported by robust quantitative and qualitative research and financial feasibility testing to estimate the new demand for below market rate housing generated by development and occupancy of new market rate housing and the need to maintain the city's existing naturally occurring affordable housing. The research indicates that development of one hundred (100) housing units priced at average market rates generates demand for an additional nine (9) housing units for households at sixty percent (60%) of the area median income and below. This link between the creation of new market rate housing and the increased need for affordable housing forms the basis for establishment of the opportunity housing requirement and associated in lieu of payment as described in section 9.09.

To further the financial feasibility of creating opportunity housing and to understand the requirements impact on developing projects, the community development department will develop financial modeling guidelines approved by the city council to assist developers in determining the types of tools applicable and useful for their project.

Additionally, as of the adoption of this section, the city has approximately 3500 units of naturally occurring affordable housing, of which the preservation and related substantial rehabilitation of the same is critical to meeting the range of housing needs in our community.

The purpose of this chapter is to:

- (a) Maintain a balanced community that provides housing for households at all income levels;
- (b) Ensure the opportunity for housing that is affordable to the employees of businesses that are located in or will be located in the city and the region;
- (c) Implement the affordable housing goals, policies, and objectives contained in the City of Bloomington's 2040 Comprehensive Plan and city council's Strategic Priorities;
- (d) Ensure that this chapter supports the continued creation and preservation of all housing types at all income levels and does not constrain market rate housing creation and preservation within the city;
- (e) Establish an affordable housing program that offers an array of tools, incentives and compliance options for promoting flexibility in development while at the same time is adaptable to changing economic circumstances and market conditions;
- (f) Allow for the city council to periodically review and revise these requirements for changing economic circumstances and to ensure responsiveness to local housing needs and real estate market conditions; and
- (g) Allow a bundling of more than one of the City's affordable tools, options, and methods toward a single development in an effort to provide the greatest chance of reaching the extremely low and very low income populations in need of affordable housing.

§ 9.03 AUTHORITY.

(a) Minnesota Statutes § 462.358, subd. 1a, provides that a municipality may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as affordable housing ordinances, notwithstanding any other provisions of the law;

(b) Minnesota Statutes § 462.358, subd. 11, provides that a municipality may enter into an agreement with an applicant that provides for a portion of housing units be affordable with established pricing and long-term affordability, notwithstanding any other provisions of the law; and

(c) Minnesota Statutes § 473.859 requires municipal comprehensive plans to promote the creation of affordable housing for low and moderate income individuals and families.

§ 9.04 DEFINITIONS.

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

ACCESSORY DWELLING UNIT (ADU). A secondary dwelling unit that is:

- (A) Physically attached to or within a single-family dwelling unit;
- (B) Subordinate in size to the single-family dwelling unit;
- (C) Fully separated from the single-family dwelling unit by means of a wall or floor, with or without a door;
- (D) Has a separate entrance than the primary dwelling unit; and
- (E) Meets the definitional requirements for a dwelling unit (cooking, living, sanitary, and sleeping facilities) as defined in this section.

AFFORDABLE. Housing is affordable when no more than thirty percent (30%) of the gross income of the household is required to pay for such housing and utility costs.

AFFORDABLE HOUSING BUILDING. A multiple-family dwelling, where at least nine percent (9%) of the units are let for an amount that is affordable to households at or below sixty percent (60%) of AMI.

AFFORDABLE HOUSING DEVELOPER. A developer of housing whose portfolio serves households at or below sixty percent (60%) of AMI.

AFFORDABLE HOUSING PLAN. The plan submitted by a developer as part of a final site and building plan or final development plan approval pursuant to this chapter and chapters 19 and 21.

AFFORDABLE HOUSING TRUST FUND. A trust fund established by the city council for the purpose of collecting and disbursing funds for affordable housing programs in accordance with the requirements set forth in article VIII.

AREA MEDIAN INCOME (AMI). The median household income as most recently determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin Metropolitan Statistical Area, as adjusted for household size and number of bedrooms.

BLOOMINGTON HOUSING AND REDEVELOPMENT AUTHORITY (HRA). The Housing and Redevelopment Authority in and for the City of Bloomington that was created by an act of the Legislature of the State of Minnesota entitled "Municipal Housing and Redevelopment Act" approved and in force April 23, 1947 and by Special Law, Chapter 616, 1971 as amended by Special Law, Chapter 344, 1977, and that operates as the city's public housing agency and whose

purposes include administration of a Section 8 Housing Choice Voucher and other public housing programs.

DENSITY BONUS UNIT. A unit as a result of an increase in density permitted above the per acre limit established by the city code.

DESIGNATED TRANSIT AREA. The area within a one-half mile walk of a transit stop or station that offers at least hourly service weekdays between 7:00 a.m. and 6:00 p.m., measured from the closest general purpose door of the development to the nearest qualifying transit stop or station.

DEVELOPMENT. A new or existing residential housing development at a site, including a mixed use development with a housing component, for which approvals have been or are being sought from the city.

DEVELOPER. Any person, individual, firm, partnership, association, joint venture, company, corporation or any combination of said entities.

DWELLING. One or more rooms designed for residential use by a single family that contain cooking, living, sanitary and sleeping facilities and that are physically separated from any other dwelling units in the same structure. Types of **DWELLINGS** are:

(A) **DWELLING, SINGLE-FAMILY.** A building designed or used for residential occupancy by one household with or without an approved accessory dwelling unit.

(B) **DWELLING, TWO-FAMILY.** A building designed or used for residential occupancy by two households in separate dwelling units fully separated by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both units, including both duplexes and double bungalows but not including accessory dwelling units.

(C) **DWELLING, MULTIPLE-FAMILY.** A building that includes three or more dwelling units where dwelling units are configured in part vertically above and below other dwelling units.

ELIGIBLE HOUSEHOLD. A household with a yearly income at less than or equal to sixty percent (60%) of AMI.

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.

HOUSING TAX INCREMENT. Increments from a housing district that can be used to finance affordable housing projects or public improvements that are directly related to the project, as well as administrative expenses pursuant to state law.

INCOME. Household income adjusted for household size includes:

(A) **EXTREMELY LOW INCOME.** Household income at or below thirty percent (30%) of AMI.

(B) **VERY LOW INCOME.** Household income above thirty percent (30%) to at or below fifty percent (50%) of AMI.

(C) **LOW INCOME.** Household income above fifty percent (50%) to at or below eighty percent (80%) of AMI.

(D) **MODERATE INCOME.** Household income at eighty percent (80%) to one hundred twenty percent (120%) of AMI.

MARKET RATE UNIT. A residential dwelling unit marketed for sale or lease at one hundred twenty percent (120%) or more of AMI.

NEXUS STUDY. An analysis that estimates new affordable housing demand generated in response to new market rate residential real estate development due to spending by new resident households.

NATURALLY OCCURRING AFFORDABLE HOUSING (NOAH). Existing owner-occupied or rental residential housing that is (a) affordable for at least twenty percent 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 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 in property in an opportunity zone.

OPPORTUNITY ZONE. A census tract in the City of Bloomington that has been designated by the United States Department of Treasury as eligible to receive private investments through opportunity funds.

OWNER. The individual or entity who holds title to a property as indicated in Hennepin County's property records.

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

DISTRICT PLAN. An adopted plan focused on one or more sites within an area that is intended to guide development, land use, transportation, preservation and other factors over a number of years or in several phases for a specific area or district.

RESIDENTIAL DEVELOPMENT. A development 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.

SITE. A lot, or group of adjacent lots intended, designated or approved to function as an integrated unit, that is proposed for development in accord with the provisions of this code and is

in a single ownership or has multiple owners, all of whom execute a joint application for development.

SUBSTANTIAL REHABILITATION. When the cost of improvement of an affordable housing building exceeds twenty percent (20%) of the value of the property, excluding land, after improvements.

§ 9.05 RESERVED.

§ 9.06 OPPORTUNITY HOUSING REQUIREMENT.

(a) *New Residential Construction, Regardless of type of Dwelling Unit.* For newly constructed or infill multi-family or townhome residential developments with twenty (20) or more newly created units, at least nine percent (9%) of the newly created units must be affordable to households at or below sixty percent (60%) of AMI. For newly constructed or infill single-family detached residential developments with twenty (20) or more newly created units, at least nine percent (9%) of the newly created units must be affordable to low income family households up to one hundred ten percent (110%) AMI.

(b) *Calculating affordable units.* In determining the number of opportunity housing units required under this chapter, any decimal fraction less than 0.5 is rounded down to the nearest whole number and any decimal fraction of 0.5 or more is rounded up to the nearest whole number. For purposes of section 9.18(density bonus), any additional units authorized and approved as a density bonus are not counted in determining the required number of affordable units.

(c) *Phasing.* Developments subject to this chapter include but are not limited to development that is undertaken in phases, stages, or otherwise developed in distinct parts.

(d) *Preservation and Rehabilitation.* When a NOAH property with twenty (20) or more units that receives some form of financial assistance from the city or HRA is transferred or is otherwise conveyed to a new owner or member of the prior owner or undergoes substantial rehabilitation, then at least nine percent (9%) of the units must be preserved as affordable to households at or below sixty percent (60%) of AMI through approval of an affordable housing plan and execution of an affordable housing agreement. This section does not apply to a NOAH property of nineteen (19) or fewer units. “Financial assistance” only includes direct financial assistance from the city or HRA and does not include participation in the 4d property tax program or the Section 8 housing choice voucher program.

(e) *City Assistance.* In consideration of the nine percent (9%) requirement of this section, a developer or owner of a NOAH property preserving opportunity units in accordance with this chapter may utilize the options and tools as provided in this chapter.

(f) *Opportunity Housing Requirement.* The requirements of this section are generally referred to in this chapter as the “opportunity housing requirement.”

ARTICLE II: DEVELOPER OPTIONS

§ 9.07 ON-SITE.

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 all required opportunity housing units on the site of the proposed residential development.

§ 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 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) 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.

§ 9.09 PAYMENT IN LIEU OF AFFORDABLE UNITS.

(a) Based on research conducted in support of this section and pursuant to sections 9.01 – 9.03, a verified payment in lieu rate is hereby established as \$9.60 per square foot and is calculated based on the leasable market rate unit square footage of the interior unit only, and not the total building square footage. For sale unit in lieu payment is calculated based upon the livable square footage only.

(b) The opportunity housing requirement in section 9.06 may be satisfied by making a payment to the city affordable housing trust fund established by this chapter in lieu of constructing the opportunity housing units, provided that such payment is received by the city after the issuance of the development permit for the project and before the issuance of the certificate of occupancy for the first market rate unit in the development.

(c) If a developer chooses not to construct a portion of the required opportunity housing units, the developer may make a payment in lieu of developing the remaining units that is proportional to the requirement of this section.

(d) If a developer chooses the in lieu payment, the developer may assign the in lieu payment to another housing development when it is:

- (1) To a development by the same developer that will include at least twenty percent (20%) of the housing units affordable to households at or below sixty percent (60%) AMI provided the development receives city site plan approval within twenty-four (24) months of beginning construction on the market rate units;
- (2) To a development by different developer that will include at least twenty percent (20%) of the housing units affordable to households at or below sixty percent (60%) of AMI provided the development receives city site plan approval within twenty-four (24) months of beginning construction on the developer's original housing development; or
- (3) To a NOAH property in the city to maintain, rehabilitate, and preserve the existing affordable housing units within twenty-four (24) months provided the developer

submit a maintenance repair plan and enters into an affordable housing agreement approved by the city.

(e) The payment will be reviewed annually by resolution of the city council.

(f) A developer that chooses to make a payment in lieu of the opportunity housing requirement in section 9.06 is not eligible for the affordable housing tools and incentives described in sections 9.15 through 9.31.

§ 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 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 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 can accommodate development of the opportunity housing units;
- (4) Sufficient infrastructure to serve the site 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 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 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 proposed to be dedicated complies with the dispersion objective pursuant to section 9.36;
- (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 dedicated to the city, but may sell, transfer, lease, or otherwise dispose of the dedicated site. 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.

§ 9.11 PURCHASE AND REHABILITATION OF NATURALLY OCCURRING AFFORDABLE HOUSING (NOAH).

(a) As an alternative to the requirements provided in section 9.06(a) or 9.09, a developer may purchase and substantially rehabilitate NOAH units in a manner that preserves long-term affordability.

(b) A developer that proposes to use the alternative described in paragraph (a) above must submit an affordable housing plan for review and approval by the community development department that demonstrates how the proposal will achieve the objectives of this chapter by creating opportunity housing equal to or excess of the value of the required opportunity housing units. The value determination must consider the number and type of units that would be preserved, affordability, and the duration of affordability.

(c) A qualified developer, with the consent of each party with a legally recognized interest, seeking to acquire a NOAH property with at least 20 dwelling units in the city in order to preserve the property as having at least twenty percent (20%) of the units affordable to households at or below sixty percent (60%) of AMI for ten (10) years may apply to the city for assistance, up to \$10.00 per unit (but no more than \$1,000.00 total) in order to submit its first year application to the State of Minnesota for a property tax reduction certification, commonly known as 4d classification. The requirements of a qualified developer are set forth in the opportunity housing guidelines.

§ 9.12 ACQUISITION, CONVERSION, AND REHABILITATION OF EXISTING MARKET RATE UNITS.

The opportunity housing requirement in section 9.06 may be satisfied by the acquisition and substantial rehabilitation of existing market rate units for conversion to opportunity housing units affordable to households at or below sixty percent (60%) AMI only when the community development department determines that the following requirements are met:

(a) Two (2) market rate dwelling units must be acquired and substantially rehabilitated for each opportunity housing unit required, and the overall development must achieve a minimum of twenty percent (20%) opportunity housing units;

(b) The developer provides notice and temporary relocation assistance to existing residents in the units to be rehabilitated and as further required by the opportunity housing guidelines;

(c) The site is zoned for residential development at a density that can accommodate the number of units after the requirements of section 9.12 are met;

(d) The site complies with applicable building and housing code requirements;

(e) A physical needs assessment must be performed by the developer to the satisfaction of the city on each dwelling unit to be acquired and rehabilitated, the site upon which the development is located, and any associated common area, and include:

- (1) Items identified for repair, replacement, and maintenance at the time of the assessment and within three (3) years of the assessment;
- (2) A plan to complete all identified repairs, replacement, and maintenance prior to the approval of the dwelling unit as an opportunity housing unit; and
- (3) Description of the method by which a capital reserve for repair, replacement and maintenance will be established, initially capitalized, and maintained for the duration of the affordability term.

(f) Environmental review of the site has been completed for the presence of water, hazardous materials, radon, lead, environmental toxins, and geological hazards, and is clear of all such hazards to the satisfaction of the city;

(g) The construction schedule for the units to be substantially rehabilitated are included in the affordable housing plan pursuant to section 9.32;

(h) The rehabilitation of the dwelling units are scheduled to be completed prior to or concurrently with the market rate residential development pursuant to section 9.36(e);

(i) The number of bedrooms in the dwelling units to be rehabilitated must be substantially the same as the market rate residential dwelling units, as set forth in the opportunity housing guidelines; and

(j) The term of affordability of the opportunity housing units must be provided pursuant to section 9.37 and must commence upon initial occupancy of the opportunity housing units.

§ 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. 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.

§ 9.14 COMBINATION OF METHODS TO PROVIDE OPPORTUNITY HOUSING.

The developer of a development may propose to use any combination of methods in sections 9.07 to 9.13 to meet the requirements of section 9.06. Said proposal must:

- (a) Be described in the affordable housing plan submitted to the city pursuant to section 9.32;
- (b) Meet the requirements of this chapter and the opportunity housing guidelines;
- (c) Demonstrate the provision of substantially the same or greater level of affordability and quantity of affordable housing as required pursuant to section 9.06; and
- (d) Be approved by the city council.

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) is eligible to use any of the following affordable housing tools and incentives for which it qualifies:

- (1) New residential rental and for-sale construction;
- (2) New mixed-use development with a residential rental or for-sale component;
- (3) Purchase of an existing naturally occurring affordable housing complex;
- (4) Renovation and acquisition of a multiple-family residential structure that preserves or increases the number of residential units from the number of units in the original structure;
- (5) Conversion of an existing single-family residential structure to a multiple-family residential structure;
- (6) Development that changes the use of an existing building from nonresidential to residential;
- (7) Development that results in the conversion of rental residential property to condominium property; and
- (8) Development located in the opportunity zone.

(b) 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.

(c) To use the tools and incentives described in this article, prior to issuance of a certificate of occupancy, the developer of a development must provide the city with record evidence of a covenant that maintains the opportunity housing units as affordable rental housing to household 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.

§ 9.16 DENSITY BONUS.

(a) To incentivize the creation of opportunity housing units, a residential development within a designated transit area and within zoning districts regulating development intensity through units per acre maximums qualify for the following density bonuses for each affordable unit provided at varying household income levels as follows:

- (1) Each extremely low and very low income household unit qualifies the overall development for two (2) bonus dwelling units up to a maximum of a fifty percent (50%) increase over current zoning; and
- (2) Each low income household unit affordable to households at or below sixty percent (60%) of AMI qualifies the overall development for one (1) bonus dwelling unit up to a maximum of a fifty percent (50%) increase over current zoning.

(b) In no instance may density bonus units be allocated to parcels designated by the comprehensive plan for residential densities of less than five (5) dwelling units per gross acre.

§ 9.17 FLOOR AREA RATIO BONUS.

(a) To incentivize the creation of opportunity housing units, a residential development within a designated transit area and within zoning districts regulating development intensity through floor area ratio maximums qualify for the following floor area ratio bonuses for each affordable unit provided at varying household income levels as follows:

- (1) Each extremely low and very low income household unit qualifies the overall development for 2,000 square feet of bonus floor area ratio up to a maximum of a fifty percent (50%) increase over current zoning.
- (2) Each low income household unit affordable to households at or below sixty percent (60%) of AMI qualifies the overall development for 1,000 square feet of bonus floor area ratio up to a maximum of a fifty percent (50%) increase over current zoning.

(b) In no instance may floor area ratio bonuses be allocated to parcels designated by the comprehensive plan for residential densities of less than five (5) dwelling units per gross acre.

§ 9.18 HEIGHT BONUS.

(a) To incentivize the construction of a mixture of opportunity housing units for households at or below sixty percent (60%) of AMI, the developer of a multiple-family development with at least nine percent (9%) of its total dwelling units affordable to households at or below sixty percent (60%) of AMI qualifies for the height bonuses as follows:

- (1) Qualifying development with a maximum height of three (3) stories or fifty (50) feet may increase to four (4) stories or sixty (60) feet equal to one (1) additional story.
- (2) Qualifying development with a maximum height of four (4) stories or sixty (60) feet may increase to five (5) stories or seventy (70) feet equal to one (1) additional story.
- (3) Qualifying development with a maximum height of six (6) stories or eighty (80) feet may increase to seven (7) stories or ninety (90) feet equal to one (1) additional story.

(b) This section may not be interpreted to allow a height bonus that exceeds the requirements and limitation of the Federal Aviation Administration or the MSP Airport Zoning Ordinance.

§ 9.19 PARKING REDUCTION.

(a) To incentivize the creation of opportunity housing units, a residential development with at least nine percent (9%) of its total dwelling units affordable to households at or below sixty percent (60%) of AMI qualifies for car parking reductions based upon 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 for a twenty percent (20%) parking reduction when outside a designated transit area and a forty percent (40%) parking reduction when within a designated transit area provided that the affordable housing agreement required pursuant to section 9.32 provides that the owner will not charge the opportunity housing units for access to parking;
- (2) A developments with nine percent (9%) of its units qualifying as very low income affordable housing qualifies for a fifteen percent (15%) parking reduction when outside a designated transit area and a thirty percent (30%) parking reduction when within a designated transit area provided that the affordable housing agreement

required pursuant to section 9.32 provides that the owner will not charge the opportunity housing units for access to parking; or

- (3) A development with nine percent (9%) of its units qualifying as low income affordable housing qualifies for a ten percent (10%) parking reduction when outside a designated transit area and a twenty percent (20%) parking reduction when within a designated transit area provided that the affordable housing agreement required pursuant to section 9.32 provides that the owner will not charge the opportunity housing units for access to parking.

(b) The car parking reductions provided in this section are not cumulative. Each qualifying development is eligible for only one (1) parking reduction of ten to forty percent (10 to 40%) depending upon the level of affordability provided.

§ 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 not charge the opportunity housing units 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 not charge the opportunity housing units 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 not charge the opportunity housing units 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.

§ 9.21 MINIMUM UNIT SIZE REDUCTION.

(a) To incentivize the construction of opportunity housing units affordable to households at or below sixty percent (60%) of AMI, a residential development that includes at least nine percent

(9%) opportunity housing units affordable to households at or below sixty percent (60%) of AMI, may reduce minimum unit size by the following amounts:

- (1) Each extremely low income opportunity housing unit qualifies for a thirty percent (30%) unit size reduction;
- (2) Each very low income opportunity housing unit qualifies for a twenty percent (20%) unit size reduction; or
- (3) Each low income opportunity housing unit that is affordable to a household at or below sixty percent (60%) of AMI qualifies for a ten percent (10%) unit size reduction.

(b) The minimum unit size reductions provided in this section are not cumulative. Each qualifying development is eligible for only one minimum unit size reduction of ten percent (10%), twenty percent (20%), or thirty percent (30%) for the opportunity housing units depending on the level of affordability provided.

§ 9.22 ALTERNATIVE EXTERIOR MATERIALS ALLOWANCE.

(a) To incentivize the construction of opportunity housing units affordable to households at or below sixty percent (60%) of AMI, 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 use the alternative exterior materials of fiber cement, exterior insulation finishing system (EIFS), and twenty (20) year warranty metals on facades not facing public streets where otherwise not allowed by the city code as follows:

- (1) A development with nine percent (9%) of its units qualifying as extremely low income affordable housing may cover up to one hundred percent (100%) of qualifying façades with the listed alternative exterior materials;
- (2) A development with nine percent (9%) of its units qualifying as very low income affordable housing may cover up to seventy-five percent (75%) of qualifying façades with the listed alternative exterior materials; or
- (3) A development with nine percent (9%) of its units qualifying as low income affordable housing may cover up to fifty percent (50%) of qualifying façades with the listed alternative exterior materials.

(b) The alternative exterior material allowances provided in this section are not cumulative. Each qualifying development is eligible for only one alternative construction material allowance of fifty percent (50%), seventy-five percent (75%), or one hundred percent (100%) 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 not charge the opportunity housing units for access to storage space.

§ 9.24 LANDSCAPE FEE IN-LIEU REDUCTION.

To incentivize the construction of opportunity housing units affordable to households at or below sixty percent (60%) of AMI, 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 reduce the fee in lieu for providing landscaping on a constrained site, where such fee in lieu is approved by the city council, as follows: developments with nine percent (9%) mix of its total units qualifying as extremely low or very low income opportunity housing units may reduce the fee by one hundred percent (100%).

§ 9.25 DEVELOPMENT FEE 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 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, not to exceed 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 at or below sixty percent (60%), as follows:

<u>Developer provides at least:</u>	<u>The city provides:</u>
<u>20% Affordable Units per building</u>	<u>30% Fee Waivers</u>
<u>25% Affordable Units per building</u>	<u>40% Fee Waivers</u>
<u>30% Affordable Units per building</u>	<u>50% Fee Waivers</u>
<u>40% or More Affordable Units per building</u>	<u>75% Fee Waivers</u>
<u>50% or More Affordable Units per building</u>	<u>100% Fee Waivers</u>

§ 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 eligible to defer up to the full amount of its development fees until 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 eligible to defer up to the full amount of its development fees until 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.

(b) The interest paid to the city during the deferral will be deposited into the city's affordable housing trust fund.

§ 9.27 EXPEDITED REVIEW OF PLANS.

The developer of a residential development that provides a minimum of fifteen percent (15%) opportunity housing affordable to households at or below sixty percent (60%) of AMI located within the opportunity zone or within the area bounded by Interstate 35, Interstate 494, Trunk Highway 77, and the Minnesota River will be eligible for expedited plan review for building permit applications by the community development department.

§ 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 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.

§ 9.29 RESERVED.

§ 9.30 HOUSING TAX INCREMENT FINANCING (TIF).

Where eligible under applicable state laws and when consistent with the city's TIF policy, the city 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.

§ 9.31 PROJECT BASED HOUSING VOUCHERS (PBV).

The City, through its HRA, shall allocate project-based vouchers annually in support of the creation of opportunity housing units for households at or below the extremely low and very low median income limits at or below fifty percent (50%) of AMI.

ARTICLE IV: AFFORDABLE HOUSING PLAN.

§ 9.32 AFFORDABLE HOUSING PLAN REQUIREMENTS.

(a) Affordable Housing Plan. Each residential development to which this chapter applies must submit an affordable housing plan to the city as a part of the application for final site and building plan, final development plan, or NOAH preservation in accordance with the requirements of section 9.06. An affordable housing plan is not required for a development in which the affordable housing obligation is satisfied by a payment pursuant to section 9.09.

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

- (1) A summary of the tools, methods, and related approaches used to meet the requirements of section 9.06;
- (2) The development philosophy and description of project performance metrics including, but is not limited to, development returns such as return on costs, return on equity, and both leveraged and unleveraged internal rate of return to assist the city in analyzing public participation;
- (3) The number, location, description of the structure such as but not limited to attached, semi-attached, or detached, size and cost of the proposed market rate and affordable units;
- (4) Description of affordable housing tools and incentives being requested as described in sections 9.15 through 9.31;
- (5) A site plan and floor plan depicting the location of the affordable and the market rate units;
- (6) The income levels to which each affordable unit will be made affordable;
- (7) The methods to be used to advertise the availability of the affordable units;
- (8) For a phased development, a phasing plan that provides for the timely development of the number of affordable units proportionate to the number of market rate units for each proposed phase of development;
- (9) Written confirmation that households with U.S. Department of Housing and Urban Development (HUD) Housing Choice Voucher rent assistance will be considered for tenancy in rental development;
- (10) Plan to monitor ongoing affordability;
- (11) The methods to be used to maintain affordability and the duration over which affordability will be maintained; and
- (12) Any additional information reasonably requested by the community development department to assist with evaluation of the affordable housing plan.

(c) A developer or owner may propose an alternative method to meet the opportunity housing requirement pursuant to section 9.06 that does not strictly comply with sections 9.07 through 9.14. Based on evidence specified in the affordable housing plan, the community development department may approve such an alternative if the alternative will provide as much or more affordable housing at the same or lower income levels, and of the same or superior quality of design and construction, and will otherwise provide greater public benefit than compliance with the requirements of this chapter.

(d) Upon submittal, the community development department will determine if the affordable housing plan is complete and conforms to the provisions of this chapter and the opportunity housing guidelines. The decision of the community development department may be appealed pursuant to section 2.85.05 of the city code.

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

(a) The affordable housing plan must establish unit rents per income level type and unit size and be leased to eligible households. The monthly rent of the opportunity housing unit at the time of lease signing must be affordable to households at or below sixty percent (60%) of AMI.

(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 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 city that the household remains eligible for an opportunity housing unit.

§ 9.34 ELIGIBILITY FOR AFFORDABLE UNITS.

No household may purchase or lease an opportunity housing unit created as a result of this chapter unless the household is a qualifying household pursuant to the requirements of this chapter and the household occupies the opportunity housing unit as its primary residence.

ARTICLE V: AFFORDABLE HOUSING AGREEMENT

§ 9.35 AFFORDABLE HOUSING AGREEMENT.

(a) Prior to the issuance of a building permit for any units in an affordable housing development or any development, including NOAH preservation, in which an opportunity housing unit is required, the applicant must have entered into a development agreement with the city. The development agreement must set forth the commitments and obligations of both the city and the applicant, including those requirements and limitations set forth in this chapter, such as, but not limited to, the affordable housing plan.

(b) The applicant must execute any and all documents deemed necessary by the city in a form to be established by the city, including without limitation, covenants, deed restrictions, and related instruments, including requirements for income qualification to ensure the continued affordability of the opportunity housing units in accordance with this chapter.

(c) The development agreement may contain a right of first refusal statement providing the city, or another entity, with the option to purchase the property to preserve the opportunity housing units before the development is placed on the open market for resale.

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

§ 9.36 OBJECTIVES.

(a) Dispersion. Opportunity housing unit dispersion means the distribution of opportunity housing units throughout all areas of the city in order to avoid concentrations of only affordable housing and to encourage racial and economic integration. Opportunity housing units built pursuant to this chapter must meet all requirements of the city code and any additional requirements for units as specified in this chapter.

(b) Integration. Opportunity housing units in a housing development must be mixed with, and not clustered together or segregated in any way from market rate units.

(c) Design. Except as otherwise provided in this chapter, opportunity housing units must be comparable in construction quality and exterior design to the market rate units constructed as part of the development.

(d) Phasing plan. If the development contains a phasing plan, the phasing plan shall provide for the proportionate development of opportunity housing units concurrently with the market-rate units. No phasing plan shall provide that the opportunity housing units are the last built units in a development.

(e) Timing of construction. A certificate of occupancy for market rate units within the development must not be issued until a certificate of occupancy is issued for a proportionate amount of opportunity housing units within the development. In phased developments, opportunity housing units must be constructed and occupied in proportion to the number of units in each phase of the residential development.

ARTICLE VII: MONITORING AND COMPLIANCE

§ 9.37 COMPLIANCE OF AFFORDABLE HOUSING AGREEMENT AND AFFORDABILITY CONTROLS.

(a) The community development department may promulgate rules, policies, and guidelines as necessary to implement this chapter and such rules, policies, and guidelines must be approved by the city council. On an annual basis, the community development department will publish or otherwise make available the U.S. Department of Housing and Urban Development household income limits and rental limits applicable to affordable units within the city and determine an inflation factor to establish a resale price of an opportunity housing unit.

(b) The affordable housing development agreement must compel the applicant or applicant's agent responsible for managing opportunity housing units in a rental development to submit an annual report to the community development department by February 1st for the previous calendar year that includes the following information for each development site:

- (1) A list of all opportunity housing units;
- (2) Vacancy information;
- (3) The monthly rent for each opportunity housing unit;
- (4) Monthly income for tenants of each opportunity housing unit;
- (5) Information sufficient to determine whether tenants of rented units qualify as extremely low, very low, low or moderate-income households; and
- (6) Any other information as required by the city, while ensuring tenant privacy rights.

(c) For all sales of for-sale opportunity housing units, the parties to the conveyance must execute and record such documentation as required by the affordable housing development agreement. Such documentation must include the applicable provisions of this chapter and provide, at a minimum, each of the following:

- (1) The opportunity housing unit must only be sold to and occupied by eligible households for the first twenty (20) years from the date of the initial certificate of occupancy; and
- (2) The opportunity housing unit must be conveyed subject to restrictions that maintain the affordability of such opportunity housing units for eligible households.

(d) In the case of rented opportunity housing units, the owner of the housing development must execute and record such documentation as required by the affordable housing development agreement. Such documentation must include the applicable provisions of this chapter and provide, at a minimum, each of the following:

- (1) The opportunity housing units must be leased to and occupied by eligible households;
- (2) The opportunity housing units must be leased at rent levels affordable to eligible households for a period of twenty (20) years from the date of the initial certificate of occupancy; and
- (3) Subleasing of opportunity housing units is not permitted without the express written consent of the community development department.

ARTICLE VIII: AFFORDABLE HOUSING TRUST FUND

§ 9.38 ESTABLISHMENT OF TRUST FUND.

The city will establish an affordable housing trust fund for the purpose of collecting funds related to the city's affordable housing programs pursuant to this chapter. Such funds will include but not be limited to payment of fees in lieu of opportunity housing units and shared appreciation dollars collected at the closing of sales of designated properties. The funds in the affordable housing trust fund and all earnings from investment of said funds will be expended exclusively to provide housing affordable to households at or below sixty percent (60%) of AMI and to moderate income households in the city.

§ 9.39 APPLICABLE HOUSING TRUST FUND ELIGIBLE ACTIVITIES.

(a) The funds collected for deposit in the affordable housing trust fund may be utilized for the following affordable housing activities:

- (1) Acquisition and construction of affordable housing units;
- (2) Gap financing for affordable units created at the extremely low, very low, and low income levels;
- (3) Enhancement of county, state, and federal affordable housing programs;
- (4) Purchase or rehabilitation, or both, and long-term preservation of NOAH units to be affordable to households at or below sixty percent (60%) of AMI;
- (5) Home rehabilitation of existing single family owner-occupied units to retain affordability;
- (6) Low cost financing or grants in support of accessory dwelling units creation affordable to households at or below sixty percent (60%) of AMI;
- (7) Predevelopment services in support of affordable housing creation;
- (8) Development fee waiver and deferral of fees in support of affordable housing creation;
- (9) Land acquisition and land banking for affordable housing creation;
- (10) Housing and economic development services in support of housing creation for low income families of two or more, non-disabled individuals, veterans, and homeless population;
- (11) Support for paying the difference between affordable rents and market rate rents to preserve affordable housing due to loss of subsidy of expiring tax credit developments or sale of NOAH property;
- (12) Infrastructure improvements;
- (13) Relocation assistance; and
- (14) Other activities to support affordable housing as determined by the city council.

(b) The city council from time-to-time may authorize by resolution additional activities that may be funded through the affordable housing trust fund.

§ 9.40 FINANCIAL OVERSIGHT OF THE AFFORDABLE HOUSING TRUST FUND.

The city manager, or designee, will administer and supervise the affordable housing trust fund account and the city's finance department will administer the fund.

ARTICLE X: IMPLEMENTATION EVALUATION AND ENFORCEMENT

§ 9.42 IMPLEMENTATION AND EVALUATION.

(a) The community development director, may establish rules, policies, and guidelines to be approved by the city council to assist in the implementation, administration, and evaluation of this chapter.

(b) On or before October 1 of each calendar year, the community development director will provide a report to the city council on the implementation of this chapter.

(c) The city attorney's office is authorized to enforce the provisions of this chapter and all associated agreements, instruments, and other requirements by administrative or judicial action or any other proceeding or method permitted by law.

(d) The city may, at its discretion, take such enforcement action as is authorized under the city code and any other action authorized by law or by any regulatory document, restriction, or agreement executed under this chapter.

(e) Failure of any official or agency to fulfill or undertake any requirement of this chapter does not waive an applicant, developer, owner, or other legally obligated party's requirements of this chapter.

(f) No permit, license, map, or other approval or entitlement for a development will be issued by the city, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been met to the satisfaction of the city.

(g) The remedies provided for herein are cumulative and not exclusive and do not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.

§ 9.43 SEVERABILITY.

If any section, subsection, paragraph, sentence or clause of this chapter is held to be unconstitutional, the remaining portions shall remain valid and in force. The city council hereby declares that it would have passed each section, subsection, sentence, paragraph, and clause despite the finding of unconstitutionality of one or more of the sections, subsections, paragraphs, sentences, or clauses.

ARTICLE XI: AFFORDABLE HOUSING TENANT PROTECTION

§ 9.44 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) AFFORDABLE HOUSING building means a rented multiple-family dwelling, where at least nine percent (9%) of the units rent for an amount that is affordable to households at or below sixty percent (60%) of AMI, as most recently determined by

the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin Metropolitan Statistical Area, as adjusted for household size and number of bedrooms.

- (2) AFFORDABLE HOUSING UNIT means a rental unit in an affordable housing building that rents for an amount that is affordable to households at or below sixty percent (60%) of AMI, as most recently determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin Metropolitan Statistical Area, as adjusted for household size and number of bedrooms.
- (3) CAUSE means the tenant or a member of 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.
- (4) TENANT PROTECTION PERIOD means the period that commences when a real estate closing transfers ownership of an affordable housing building and runs through the end of the three calendar months following the month in which written notice of the transfer is delivered to each affordable housing unit tenant.

(b) Relocation assistance.

- (1) If during the tenant protection period the new owner of an affordable housing building terminates or refuses to renew any affordable housing unit tenant's rental agreement without cause, then upon terminating or refusing to renew the tenant's lease, the new owner must pay to the tenant the equivalent of three months' rent, as relocation assistance, no later than the day upon which the tenant vacates the unit.
- (2) If during the tenant protection period the new owner of an affordable housing building raises any affordable housing unit tenant's rent, or rescreens an existing affordable housing unit tenant, and the tenant gives written notice to the new owner to terminate the rental agreement, the new owner, must within thirty (30) days of receiving tenant's written notice of termination of the rental agreement, pay to the tenant the equivalent of three (3) months' rent as relocation assistance.

(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 provides for a three (3) month tenant protection period for affordable housing unit tenants. Under Section 9.44, 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."

- (3) Whether there will be any rent increase within the three (3) month tenant protection period with the amount of the rent increase and the date the rent increase will take effect.
- (4) Whether the new owner will require existing affordable housing unit tenants to be rescreened to determine compliance with existing or modified residency screening criteria during the three (3) month tenant protection period and if so, a copy of the applicable screening criteria.
- (5) Whether the new owner will terminate or not renew rental agreements without cause during the three (3) month tenant protection period, and if so, notice to the affected affordable housing unit tenants whose rental agreements will terminate and the date the rental agreements will terminate.
- (6) Whether the new owner intends to increase rent, require existing affordable housing unit tenants to be rescreened to determine compliance with existing or modified residency screening criteria, or terminate or not renew affordable housing unit rental agreements without cause on the day immediately following the tenant protection period.

(d) Notice to the city. The new owner must deliver a copy of the notice required by clause (c) of this section to the city community development director at the same time notice is delivered to tenants.

(e) Required tenant protection period. The new owner or member of the prior owner of an affordable housing building must not terminate or not renew a tenant's rental agreement without cause, raise rent, or rescreen existing tenants during the tenant protection period without providing the notices required by clauses (c) and (d) of this section.

Section 3. That Chapter 14 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 14: LICENSES AND PERMITS

...

ARTICLE VIII: RENTAL HOUSING CODE

...

~~[DIVISION F: AFFORDABLE HOUSING BUILDING
§ 14.595 AFFORDABLE HOUSING BUILDING SALE.~~

~~—(a) *Definitions.* The following definitions apply in this Division F of this Article VIII of the Code. Defined terms remain defined terms, whether or not capitalized.~~

~~—(1) **AFFORDABLE HOUSING** building means a rented multiple family dwelling, where at least 15% of the units rent for an amount that is affordable to households at or below 60% of area median income, as most recently determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin Metropolitan Statistical Area, as adjusted for household size and number of bedrooms.~~

~~—(2) **AFFORDABLE HOUSING UNIT** means a rental unit in an affordable housing building that rents for an amount that is affordable to households at or below 60% of area median~~

income, as most recently determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin Metropolitan Statistical Area, as adjusted for household size and number of bedrooms.

—(3) ~~**CAUSE** means the tenant or a member of the tenant's household materially violated a term of the lease or violated a provision of Division D, Crime Free Rental Housing, of this Article.~~

—(4) ~~**TENANT PROTECTION PERIOD** means the period that commences when a real estate closing transfers ownership of an affordable housing building and runs through the end of the three calendar months following the month in which written notice of the transfer is delivered to each affordable housing unit tenant.~~

—(b) ~~*Relocation assistance.*~~

—(1) ~~If during the tenant protection period the new owner of an affordable housing building terminates or refuses to renew any affordable housing unit tenant's rental agreement without cause, then upon terminating or refusing to renew the tenant's lease, the new owner must pay to the tenant the equivalent of three months' rent, as relocation assistance, no later than the day upon which the tenant vacates the unit.~~

—(2) ~~If during the tenant protection period the new owner of an affordable housing building raises any affordable housing unit tenant's rent, or rescreens an existing affordable housing unit tenant, and the tenant gives written notice to the new owner to terminate the rental agreement, the new owner, must within (30) days of receiving tenant's written notice of termination of the rental agreement, pay to the tenant the equivalent of three months' rent as relocation assistance.~~

—(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 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 14.595 provides for a three-month tenant protection period for affordable housing unit tenants. Under Section 14.595, 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-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."~~

—(3) ~~Whether there will be any rent increase within the three-month tenant protection period with the amount of the rent increase and the date the rent increase will take effect.~~

—(4) ~~Whether the new owner will require existing affordable housing unit tenants to be rescreened to determine compliance with existing or modified residency screening criteria during the three-month tenant protection period and if so, a copy of the applicable screening criteria.~~

—(5) ~~Whether the new owner will terminate or not renew rental agreements without cause during the three-month tenant protection period, and if so, notice to the affected affordable housing unit tenants whose rental agreements will terminate and the date the rental agreements will terminate.~~

—(6) ~~Whether the new owner intends to increase rent, require existing affordable housing unit tenants to be rescreened to determine compliance with existing or modified residency screening~~

~~criteria, or terminate or not renew affordable housing unit rental agreements without cause on the day immediately following the tenant protection period.~~

~~—(d) *Notice to the city.* The new owner must deliver a copy of the notice required by clause (c) of this section to the city Community Development Director at the same time notice is delivered to tenants.~~

~~—(e) *Required tenant protection period.* The new owner or member of the prior owner of an affordable housing building must not terminate or not renew a tenant's rental agreement without cause, raise rent, or rescreen existing tenants during the tenant protection period without providing the notices required by clauses (c) and (d) of this section.]~~

Section 4. Effective Date.

The effective date of Ordinance is September 1, 2019. An application for final site and building plan or final development plan approval pursuant to city code for a development submitted to the city for review before September 1, 2019 is not subject to the requirements of this Ordinance. A substantially city code compliant pre-application concept plan for a development site submitted to the city for pre-application review before the Development Review Committee before September 1, 2019 qualifies the site to be exempt from the requirements of this Ordinance so long as a complete application for final site and building plan or final development plan approval on the same development site pursuant to city code is submitted to the city before September 1, 2021. A NOAH property that is transferred or is otherwise conveyed to a new owner or member of the prior owner or undergoes substantial rehabilitation before September 1, 2019 is not subject to the requirements of this Ordinance.

Passed and adopted this _____ day of _____ 2019.

Mayor

ATTEST:

APPROVED:

Secretary to the Council

City Attorney