

# **City of Franklin Inclusionary Housing Ordinance for Previously Approved Planned Developments**

## **Background**

In 2008, the City of Franklin Board of Mayor and Alderman adopted an ordinance to establish and promote affordable/workforce housing programs. The ordinance, Title 21 of the Municipal Code, was drafted with input from the Affordable/Workforce Housing Advisory Committee.

Affordable and workforce housing has been an issue in Franklin for decades and continues to be a complicated quality of life issue for the community. Whose responsibility is housing affordability? What are the impacts on Franklin's economy, demographics, diversity, and future development patterns if provisions for affordable housing are not made? Equally important, are provisions for affordable housing best left to the free market or should government intervene?

Through years of discussion, analysis, and debate, City of Franklin leaders have determined that while the provision of affordable housing is the responsibility of both public and private sectors, the public sector must take the lead.

This inclusionary ordinance allows Franklin an opportunity to take a small, but meaningful step in developing affordable housing units. *The proposed ordinance only pertains to existing approved planned development plans that, upon request for additional density will result in the creation of affordable housing units (AHU).*

The commentaries included throughout the ordinance serve as a "brief explanation" of the Affordable/Workforce Housing Advisory Committee's intention and spirit.

Despite the Committee's best intentions, there is no true "perfect" inclusionary housing ordinance, particularly in a community as diverse as ours.

## **TITLE 21 – AFFORDABLE AND WORKFORCE HOUSING Chapter 7 – Inclusionary Housing for Previously Approved Planned Developments**

### **SECTION**

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- 21-709. Maximum Incomes and Selling Prices
- 21-710. Preservation of Affordability; Deed Restrictions on Resale
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**Sec. 21-701. Purpose and Intent:** The purpose of this ordinance is to implement a coherent set of policies and objectives for the development of affordable housing in previously approved planned developments.

*Commentary:* This ordinance and the requirements contained herein are applicable only to existing planned developments whose owner(s) may, in the future request consideration for increased density.

**Sec. 21-702. Definitions:**

Affordable/Workforce Housing Reserve. An account established by the Board of Mayor and Alderman (BOMA) in the General Fund used for purchasing land or existing dwelling units for development of affordable housing dwelling units or, to defer City of Franklin water and wastewater system development and access fees that are otherwise payable at the time a building permit is ready to be issued for construction of new residential dwelling units.

*Commentary:* The Affordable/Workforce Housing Reserve was established in conjunction with the voluntary round-up program. The ordinance currently limits the use of funds to deferring City of Franklin water and wastewater system development and access fees that are otherwise payable at the time a building permit is ready to be issued for construction of new residential dwelling units. This revised definition broadens the use of the funds. The Reserve is a place for citizens and corporations to donate funds in addition to where developers may deposit fees-in-lieu-of affordable housing units in accordance with this ordinance.

Affordable housing unit (AHU). A dwelling unit available at a cost of no more than 30% (mortgage principal, interest, taxes, and insurance) of gross household income of households with family incomes at or below 80% of the Greater Nashville, Davidson, Murfreesboro, Franklin MSA as reported annually by the U.S. Department of Housing and Urban Development.

*Commentary:* This definition provides the needed link to this and future City of Franklin Affordable and Workforce Housing Programs for the purposes of determining which units count toward the requirement of creating affordable housing.

Qualified affordable housing unit purchaser or tenant. An individual or family with household incomes that do not exceed 80% of the median income, with adjustments for household size, as reported by the U.S. Department of Housing and Urban Development (HUD).

*Commentary:* This is a commonly accepted and used definition for determining qualified purchasers or tenants for affordable housing units. For example, the 2009 Median Income for a family of four as reported by HUD in the Greater Nashville-Davidson-Murfreesboro-Franklin MSA is with an income of \$63,200 and for an individual \$44,200. For a family to become a qualified purchaser under this ordinance their income must be no greater than \$50,560 and \$35,360, respectively.

**Sec. 21-703. Applicability:** This ordinance shall be applicable to all planned development approved prior to April 1, 2010 containing residential dwelling units and where an applicant is requesting an increase in density after April 1, 2010.

*Commentary:* The requirements of this ordinance are triggered by the occurrence of someone who has control of a previously approved planned development that contains residential dwelling units and submits a request for additional density.

**Sec. 21-704. Mandatory Provision of Affordable Units:** As a condition of approval for a revised concept plan any development referred to in Section 21-703, requires that an applicant requesting increased density to comply with the obligation to provide affordable housing pursuant to this ordinance.

*Commentary:* This provision links the requirements for obtaining approval of a revised concept plan and increased density with the provision of affordable housing.

**Sec. 21-705. Provision of Affordable Units:**

(1) The BOMA shall deny any application for a revised concept plan that increases residential density and fails to comply, at a minimum, with the following requirements for affordable units:

(a) At least ten (10) percent of the total number of requested residential units that exceed the originally approved density shall be established as affordable housing units in any one or combination of methods provided below:

- (i) constructed or rehabilitated subject to the revised concept plan (see Sec. 21.706); or
- (ii) constructed or rehabilitated on a different site (see Sec. 21-707); or
- (iii) an equivalent fees-in-lieu-of payment may be made (see Sec. 21-708); or
- (iv) an applicant may offer, and the BOMA may accept, donations of land in fee simple, on or off-site, or donation of land to a not-for-profit affordable housing entity. Said consideration shall include a recommendation from the Affordable/Workforce Advisory Committee and Franklin Municipal Planning Commission. The value of donated land shall be equal to or greater than the value of the construction of new affordable units or fees-in-lieu as required by this ordinance. The BOMA may require, prior to accepting land as satisfaction of the requirements of this ordinance, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

The applicant may offer, and the BOMA may accept, any combination of the Sec. 21-705(1)(a)(i)-(iv) requirements provided that in no event shall the total number of units or land area accepted be less than the equivalent value of the fees-in-lieu required by this ordinance.

*Commentary:* This section establishes the minimum number of, and methods for providing affordable units. Note that the applicant has four choices for providing affordable units. First, they may construct or rehabilitate units on the site subject to the approval of a revised concept plan. Second, they may construct or rehabilitate units at a different site than the one subject to the pending concept plan approval. Third, they may offer fees-in-lieu of the construction of affordable housing units, more fully discussed in Sec. 21-708. Fourth, they may offer, and the BOMA may accept, land on- or off-site for the purposes of constructing affordable units, perhaps for a non-profit entity, subsequent developer, or landowner. Finally, the applicant may propose and the BOMA may accept any combination of options one through four.

**Sec. 21-706. Provisions Applicable to Affordable Housing Units On- and Off-Site:**

(1) Location of affordable units. Except as provided affordable housing units constructed or rehabilitated under this ordinance shall not be situated in less desirable locations as market-rate units and on average, be no less accessible to public amenities, such as open space, as the market-rate units.

(2) Minimum design and construction standards for affordable units. Affordable housing units within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units. Exterior and interior features of affordable units shall comply in all respects with the Barrier Free Construction requirements as provided in Chapter 3 of this Title.

(3) Timing of construction of affordable units or deeding lots. Where feasible, affordable housing units or deeding of lots shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-rate Unit %	Affordable Housing Unit %
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%

Fractions of units shall be counted as the next whole unit.

*Commentary:* This table establishes the required schedule for completion of affordable units or deeding of lots in conjunction with the completion of market rate units. For example, a developer has requested and the BOMA has approved an additional 50 units, five (5) affordable units are required. Upon completion of the 16<sup>th</sup> market rate unit, the developer must construct or have rehabilitated at least one affordable unit (10% of 5). After completion of the 25th unit, the applicant must have constructed at least two affordable units (30% of 5), and so on. Similarly, the same formula would apply to donating buildable lots, when applicable.

(5) Marketing Plan for Affordable Units. Applicants under this ordinance shall submit a marketing plan or other method as approved by the BOMA, which describes how the affordable units will be marketed to potential qualified homebuyers. This plan shall include a description of the process (lottery) to be used for selecting buyers.

*Commentary:* A marketing plan is considered essential to the success of affordable housing development in the City of Franklin. How units are advertised and applicants are sought and qualified are essential and shall include the City and local not-for-profit affordable housing agencies.

**Sec. 21-707. Provision of Affordable Housing Units Off-Site:** As an alternative to the requirements of Sec. 21-706 or 21-708, an applicant subject to this ordinance may develop, construct or otherwise provide affordable units equivalent to those required by Sec. 21-705 off-site. All requirements of this ordinance that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of off-site units shall be approved by the BOMA as an integral element of a revised concept plan, where applicable.

*Commentary:* Allowing off-site provision of affordable units gives flexibility to both the developer and the City. The City may need to consider the City's Land Use Plan for the approval of off-site locations.

**Sec. 21-708. Fees-in-Lieu-of Affordable Housing Unit Provision:**

(1) As an alternative to the requirements of Sec. 21-706 or Sec, 21-707, an applicant may contribute to the Affordable/Workforce Housing Reserve to be used for the development and/or rehabilitation of affordable housing in lieu of constructing and offering affordable units within the proposed development or an approved off-site location.

(a) Calculation of fees-in-lieu-of units. The applicant for development subject to this ordinance may pay fees-in-lieu of the construction of affordable units. The fee-in-lieu of the construction or provision of affordable units is determined to be 2.5% of the total value of the additional lots, as verified by appraisal, of the approved, increased density. For example, if the applicant is approved for 10 additional lots with an appraised value of \$60,000 per lot the developer may opt to pay \$15,000 (10 x 60,000 = 600,000 x 2.5%) in lieu of constructing the units in their development. The appraisal and fees-in-lieu shall be paid in full within 120 days from the date the

BOMA conditionally approves the concept plan or prior to the recording of the plat, whichever occurs first.

*Commentary:* Understanding the request for additional density is initiated by the developer and even with the goal of having the developer incorporate affordable units into their development the option of fees-in-lieu must be realistic. Success of this ordinance must include an incentive for a developer to request additional density while affording the city the opportunity to assist in the development of affordable housing elsewhere in the city.

- (b) If the City disputes the applicants's appraisal, the City reserves the right to have their own appraisal completed at the City's expense and the BOMA shall decide the appraisal to accept.

**Sec. 21-709. Maximum Incomes and Selling Prices:**

- (1) To ensure that only eligible, low-to-moderate-income families purchase affordable housing units, the builder and future owners of a deed-restricted affordable unit shall be required to verify the incomes of the purchaser to the Housing Development Coordinator in accordance with the U.S. Department of Housing and Urban Development Part 5 - Definition of Income.

- (2) The maximum housing cost for affordable units created under this ordinance is established annually by the Affordable/Workforce Housing Advisory Committee.

*Commentary:* The Affordable/Workforce Housing advisory Committee with help from the Williamson County Board of Realtors and criteria used by HUD determines the maximum purchase price of a dwelling that is affordable by a qualifying family. For example, the cost of an affordable unit for an eligible low-to-moderate-income family of four whose annual household income is \$51,920 (80% of the HUD reported median income for the Greater Nashville-Davidson-Murfreesboro-Franklin MSA) the maximum purchase price is \$201,500. This calculation utilizes the maximum 30% of the family's income for principal, interest, taxes, and insurance. Understandably, the purchase price varies since it is primarily based on the household income.

**Sec. 21-710. Preservation of Affordability; Deed Restrictions and Riders:**

- (1) Each affordable unit created in accordance with this ordinance shall have limitations governing its initial sale and resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. These controls shall be established through a deed restriction on the property with the City named as a party, and shall be in force for a period of forty (40) years.

- (a) Sale price. The initial sale and resale restrictions shall include a provision that establishes the maximum sale/purchase price that an affordable housing unit established under this ordinance. This price varies as it based on the household income of a qualifying low-to-moderate-income family as calculated using criteria reported annually by HUD and endorsed by the Affordable/Workforce Housing Advisory Committee.
- (b) Right of first refusal to purchase. The developer/builder and future owners of a deed-restricted affordable housing unit created under ordinance shall agree to maintain a rider prepared by the City granting, among other things, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located. The rider shall state if after 180 days (6 months) following the unit being approved for occupancy and a good-faith attempt to sell the

affordable unit to a qualified buyer the property is not under contract, the City shall have an additional 90 days to find a qualified buyer who enters into a sales contract. During those 90 days, the City at any time may exercise a right of first refusal to purchase the property at the affordable price. The City shall use this time to identify a qualified, low-to-moderate income family or have the right to purchase any deed-restricted affordable housing unit at of the maximum price that could be charged to an eligible low-to-moderate income family. The City's purchase price shall be based on the same criteria utilized by the current owners, specifically family size and income when the dwelling was initially purchased but pro-rated using current Greater Nashville-Davidson-Murfreesboro-Franklin MSA data.

- (c) The BOMA shall require, as a condition for granting approval of a revised concept plan, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed restriction and rider noted in this Section. The Building Official or their designee shall not issue an occupancy permit for any affordable unit until the deed restriction and rider are recorded.

*Commentary:* This Section provides language to ensure that the affordable housing units remain affordable by restricting resale for at least forty (40) years and grants the City a right of first refusal to purchase the AHU should a qualified purchaser, beyond the initial purchaser, not be found. The restrictions on resale are designed to encourage the homeowner to maintain and improve the property while ensuring when an AHU is sold another eligible, low-to-moderate income family who is able to enjoy the same discount. It is important that the restrictions on resale do not block, in any way, the property owner from realizing a profit on the resale of the dwelling unit. Rather, the resale restriction simply passes on the initial affordability enjoyed by the purchaser, who qualified as a low-to-moderate income family to the new, qualifying family as calculated using criteria reported annually by HUD and endorsed by the Affordable/Workforce Housing Advisory Committee. In the event, a purchaser cannot be identified and the City cannot purchase the unit, the City agrees to remove the deed restrictions and riders and the property may be sold at market rate.

**Sec. 21-711. Severability:** If any provision of this ordinance is held invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected. The invalidity of any section or sections or parts of any section or sections of this ordinance shall not affect the validity of the remainder of the City of Franklin Municipal Code or Zoning Ordinance.

*Commentary:* This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In addition, the severability clause provides limited insurance that a court will not strike down the entire ordinance should it find one or more offending sections.