

# City of Philadelphia



(Bill No. 071005-A)

## AN ORDINANCE

Amending Title 7 of The Philadelphia Code, entitled "Housing Code," by adding a new Chapter establishing inclusionary affordable housing requirements, by requiring that certain developments, consisting of a certain number of dwelling units, provide a certain percentage of those units for affordable housing or provide other options for affordable housing, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Title 7 of The Philadelphia Code is hereby amended to read as follows:

### TITLE 7. HOUSING CODE.

#### CHAPTER 7-100. INCLUSIONARY AFFORDABLE HOUSING.

*§7-101. Declaration of Policy. The purpose of this Chapter is to provide for a full range of housing choices in a suitable environment for households of all income levels by increasing the availability of affordable housing in the City.*

*§7-102. Definitions.*

*(1) Affordable dwelling unit. A dwelling unit affordable for eligible households based on the affordability levels calculated pursuant to Section 7-107;*

*(2) Reserved.*

*(3) Reserved.*

*(4) Affordable Price. The price, as determined by the Director, that a family with income at 70% of AMI could afford to pay to purchase a dwelling unit, adjusted by the Director to account for size of family and size of unit.*

*(5) Fifteen Year Affordable Rent. The annual rent (multiplied by fifteen), as determined by the Director, that a family with income at 70% of AMI could afford to pay to rent a dwelling unit, adjusted by the Director to account for size of family and size of unit.*

*(6) Fifteen Year Market Rate Rent. The annual market rate rent for a unit, multiplied by fifteen.*

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(7) *AMI.* *The median income for the Philadelphia area adjusted for household size as calculated by the U. S. Department of Housing and Urban Development;*

(8) *Applicant.* *Any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, or affiliated entities and any transferee of all or part of the real property at one location which develops a total of twenty (20) or more dwelling units at one location for sale or rent;*

(9) *At one location.* *All real property of the applicant if:*

(a) *The property lines are contiguous or nearly contiguous at any point;*  
*or*

(b) *The property lines are separated only by a public or private street, road, highway, right-of-way or utility right-of-way, at any point;*

(10) *Department.* *The Department of Licenses and Inspections;*

(11) *Director.* *The Director of the Office of Housing and Community Development;*

(12) *Dwelling unit.* *A room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating but excluding dwelling units developed by or for an educational institution for the exclusive residential use and occupancy by that institution's students;*

(13) *Eligible household.* *A household where the income of the household is less than or equal to one hundred twenty-five (125) percent of the AMI and which holds a valid verification of eligibility from OHCD which entitles the household to buy or rent an affordable dwelling unit;*

(14) *Market rate units.* *Residential dwelling units that are not required to be affordable housing under this Chapter;*

(15) *OHCD.* *The Office of Housing and Community Development;*

(16) *Planning Commission.* *The City Planning Commission.*

## §7-103. Applicability.

(1) *This Chapter applies to any development project consisting of the construction or rehabilitation of twenty (20) or more dwelling units at any one location, including*

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*condominium conversions, and regardless whether for sale or for rent, and regardless over what time period the construction or rehabilitation is scheduled; except that this Chapter shall not apply to any development project which, pursuant to a grant of government funding or other governmental financial assistance, provides affordable housing independent of the requirements of this Chapter. An applicant shall not avoid the applicability of this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans or building permits. Any applicant may apply for approval of a preliminary plan of subdivision, for approval of a site or development plan or for a building permit for fewer than twenty (20) dwelling units at any time; but the applicant must agree in writing that the applicant will comply with this Chapter when the total number of dwelling units at one location reaches twenty (20) or more.*

## *§7-104. Inclusionary Affordable Housing Requirements.*

*(1) Any development project to which this Chapter applies must provide affordable dwelling units by complying with one of the following requirements:*

*(a) Providing affordable housing as follows:*

*(.1) Making five (5) percent of the dwelling units in the project affordable to households with incomes below 80% of AMI, such that the median price of these units is affordable to a household with income at 40% of AMI; and*

*(.2) Making five (5) percent of the dwelling units in the project affordable to households with incomes below 125% of AMI, such that the median price of these units is affordable to a household with income at AMI; or*

*(b) Constructing affordable dwelling units on an off-site location within the City in a number equal to or greater than the total number of dwelling units in the proposed residential development project multiplied by 0.15, provided that half of such units comply with subsection (a)(.1) above, and half of such units comply with subsection (a)(.2) above; and provided that the off-site proposal is approved by the Planning Commission; meets all zoning requirements of the district in which such units are proposed to be constructed; is completed no more than one (1) year after completion of the proposed residential development project; and complies with all other requirements of this Chapter. In the event the required number of off-site units are not available for occupancy within one year after a certificate of occupancy is issued for the original development project, the developer shall pay an Affordable Housing Fee to the City in accord with subsection (c), below, unless such one year period is extended by the Planning Commission, upon good cause shown.*

*(c) Payment of an Affordable Housing Fee to the City, calculated as follows:*

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*(.1) Where the majority of units in a development are for sale, the Fee shall equal the difference between the Affordable Price and the Market Rate Price (but not more than the cost of construction of an affordable unit), multiplied by the number of affordable units otherwise required by subsection (a) above.*

*(.2) Where the majority of units in a development are for rent, the Fee shall equal the difference between the Fifteen Year Affordable Rent and the Fifteen Year Market Rate Rent, multiplied by the number of affordable units otherwise required by subsection (a) above.*

*Each year, in the annual operating budget ordinance, Council shall appropriate to the Mayor - Office of Housing and Community Development – Affordable Housing, subject to Section 2-300(2)(d) of the Home Rule Charter, an amount equal to an estimate provided by the Director of Finance of total receipts under this subsection in the fiscal year immediately preceding the year for which appropriations are being made, with the expectation that such amounts will be deposited by the Director of Finance in the Housing Trust Fund, to be used for the purposes set forth in Chapter 21-1600.*

*(2) Any affordable dwelling units created shall be comparable in size, bedroom mix and quality of construction to the average market rate unit in the development.*

## §7-105. Application and Affordable Housing Plan.

*(1) Application. For all developments covered by this Chapter, the applicant shall file with the Planning Commission an application for approval of the development on a form provided and required by the Planning Commission. The application shall require and the applicant shall provide, among other things, general information about the nature and scope of the development and such other documents and information as the Planning Commission may require to evaluate the proposed development under the provisions of this Chapter. The applicant shall also comply with any other applicable requirements of the Planning Commission under Chapter 14-2100.*

*(2) Affordable Housing Plan. As part of the application process, the applicant shall file with the Planning Commission an affordable housing plan that specifies the development's compliance with each of the applicable requirements of this Chapter. The plan shall be subject to the approval of the Planning Commission and shall be incorporated into the development agreement between the applicant and the City as required by Section 7-106. At a minimum, the plan shall contain the following information:*

*(a) A general description of the development, whether the development will contain rental or individually owned units, or both, and, if the affordable units will be built off-site, the location of such off-site units;*

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(b) The total number of market rate dwelling units and Affordable Dwelling Units; and for each such unit or group of units:

- (.1) The number of bedrooms;
- (.2) The square footage;
- (.3) The sale or rental price;
- (.4) The phasing and construction schedule; and
- (.5) Documentation and plans regarding the exterior and interior appearances, materials and finishes of the development and each of the individual units;
- (.6) The target household income range.

(3) The approval of the Planning Commission shall be required for any development covered by this Chapter and such approval shall become part of the development agreement entered into between the City and the applicant.

## §7-106. Development Agreement.

Prior to the issuance of a building permit by the Department for any development subject to the provisions of this Chapter, the applicant must execute a development agreement with the City regarding the specific requirements and restrictions for affordable housing. The applicant shall execute any and all documents deemed necessary by the City, including but not limited to, restrictive covenants and other related instruments, to ensure the continued affordability of the affordable dwelling units in accordance with this Chapter. The development agreement shall include, but not be limited to, the commitments and obligations of the applicant and shall incorporate the affordable housing plan and approval of that plan by the Planning Commission.

## §7-107. Affordability Levels.

The City, through OHCD, is authorized to promulgate regulations to implement this Chapter, including determination of affordability levels based on the criteria set forth below. The Director shall publish a pricing schedule of sales and rental prices for affordable dwelling units to be updated annually.

(1) Ownership units. The sales price for each affordable dwelling unit shall be calculated on the basis of: an available fixed rate thirty (30) year mortgage, consistent with the average rate published from time to time by Freddie Mac; a down payment of no

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*more than five (5) percent of the purchase price; property taxes, if applicable; home owners insurance; and condominium or homeowner association fees, if applicable.*

*(2) Rental units. The monthly rent for each dwelling unit in the applicable portion of the development shall be calculated on the basis of thirty (30) percent of gross monthly income, adjusted for household size, less a reasonable allowance for utilities.*

## *§7-108. Eligible Household Qualifications.*

*(1) Each household seeking to be verified as an eligible household must submit to the Director, on a form provided by the Director, an application for eligibility in which the household provides such information that the Director requests to determine whether the household is eligible.*

*(2) After review, if the Director determines that the household is eligible, the Director shall sign a written verification of eligibility stating that the household qualifies as an eligible household. All such verifications shall be kept on file by OHCD.*

*(3) Appeals. The Director shall, by regulation, provide an appeal process for review of any application by a household that has been denied verification by the Director as an eligible household.*

## *§7-109. Initial Sale to Eligible Households.*

*(1) Every affordable dwelling unit required under this Chapter shall be sold or rented only to eligible households, for the buyer or renter's primary residence. One-half of such sales or rentals shall be to families with incomes at or below 80% of AMI and the median income of such families shall be 40% of AMI; and one-half of such sales or rentals shall be to families with incomes at or below 125% of AMI and the median income of such families shall be equal to AMI.*

*(2) An applicant shall not sell or rent any affordable dwelling unit without first obtaining from the buyer or renter a verification of eligibility issued by the Director.*

## *§7-110. Duration.*

*The affordable dwelling units in the applicable portion of the development, whether ownership or rental units, shall remain affordable for ten (10) years from the date of issuance of the certificate of occupancy, in the case of units for sale, and fifteen (15) years in the case of rental units, all through the imposition of a declaration of covenants, conditions and restrictions in accordance with Section 7-111.*

## *§7-111. Declaration of Covenants, Conditions and Restrictions.*

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*(1) Any development subject to the provisions of this Chapter shall also be subject to the following restrictions:*

*(a) The applicable portion of the development shall have recorded against it a Declaration of Covenants, Conditions and Restrictions requiring that the affordable housing units remain affordable for ten (10) years from the date of issuance of the certificate of occupancy, in the case of units for sale, and fifteen (15) years in the case of rental units. Such covenants shall be recorded by the developer with the Department of Records, shall run with the land for the entire ten (10) or fifteen (15) years, as applicable, and shall bind any owner of the affordable housing units and any other party with an interest in title to such units. In the case of units for sale, such covenants shall further require that, upon subsequent sale of such units after ten (10) years, the seller shall pay over to the City an amount equal to twenty (20) percent of the increase in market value. Such increase shall be calculated by subtracting from the sale price (i) any increase in value due to improvements; and (ii) the original sale price when the unit was first sold by the developer. Such payments shall be appropriated and spent by the City in the same manner as any payments pursuant to Section 7-104(1)(b), relating to Affordable Housing Fee.*

## §7-112. Development Assistance Programs.

*In recognition that the inclusion of affordable housing in any development will cause the developer to forego income that otherwise might be available from the development of market rate housing, it is the intent of Council that certain programs be developed to minimize the burden on developers. Such programs may include, but need not be limited to, modifications of Building Code requirements; provision of land for affordable developments, at below-market rates; and the provision of credits against business privilege tax. It is the intent of Council that legislation to implement such programs will be introduced into Council on or before the effective date of this Chapter.*

## §7-113. Enforcement and Penalties.

*Each violation of this Chapter shall constitute a “Class III” offense, and any applicant who violates this Chapter shall be subject to a fine as set forth in Section 1-109(3). In addition, the City shall have the right to all remedies provided by law or in equity.*

## §7-114. Severability.

*If any provision, sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is the intent of the City Council that this*

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*Ordinance would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof not been included herein.*

## *§7-115. Regulations.*

### *(1) OHCD may promulgate regulations:*

*(a) Adjusting the percentage requirements set forth in Section 7-104(1) to account for rounding differences or to allow for similar minor deviations.*

*(b) Allowing for minor deviations from the median incomes set forth in Sections 7-104(1)(a) and 7-109(1), to account for the practical inability to find households with precisely the income levels called for by said Sections.*

*(c) Otherwise to implement the intent of this Chapter.*

SECTION 2. This Ordinance shall take effect upon the adoption by Council of legislation certifying that developer incentives, which include but need not be limited to, building code modifications, expedited permitting, enacting certain tax credits, and the provision of land for affordable units at reduced or nominal consideration, are in place. This Ordinance shall apply to any development for which an application for a zoning permit is filed on or after such date.

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#### **Explanation:**

*Italics indicate new matter added.*

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 13, 2007. The Bill was Signed by the Mayor on January 3, 2008.



Patricia Rafferty  
Chief Clerk of the City Council