

ORDINANCE NO. 2021-1

AN ORDINANCE AMENDING CHAPTER 9 OF THE CITY CODE RELATED TO HOUSING OPPORTUNITY AND PRESERVATION

The City Council of the City of Bloomington, Minnesota ordains:

Section 1. That Chapter 9 of the City Code is hereby amended by deleting those words that are contained in brackets and ~~stricken through~~ and adding those words that are underlined, to read as follows:

CHAPTER 9

ARTICLE I: GENERAL PROVISIONS

§ 9.04 DEFINITIONS.

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

AFFORDABLE. Housing is **AFFORDABLE** when no more than 30% of the gross income of the household is required to pay for such housing and utility costs, fees and charges.

AFFORDABLE RENTS. The rent and utilities for the affordable Opportunity Housing Units will be based on the higher of the Bloomington HRA’s Section 8 Payment Standards, HUD Fair Market Rents for the Metropolitan Statistical Area, which includes Bloomington, Minnesota, or, if applicable, the Multifamily Tax Subsidy Projects (MTSP) Income Limits are used to determine qualification levels as well as set maximum rental rates for projects funded with tax credits or tax exempt housing bonds authorized under the Internal Revenue Code as adjusted annually.

(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~~].

GATEWAY AREA. The location and boundaries of the Gateway Area shall be established by the City Council as a development district. The district description shall be reflected in a district map that shall be kept permanently on file in the Community Development Department of the city and shall be available for public inspection.

INCOME LIMITS. The Department of Housing and Urban Development (HUD) sets income limits based on Median Family Income estimates and Fair Market Rent area definitions. Multifamily Tax Subsidy Projects (MTSP) Income Limits are used to determine qualification levels as well as set maximum rental rates for projects funded with tax credits authorized under section 42 of the Internal Revenue Code (the Code) and projects financed with tax exempt housing bonds issued to provide qualified residential rental development under section 142 of the Code.

NATURALLY OCCURRING AFFORDABLE HOUSING (NOAH). Existing owner-occupied or rental residential housing that is (a) affordable for at least 20% of the units to a household at or below 60% of

AMI, (b) classified in the Class B and C real estate categories, and (c) ~~were~~ was constructed between 1940 and 1990.

§ 9.06 OPPORTUNITY HOUSING REQUIREMENT.

(a) *New residential construction, regardless of type of dwelling unit.* For newly constructed, converted, or infill multi-family or townhome residential developments with 20 or more newly created units, at least 9% of the newly created units must be affordable to households at or below 60% of AMI. For newly constructed or infill single-family detached residential developments with 20 or more newly created units, at least 9% of the newly created units must be affordable to low income family households up to 115~~[0]~~ % AMI.

ARTICLE II: DEVELOPER OPTIONS

§ 9.09 PAYMENT IN LIEU OF AFFORDABLE UNITS.

(a) Based on research conducted in support of this section and pursuant to §§ 9.01 through 9.03, a verified payment in lieu rate is hereby established as set forth in City Code Appendix A 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 § 9.06 may be satisfied by making a payment to the city ~~[a] Affordable [h]Housing [t]Trust [f]Fund~~ established by this chapter in lieu of constructing the opportunity housing units, provided that such payment is received by the city ~~[after]~~ prior to the issuance of the [development] building 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 mid project, the developer may make a payment in lieu of developing the remaining units that is proportional to the requirement of this section, provided that such payment is received by the city prior to the issuance of the building permit for the project.

(d) If a developer chooses the in lieu payment, the fee in-in lieu shall be paid to the Affordable Housing Trust Fund, but 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 20% of the housing units affordable to households at or below 60% AMI provided the development receives city site plan approval within 24 months of beginning construction on the market rate units;

(2) To a development by different developer that will include at least 20% of the housing units affordable to households at or below 60% of AMI provided the development receives city site plan approval within 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 24 months provided the developer submit a maintenance repair plan and enters into an affordable housing agreement approved by the city.

(e) The payment amount will be reviewed annually by resolution of the City Council.

ARTICLE III: AFFORDABLE HOUSING TOOLS AND INCENTIVES

§ 9.15 AFFORDABLE HOUSING TOOLS AND INCENTIVES.

(e) Use of an individual tool or incentive described in this article is prohibited if the City Council determines that the resulting development has the potential to negatively impact the surrounding

neighborhood and that the negative impacts outweigh the positive benefits of the opportunity units created.

(f) The City Council may, at its sole discretion, allow use of the incentives for developments that create or preserve less than 20 units where the City Council finds it to be in the public's interest.

§ 9.16.01 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 bonus dwelling units up to a maximum of a 50% increase over current zoning; and

(2) Each low income household unit affordable to households at or below 60% of AMI qualifies the overall development for one bonus dwelling unit up to a maximum of a 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 dwelling units per gross acre.

§ 9.16.02 SITE AREA REDUCTION.

(a) To incentivize the creation of opportunity housing units, a residential development that includes at least 9% of its total dwelling units affordable to households at or below 60% of AMI may reduce the required minimum site area as follows unless the City Council determines that the reduction is likely to create a specific adverse public health, safety, or welfare impact or would otherwise conflict with local, state, or federal regulations, rules, or laws:

(1) A development with at least 9% of its units qualifying as extremely low income affordable housing may reduce minimum site area requirements by up to 50%;

(2) A development with 9% of its units qualifying as very low income affordable housing may reduce minimum site area requirements by up to 25%; or

(3) A development with 9% of its units qualifying as low income affordable housing may reduce minimum site area requirements by up to 10%.

(b) The minimum site area reductions provided in this section are not cumulative. Each qualifying development is eligible for only one minimum site area reduction of 10%, 25%, or 50% depending on the level of affordability provided.

§ 9.16.03 SITE WIDTH REDUCTION.

(a) To incentivize the creation of opportunity housing units, a residential development that includes at least 9% of its total dwelling units affordable to households at or below 60% of AMI may reduce the required minimum site width as follows unless the City Council determines that the reduction is likely to create a specific adverse public health, safety, or welfare impact or would otherwise conflict with local, state, or federal regulations, rules, or laws:

(1) A development with at least 9% of its units qualifying as extremely low income affordable housing may reduce minimum site width requirements by up to 50%;

(2) A development with 9% of its units qualifying as very low income affordable housing may reduce minimum site width requirements by up to 25%; or

(3) A development with 9% of its units qualifying as low income affordable housing may reduce minimum site width requirements by up to 10%.

(b) The minimum site width reductions provided in this section are not cumulative. Each qualifying development is eligible for only one minimum site width reduction of 10%, 25%, or 50% depending on the level of affordability provided.

§ 9.16.04 IMPERVIOUS SURFACE AREA INCREASE.

(a) To incentivize the creation of units affordable to households at or below 50% of AMI, a residential development that includes at least 9% of its total dwelling units affordable to households at or below 50% of AMI may increase the maximum allowed impervious surface area as follows unless the City Council determines that the increase is likely to create a specific adverse public health, safety, or welfare impact or would otherwise conflict with local, state, or federal regulations, rules, or laws:

(1) A development with at least 9% of its units qualifying as extremely low income affordable housing may increase the maximum allowed impervious surface area by an additional 10% beyond what is required in the zoning district. For example, if the respective zoning district limits impervious surface area to 85%, the incentive would allow up to 95% impervious surface area; or

(2) A development with at least 9% of its units qualifying as very low income affordable housing may increase the maximum allowed impervious surface area by an additional 5% beyond what is required in the zoning district. For example, if the respective zoning district limits impervious surface area to 85%, the incentive would allow up to 90% impervious surface area.

(b) The impervious surface area increases provided in this section are not cumulative. Each qualifying development is eligible for only one impervious surface area increase of 5% or 10% depending on the level of affordability provided.

§ 9.16.05 OPEN SPACE REDUCTION.

(a) To incentivize the creation of opportunity housing units, a residential development that includes at least 9% of its total dwelling units affordable to households at or below 60% of AMI may reduce the required minimum usable open space as follows unless the City Council determines that the reduction is likely to create a specific adverse public health, safety, or welfare impact or would otherwise conflict with local, state or federal regulations, rules, or laws:

(1) A development with at least 9% of its units qualifying as extremely low income affordable housing may reduce minimum usable open space requirements by up to 50%;

(2) A development with 9% of its units qualifying as very low income affordable housing may reduce minimum usable open space requirements by up to 25%; or

(3) A development with 9% of its units qualifying as low income affordable housing may reduce minimum usable open space requirements by up to 10%.

(b) The minimum usable open space reductions provided in this section are not cumulative. Each qualifying development is eligible for only one minimum usable open space reduction of 10%, 25%, or 50% depending on the level of affordability provided.

§ 9.18 HEIGHT BONUS.

(a) To incentivize the construction of a mixture of opportunity housing units for households at or below 60% of AMI, the developer of a multiple-family development with at least 9% of its total dwelling units affordable to households at or below 60% of AMI qualifies for a height bonus of one additional story and 10 additional feet above the height limit set forward on the City's height limits map.~~the height bonuses as follows:~~

~~(1) Qualifying development with a maximum height of three stories or 50 feet may increase to four stories or 60 feet equal to one additional story.~~

~~(2) Qualifying development with a maximum height of four stories or 60 feet may increase to five stories or 70 feet equal to one additional story.~~

~~(3) Qualifying development with a maximum height of six stories or 80 feet may increase to seven stories or 90 feet equal to one 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 9% of its total dwelling units affordable to households at or below 60% of AMI qualifies for car parking reductions based upon the level of affordability provided as follows:

(1) A development with 9% of its units qualifying as extremely low income affordable housing qualifies for a 20% parking reduction when outside a designated transit area and a 40% parking reduction when within a designated transit area provided that the affordable housing agreement required pursuant to § 9.32 provides that the owner will not charge the opportunity housing units for access to parking;

(2) A development with 20% of its units qualifying as extremely low income affordable housing qualifies for a 25% parking reduction when outside a designated transit area and a 50% parking reduction when within a designated transit area provided that the affordable housing agreement required pursuant to § 9.32 provides that the owner will not charge the opportunity housing units for access to parking;

~~(2)3~~ A development with 9% of its units qualifying as very low income affordable housing qualifies for a 15% parking reduction when outside a designated transit area and a 30% parking reduction when within a designated transit area provided that the affordable housing agreement required pursuant to § 9.32 provides that the owner will not charge the opportunity housing units for access to parking; or

~~(2)4~~ A development with 9% of its units qualifying as low income affordable housing qualifies for a 10% parking reduction when outside a designated transit area and a 20% parking reduction when within a designated transit area provided that the affordable housing agreement required pursuant to § 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 parking reduction of 10% to ~~40~~50% 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 9% of its total dwelling units affordable to households at or below 60% of AMI may convert required enclosed parking spaces to unenclosed ~~carport covered~~ parking spaces depending on the level of affordability provided as follows:

(1) A development with 9% of its units qualifying as extremely low income affordable housing qualifies to convert 50% of required enclosed parking spaces to unenclosed ~~carport covered~~ parking spaces provided that the affordable housing agreement required pursuant to § 9.32 provides that the owner will make all ~~enclosed or carport covered~~ parking spaces accessible to the opportunity housing units without charge;

(2) A development with 20% of its units qualifying as extremely low income affordable housing qualifies to convert 100% of required enclosed parking spaces to unenclosed parking spaces provided that the affordable housing agreement required pursuant to § 9.32 provides that the owner will make all parking spaces accessible to the opportunity housing units without charge;

~~(2)3~~ A development with 9% of its units qualifying as very low income affordable housing qualifies to convert 50 ~~25~~% of required enclosed parking spaces to unenclosed ~~carport covered~~ parking spaces provided that the recorded affordable housing agreement required pursuant to § 9.32 provides that the owner will make all ~~enclosed or carport covered~~ parking spaces accessible to the opportunity housing units without charge; or

~~(2)4~~ A development with 9% of its units qualifying as low income affordable housing qualifies to convert 10% of required enclosed parking spaces to unenclosed ~~carport covered~~ parking spaces provided that the recorded affordable housing agreement required pursuant to § 9.32 provides that the

owner will make all ~~enclosed or carport covered~~ parking spaces accessible to the opportunity housing units without charge.

(b) The enclosed parking space conversion allowances provided in this section are not cumulative. Each qualifying development is eligible for only one enclosed parking space conversion allowance of 10% to ~~100~~50% 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 60% of AMI, a residential development that includes at least 9% of its total dwelling units affordable to households at or below 60% of AMI may use the alternative exterior materials of fiber cement, engineered wood, exterior insulation finishing system (EIFS), and 20 year warranty metals on façades not facing public streets where otherwise not allowed by the city code as follows:

§ 9.23 STORAGE SPACE REDUCTION.

To incentivize the construction of opportunity housing units, a multiple-family development that includes at least 9% of its total dwelling units affordable to households at or below 60% of AMI may reduce the required number of storage spaces outside the dwelling unit by 50% provided that the affordable housing agreement pursuant to § 9.32 provides that the owner will make storage space accessible to the opportunity housing units without charge. A multiple-family development that includes at least 20% of its total dwelling units affordable to households at or below 50% of AMI may reduce the required number of storage spaces outside the dwelling unit by 75%.

§ 9.25 DEVELOPMENT FEE REIMBURSEMENT.

For any development located within the Gateway Area ~~[area bounded by Interstate 35W, Interstate 494, Trunk Highway 77, and the Minnesota River]~~, upon a showing of demonstrated need, the city will consider reimbursing all or a portion of the zoning application fees, building permit fees, park dedication fees, sewer availability charge (SAC) fees and related infrastructure fees from ~~[available funds in] the Affordable H[ousing] T[rust] F[und]~~ [not to exceed the fees for a cumulative total of 320 housing units, within the geographic area,] for a development in which a minimum 20% of units are affordable to a mix of households with incomes at or below ~~65~~50% of AMI, as follows:

Developer provides at least:	The city may provide up to:
20% affordable units per building	30% fee reimbursement
25% affordable units per building	40% fee reimbursement
30% affordable units per building	50% fee reimbursement
40% or more affordable units per building	75% fee reimbursement
50% or more affordable units per building	100% fee reimbursement

§ 9.26 DEVELOPMENT FEE DEFERMENT.

(a) The city may ~~offer~~ consider development fee deferrals from the Affordable Housing Trust Fund 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 9% of its total dwelling units as opportunity housing affordable to households at or below 60% of AMI, when calculated before any

applicable density bonus, the development may be eligible to defer up to the full amount of its development fees until 12 months after the development obtains its certificate of occupancy. The city will charge an annual interest of 5% during the deferral period.

(2) When a residential development includes at least a 20% of its total dwelling units as opportunity housing affordable to households at or below 60% of AMI, when calculated before any applicable density bonus, the development may be eligible to defer up to the full amount of its development fees until 24 months after the development obtains its certificate of occupancy. The city will charge an annual interest of 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 15% opportunity housing affordable to households at or below 60% of AMI located within the opportunity zone or within the Gateway Area [area bounded by Interstate 35, Interstate 494, Trunk Highway 77, and the Minnesota River] will be eligible to move to the front of the review queue [for expedited plan review] for building permit applications by the Community Development Department.

§ 9.29 [RESERVED] AFFORDABLE HOUSING TRUST FUND

The City may consider awarding funding from the Affordable Housing Trust Funds under Article VIII. §9.39.

ARTICLE IV: AFFORDABLE HOUSING PLAN

§ 9.32 AFFORDABLE HOUSING PLAN REQUIREMENTS.

(c) A developer or owner may propose an alternative method to meet the opportunity housing requirement pursuant to § 9.06 that does not strictly comply with §§ 9.07 through 9.14 and the tools and incentive sections §§ 9.15 through 9.31. Based on evidence specified in the affordable housing plan, the Community Development Department [may] must make a recommendation to the City Council on whether to 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.

§ 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 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) Unless in conflict with the requirements of other funding, [A]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 years provided the household income does not exceed 140% of the applicable median income adjusted for family size 30% of AMI for extremely low, 50% of AMI for very low and 60% of AMI for low[}].

(2) An extremely low, very low, or low income household whose household income falls below the income level for which the household originally qualified due to loss of employment that is not the result

of a local, state or federal crime and the household is otherwise in good standing as a tenant, may qualify to receive partial rent assistance from the Affordable Housing Trust Fund, if eligible funding is available, for up to two years provided the household can meet the requirements of the opportunity housing guidelines.

(2[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 60% of AMI.

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

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

§ 9.36 OBJECTIVES.

Developments with opportunity housing units must meet the following objectives:

(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. Opportunity housing units in a housing development must be distributed across all unit sizes proposed in the development, including: efficiencies, one, two, and three or more bedroom units.

ARTICLE VIII: AFFORDABLE HOUSING TRUST FUND

§ 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 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 unit[s] creation affordable to households at or below 60% of AMI;
- (7) Predevelopment services in support of affordable housing creation;
- (8) Development fee [~~waiver~~] reimbursement 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.

ARTICLE IX: IMPLEMENTATION EVALUATION AND ENFORCEMENT

§ 9.42 IMPLEMENTATION AND EVALUATION.

(b) On or before October 1 of each calendar year, the Community Development Director, or designee, will provide a report to the City Council on the implementation of this chapter.

Passed and adopted this 8th day of March, 2021.

/s/ Tim Busse
Mayor

ATTEST:

/s/ Denise M. Christenson
Secretary to the Council

APPROVED:

/s/ Melissa J. Manderschied
City Attorney