

CITY OF MEDFORD  
AMENDMENTS TO REVISED ORDINANCE  
CHAPTER 94, ZONING

BE IT ORDAINED, by the Medford City Council of the City of Medford, that the Revised Ordinances of the City of Medford in Chapter 94, Zoning, be further amended to establish an Inclusionary Housing/Special Permit Process.

Add Article VIII, Inclusionary Housing, Section 94-501- as follows:

Section 1.0 Purpose and Intent:

The purpose of this ordinance is to encourage development of new housing that is affordable to low and moderate-income households in applicable zoning districts that require site review. At a minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-24 and other affordable housing programs developed by federal, state, and local governments. It is intended that the affordable housing units that result from this ordinance be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Department of Housing and Community Development.

Section 2.0 Definitions

The following words, terms and phrases when used in this article shall have the meanings assigned to them below, except where the context clearly indicates a different meaning:

*Affordable Housing Restriction:* A right, either in perpetuity or for the longest period permitted by law, whether or not stated in the form of a restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other instrument executed by or on behalf of the owner of the land appropriate to (a) limiting the use of all or part of the land to occupancy by persons, or families of low-to-moderate income in either rental housing or other housing, (b) restricting the resale price of all or part of the property in order to assure its affordability by future low-to-moderate income purchasers or (c) in any way limiting or restricting the use of enjoyment of all or any portion of the land for the purpose of encouraging or assuring creation or retention of rental and other housing for occupancy by low-to-moderate income persons and families.

*Affordable Housing Unit (or Affordable Unit):* Any residential dwelling unit constructed as part of a Covered Project (a) for which the rent, including utilities, or monthly

mortgage payment, including insurance, taxes and fees, does not exceed the maximum allowable percentage of the household's income allowable under law, (b) is affordable to and occupied by a low-to-moderate income household, and (c) meets the requirements of this ordinance and the Local Initiative Program (LIP) for the inclusion in the Chapter 40B Subsidized Housing Inventory.

*Substantial Rehabilitation:* To cause alterations or repairs to be made, to a structure or structures costing in excess of 50 percent of the assessed value for property tax purposes as defined in the City of Medford Zoning Code under Section 94-382. Assessed value of a structure or structures shall be based on the assessed value as recorded on the assessment rolls of the City as of the first of January preceding the date of the application for development impact project plan approval.

*Area Median Income (AMI):* The median family income, adjusted for household size, for the metropolitan area that includes the City of Medford, as determined annually by the U.S. Department of Housing and Urban Development (HUD).

*Chapter 40B Subsidized Housing Inventory:* The official listing of low-to-moderate income housing in the City of Medford, as determined by the Department of Housing and Community Development (DHCD) under G.L. c. 40B, Sections 20-23.

*Covered Project:* Any development containing ten (10) or more residential dwelling units in a multiple-family, mixed-use, attached, single family dwelling, assisted living residence or subdivision creating ten (10) or more lots. A Covered Project shall include projects that are incrementally divided or phased within a five (5) year period.

*Local Initiative Program:* A program administered by the Massachusetts Department of Housing and Community Development (DHCD) pursuant to 760 CMR 45.00 (760 CMR 56) to develop and implement local initiatives that produce affordable housing for low-to-moderate income households.

*Low-to-Moderate Income Household:* A household whose income is at or below 80% of the Boston Metropolitan Area Median Income (AMI) as defined by the U.S. Department of Housing and Urban Development, adjusted for household size.

*Market-rate Housing:* Residential dwelling units for which prices are captured based on market conditions, without rent or income restrictions. In a development with affordable housing, market-rate housing means all units other than the affordable housing units as defined in this section.

*Maximum Affordable Purchase Price or Rent:* A maximum purchase price or monthly rent that complies with the regulations and guidelines of the Local Initiative Program as published by the Department of Housing and Community Development pursuant to 760

CMR 56 and G.L. c.40B guidance, other subsidized funding programs whose regulations are consistent with state guidelines, or where no such regulations or guidelines exist, the regulations of the Community Development Board.

*Segmented:* A Covered Project that has incrementally divided or phased one or more large tract(s), parcel(s), division(s) of land or project(s) linked in common ownership, control or purpose for which special permits are sought within a five (5) period so as to appear unrelated, but such that the division(s) would cumulatively result in ten (10) or more dwelling units. The Special Permit Granting Authority shall determine if there is any shared impact amongst any segmented component(s) or if one or more component(s) relate to other identifiable phases. Segmented components need not be contiguous to relate to a larger, discernable plan or project.

*Special Permit Granting Authority:* The Community Development Board shall be the Special Permit Granting Authority (SPGA) for an Inclusionary Zoning Special Permit, except for a use requiring a Special Permit consistent with Section 94-148, Table of Uses. In such instances, the SPGA shall be the applicable Special Permit Granting Authority as defined in said Table.

### Section. 3.0 Applicability

1. In all zoning districts, the inclusionary zoning provisions of this section shall apply to the following uses:

(a) Any project that results in a net increase of ten (10) or more dwelling units over a five (5) year period, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and

(b) Any subdivision of land for development of ten (10) or more dwelling units over a five (5) year period; and

(c) Any life care facility development that includes ten (10) or more assisted living units and accompanying services.

### Section 4.0 Procedures and Administrative Fees

Procedures for the filing of a special permit for Inclusionary Housing and any administrative fees shall be established by the Community Development Board by the adoption of Rules and Regulations.

### Section 5.0 Special Permit Requirement

The development of any project set forth in Section 03.0 (above) shall require the grant of a Special Permit from the Board of Appeals or other designated Special Permit Granting Authority (SPGA). A Special Permit shall be granted if the proposal meets the requirements of this ordinance.

- a) Covered projects requiring a special permit and /or a variance from the Board of Appeals or City Council. In the case of a covered project which requires a special permit from the City Council or the Board of Appeals as identified in 94-148, Table of Use Regulations or Site plan review pursuant to Section 94-331, the Community Development Board shall submit its recommendation relative to Inclusionary Housing within 45 days of the date of submission to the Board for comment. The Recommendation of the Community Development Board shall be attached as a condition of approval of the Special Permit which shall be conducted pursuant to the provisions of M.G. L. Ch. 40 A and the Ordinances of the city of Medford.
- b) Covered Projects requiring a special permit from the Community Development Board. In the case of a covered project which requires a special permit for site plan review and all other covered projects not subject to 3.0 (a), the Community Development Board shall conduct a public hearing and its review shall be consistent with the provisions of M.G.L c. 40A and the Ordinances of the City of Medford.
- c) Nothing shall prevent the SPGA to combine public hearings for a special permit for use or site plan review with the special permit for Inclusionary Housing.

#### Section 6.0 Mandatory Provision of Affordable Units

1. As a condition of approval for a Special Permit for a Covered Project, the applicant shall contribute to the local stock of affordable unit in accordance with the following requirements:

- a) 10 -24 lots or units- ten (10) percent affordable units
- b) 25-49 lots or units- thirteen (13) percent affordable units
- c) 50 or more lots or units- fifteen (15) percent affordable units.

2. As a condition for the granting of a Special Permit for a Covered Project, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the Community Development Board .The regulatory agreement shall be consistent with any applicable guidelines issued by the

Department of Housing and Community Development and any other applicable state or federal funding source and shall ensure that affordable units can be counted toward the City's Subsidized Housing Inventory. In the case of a subdivision, no lot or unit shall be sold until an approved Regulatory Agreement is recorded at the Registry of Deeds. In the case of a construction project subject to a building permit, no certificate of final occupancy shall be issued until an Approved Regulatory Agreement is recorded at the Registry of Deeds and the Building Commissioner is notified by the Director of the Office of Community Development or her representative that the project is progressing in a satisfactory manner in fulfilling its affordable housing requirement.

3. All Covered Projects shall comply with the following:

- a) Fractional units—Where the required number of affordable units results in a fraction of a unit, the required number should be rounded up to the nearest whole number;
- b) Phasing—Affordable units should not be the last units to be developed or occupied in any Covered Project;
- c) Non-avoidance by phasing or segmentation—A development shall not be phased or segmented in a manner to avoid compliance with this section. The Special Permit Granting Authority (SPGA) shall not approve any Covered Project that results in ten (10) or more dwelling units if the land or parcels of land were held in common ownership (including ownership by related or jointly controlled persons or entities) and were subdivided or otherwise modified within the previous five (5) years to avoid compliance without complying with this section. This section shall also be enforceable against purchasers of land previously held in common ownership with land that received, after the date of adoption of this section, approvals or permits for development, to the effect that units developed under such previous development shall be counted toward the calculation of number of units under this section.

Section 7.0 Provisions Applicable to Affordable Housing Units

The following criteria shall apply.

- 1. Siting of affordable units. All affordable units constructed or rehabilitated under this ordinance shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, 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 shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with

other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.

3. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units

4. Marketing Plan for Affordable Units. Applicants under this ordinance shall submit an affirmative marketing plan to the Director of Diversity and DHCD, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

#### Section 8.0 Maximum Incomes and Selling Prices: Initial Sale:

The Proponent of a Covered Project shall engage a DHCD and Office of Community Development approved Lottery Agent who shall ensure affirmative marketing and DHCD requirements regarding compliance with maximum income and maximum selling prices. For certain state and federally funded projects more restrictive requirements may supersede state requirements.

The maximum income level is as established by the Commonwealth's Department of Housing and Community Development, and as may be revised from time to time. The maximum housing cost for affordable units is as established by the Commonwealth's Department of Housing and Community Development, Local Initiative Program or as required by other State or federal Programs. If multiple funding sources are used, the units must still be eligible for inclusion on the Subsidized Housing Inventory.

#### Section 7.0 Preservation of Affordability; Restrictions on Resale:

Each affordable unit created in accordance with this ordinance shall have limitations governing its resale through the use of a regulatory agreement. 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. The resale controls shall be established through a restriction on the property and shall be in force for perpetuity.

(a) Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall comply with the requirements of the DHCD Local Initiative Program.

(b) Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this ordinance shall agree to execute a condition in its deed restriction to be approved by the City and DHCD, granting, among other things, the municipality's and DHCD's right of first refusal to purchase the property in the event

that a subsequent qualified purchaser cannot be located. (c) The SPGA shall require, as a condition for Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider. The Building Commission shall not issue an occupancy permit for any affordable unit without evidence of the recording of the affordable deed restriction.

Section 9.0 Conflict with Other Ordinances:

The provisions of this ordinance shall be considered supplemental of existing zoning ordinances. To the extent that a conflict exists between this ordinance and others, the more restrictive ordinance, or provisions therein, shall apply.

Section 10.0 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 thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the city's zoning ordinance.

APPROVED: Stephane M Bute MAYOR

IN COUNCIL      FEBRUARY 19, 2019      PASSED TO BE ORDAINED

APPROVED: Charles G. Zumbly CITY SOLICITOR

A TRUE COPY, ATTEST

Adam L. Hurtubise  
ADAM L. HURTUBISE  
CITY CLERK