

**ORDINANCE NO. 2018-43**

**AN ORDINANCE ADOPTING AN INCLUSIONARY AFFORDABLE HOUSING ORDINANCE.**

BE IT ORDAINED by the City Council of Heber City, Utah, that Chapter 18.102 Affordable Housing, is hereby modified to read as follows.

**Chapter 18.102 Affordable Housing**

|                           |                                                              |
|---------------------------|--------------------------------------------------------------|
| <b>Section 18.102.010</b> | <b>Findings</b>                                              |
| <b>Section 18.102.020</b> | <b>Purpose</b>                                               |
| <b>Section 18.102.030</b> | <b>Applicability</b>                                         |
| <b>Section 18.102.040</b> | <b>Requirements</b>                                          |
| <b>Section 18.102.050</b> | <b>Incentives</b>                                            |
| <b>Section 18.102.060</b> | <b>Standards for Construction of Onsite Affordable Units</b> |
| <b>Section 18.102.070</b> | <b>Affordable Housing Development Agreement</b>              |
| <b>Section 18.102.080</b> | <b>Fee-in-Lieu</b>                                           |
| <b>Section 18.102.090</b> | <b>Severability</b>                                          |
| <b>Section 18.102.100</b> | <b>Enforcement</b>                                           |
| <b>Section 18.102.110</b> | <b>Definitions</b>                                           |

**Section 18.102.010 Findings**

- A. Heber City has adopted a Moderate Income Housing Element of the General Plan as required by Utah State Code, which looks at the estimated existing supply, the estimated five year need, a survey and evaluation of zoning's effect on affordable housing, and a description of Heber's programs to encourage an adequate supply of affordable housing;
- B. The Moderate Income Housing Element of the General Plan shows that there is a continuing shortage of affordable housing in the City, which is detrimental to the public health, safety and welfare, as it contributes to overcrowded and substandard conditions for lower-income families, and the inability of industry to find and retain a quality labor supply;
- C. A Nexus Study performed for the valley, an exhibit to the Moderate Income Housing Element of the General Plan, shows that new development which does not include or provide for affordable housing serves to aggravate the current affordable housing shortage, by reducing the supply of residential land available for affordable housing development, and creating larger numbers of service oriented, low-paying jobs, creating a greater demand for affordable housing by increasing the numbers of lower wage earners;
- D. A requirement for ten percent (10%) of all new residential units being created as affordable housing units is strongly recommended to implement the Goals and Policies of

the Moderate Income Housing Element of the General Plan;

- E. A Needs Assessment performed for the valley, an exhibit to the Moderate Income Housing Element of the General Plan, shows that a Fee-in-Lieu may be assessed as an alternative to providing onsite affordable housing; and
- F. Costs for implementing the requirement to contribute to affordable housing can be offset by allowing reasonable development incentives.

**Section 18.102.020 Purpose**

The purposes of this Ordinance are to:

- A. Ensure that all development provides a range of housing opportunities for all identifiable economic segments of the population, including households of low and moderate income;
- B. Focus affordable housing efforts on monitoring the need and providing opportunity for low to moderate income families to obtain housing that meets their needs and not focus merely on building low income units;
- C. Provide a variety of housing types for our elderly or senior citizens including assisted care, independent care, and targeted senior retirement communities;
- D. Recognize the need for special target groups for affordable housing, namely: families in crisis; handicapped and other special need groups;
- E. Allow alternatives to onsite construction in order to provide a special use deemed necessary and appropriate to accomplish the purposes of affordable housing.

**Section 18.102.030 Applicability**

- A. This ordinance applies to all residential development that contains 10 units or more residential units.
- B. This ordinance does not apply to:
  - 1. Any development who, after having performed an impact study which has been reviewed and approved by the City Council, at the expense of the development, can show there is no rational nexus or rough proportionality between the requirements of this ordinance and the impacts of the development. If such impact study is to be performed, it must be completed and approved prior to receipt of preliminary approval of such development; and

2. Federal, State, or Local Governmental Agencies and Non-Profit Housing agencies constructing price restricted affordable housing.

### **Section 18.102.040 Requirements**

All developments that contain 10 units or more residential units shall:

- A. Provide at least ten percent (10%) of the Equivalent Residential Units (ERUs) proposed for the development as affordable housing units as defined by this ordinance within the development; or
- B. Pay a Fee-in-Lieu as calculated per Section 18.102.080; or
- C. Implement alternatives to the construction of new affordable housing units contained within the development, where the proposed alternative supports specific housing policies and goals as identified within the Heber City Moderate Income Housing Plan and assists the City in meeting those goals. Acceptable alternatives shall be of equal or greater value to the required Fee-in-Lieu for the development and may include the following:
  1. Acquisition and rehabilitation of affordable housing units;
  2. Construction of affordable housing units off-site;
  3. Conversion of existing market-rate units to affordable units;
  4. Construction of special needs projects or shelters;
  5. Dedication of land for future development;
  6. Affordable renter occupied housing for those earning 60% or less of Area Median Income (AMI);
  7. Elderly or senior citizens, including assisted care and independent care and targeted senior retirement communities (55 years plus); or
  8. Families in crisis and the disabled.

### **Section 18.102.050 Incentives**

- A. At the request of a petitioner for a development which is required to provide affordable housing, a Fee-in-Lieu, or other acceptable alternatives, the City Council may permit one or more of the following incentives. The granted incentives should be proportionate to the costs incurred by providing the affordable housing. The approved development incentives for the development shall be noted in a Development Agreement.
  1. A density bonus of up to 10% (ten percent), rounded up to the nearest whole number.
  2. The minimum lot width, lot area, and open space required within a development may be reduced by a proportionate amount to accommodate bonus density units.
- B. See Section 18.102.060 C. for additional incentives for onsite construction.

**Section 18.102.060 Standards for Construction of Onsite Affordable Units**

- A. Affordable housing units should be built within the development project site to allow for a blending of such units with market rate units.
- B. The design of affordable units shall be reasonably consistent or compatible with the design of the development in terms of appearance, materials and finished quality.
- C. Additional incentives for onsite construction include the following:
  - 1. Affordable units may utilize attached housing within a single-family detached dwelling subdivision, provided the developer demonstrates the proposed buildings are compatible in height, size and yard requirements as surrounding lots, and the negative impacts for substantial differences in those features are mitigated with fence and landscape screening, architectural treatments and site planning as demonstrated by submitted site plan, landscaping plan and building elevations. Attached housing within a single family detached dwelling subdivision shall be designed for owner occupancy.
  - 2. For affordable detached single family lots, lot size may be reduced by up to 60 percent under that required by the zoning ordinance.
  - 3. Affordable units may have the following setbacks:
    - a. Front Setbacks may be reduced to 20 feet from the front property line, and reduced to 10 feet for alley loaded units.
    - b. Side setbacks may be reduced by 30 percent.
    - c. Rear setbacks may be reduced by 30 percent.
  - 4. The minimum square footage for a building containing an affordable unit may be reduced by 40 percent.
  - 5. Building permit fees, to the extent permitted by law, may be waived for the affordable units.
- D. Each affordable dwelling shall be designed for a family of four, unless current housing studies demonstrate a targeted need for smaller or larger units, as recommended by the Wasatch County Housing Authority.
- E. The affordable housing units should be built concurrently with market-rate units.
- F. Affordable housing units should provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demands identified by the Wasatch County Housing Authority.
- G. Affordable rental units and affordable owner occupied units shall be deed restricted and affordable to the designated income group in perpetuity. Actual rents and prices to be charged and later increases shall be determined in an Affordable Housing Agreement to be entered into prior to receiving final approval on any project.

**Section 18.102.070 Affordable Housing Development Agreement**

An Affordable Housing Plan shall be required for all residential developments to which are subject to this ordinance. This plan shall be incorporated into a Development Agreement. The Affordable Housing Development Plan shall contain, at a minimum, the following information concerning the development, and shall be submitted no later than preliminary approval:

- A. A calculation of the number of units permitted by the underlying zone.
- B. The need and request for specific incentives offered by this Chapter.
- C. A written appraisal by an MAI Certified Appraiser, who is either 1) mutually agreed upon between the petitioner for development and Heber City, or 2) hired by the city and paid for by the petitioner for development, estimating the retail value of the developed residential component of the project. The city may require, in lieu of the appraisal, submittal of a copy of the development appraisal used for financing approval of the development.
- D. For construction of affordable housing units, include the following:
  - 1. The total number of units proposed in the project;
  - 2. The average selling price of a unit for each of the phases of the development;
  - 3. The number of affordable units proposed;
  - 4. The square footage, calculated ERU's and numbers of bedrooms,
  - 5. The proposed location of the units;
  - 6. The schedule for production of dwelling units, both affordable and market rate;
  - 7. Production cost associated with dwelling construction;
  - 8. Appraisals for units;
  - 9. Providing copies of plans for such units;
  - 10. Security posted or to be posted prior to recording of final plat, for building of units, if construction of such units will not take place at the same time as the market rate units in a proportionate manner.
- E. A calculation of the amount of the Fee-in-Lieu.
- F. Letter of Recommendation from the Wasatch County Housing Authority.
- G. Proposed payment method and timing of the Fee-in-Lieu. The fee shall normally be paid in cash prior to recording of the subdivision plat, or prior to issuance of a building permit for multifamily residential developments or if a plat is not required. All lot contributions shall occur simultaneously with the recording of the subdivision plat. A multi-phased development may pay the Fee-in-Lieu as each phase is developed. The city may consider accepting the Fee-in-Lieu in payments provided:
  - 1. At least 50% of the Fee-in-Lieu is paid as cash prior to recording of the subdivision plat or prior to issuance of a building permit for multifamily

- residential developments or if a plat is not required; and
2. Any remaining amount of the Fee-in-Lieu shall be paid upon completion or issuance of a Certificate of Occupancy (for multifamily, apartments, PUDS, etc.), or upon subdivision acceptance by Heber City.
- H. Prior to the recording of a subdivision plat, or prior to the issuance of a building permit for multifamily residential developments or if a plat is not required, the applicant shall have entered into a Development Agreement with Heber City. The Development Agreement shall set forth the commitments and obligations of Heber City and the applicant, including, as necessary, Fee-in-Lieu payment plan, construction details, lot dedications if applicable, etc., and approved bonus density units and incentives.
- I. If a developer intends to build his required amount of affordable housing units at a time which is not concurrent with the building of the market rate units, and a later construction schedule is agreed upon as part of the development approval process (not to exceed one year), a bond or other financial assurance equal to 110% of the current Fee-in-Lieu, shall be placed with Heber City to ensure the building of the affordable housing units within the time agreed upon or one year from final approval, whichever is sooner.

#### **Section 18.102.080 Fee-in-Lieu**

The Fee-in-Lieu amount is determined by the subsidy needed to make a market rate unit affordable to a low-income household. This subsidy shall be based upon a determination of the average subsidy that would be required to make a typical new starter home consisting of three Bedrooms/two baths affordable to a family earning 80% of the median gross income of the metropolitan statistical area for households of the same size. To ensure proportionality to each development, the Fee-in-Lieu is determined as follows:

- A. For developments with detached single-family lots, the Fee-in-Lieu shall be calculated as 6% (six percent) of the value of the subdivision lots as determined by a written appraisal by an MAI Certified Appraiser.
- B. For all other residential developments, the Fee-in-Lieu shall be calculated as 3% (three percent) of the value of the development as determined by a written appraisal by an MAI Certified Appraiser.
- C. The Fee-in-Lieu shall be adjusted to current market conditions for developments that have not recorded or have not been constructed within 2 years of approval. It is the responsibility of the developer to submit an updated appraisal of the development value to determine the updated Fee-in-Lieu.
- D. Heber City and/or the Wasatch County Housing Authority reserves the right to obtain and utilize a second opinion from an Appraiser or Qualified Real Estate Professional to determine the development value used to calculate the Fee-in-Lieu.

- E. All Fees-in-Lieu shall be deposited in a Housing Trust Fund. Said fund shall be administered by the Wasatch County Housing Authority and shall be used for the purpose of providing funding assistance for the provision of affordable housing of both for rent and for sale units, the alternatives approved under Section 18.102.040 C. of this ordinance, and reasonable costs of administration consistent with the policies and programs of the Wasatch County Housing Authority.
- F. Affordable Housing Alternatives shall be of a value not less the amount that would have been paid as the Fee-in-Lieu. Title to all dedicated lots shall be unencumbered, including being clear of all taxes and liens, all such being paid and cleared. All dedicated lots shall be buildable, being of sufficient size and shape to accommodate at least the minimum sized home permitted by the zoning ordinance, plus accommodate required parking spaces and setbacks.

**Section 18.102.090 Severability**

If any of the provisions of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

**Section 18.102.100 Enforcement**

- A. The provisions of this ordinance shall apply to all developers for which are required to provide affordable housing, and their agents, successors and assigns, unless an impact study performed has been performed and approved.
- B. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this ordinance, including but not limited to actions to revoke, deny or suspend a permit or development approval.
- C. It shall be a class "B" misdemeanor for any individual or entity to sell or rent a restricted affordable housing unit for a sum in excess of the affordable housing rate set forth in the affordable housing agreement governing that unit. Excess proceeds of an unlawful sale or unlawful rental shall be forfeited shall be paid to the Wasatch County Housing Authority Trust Fund.
- D. The city may withhold the issuance of permits or other permissible regulatory authority in the enforcement of this ordinance.

**Section 18.102.110 Definitions**

The following words shall have the described meaning when used in this ordinance. If any words are used in this ordinance are not defined herein, the definitions contained in Section

18.08 shall control. In the event of a conflict between section 18.08 and this section, this section shall control. If there is no definition contained in either this section or section 18.08 the ordinary meaning contained in the dictionary shall be the meaning intended, unless a contrary meaning is apparent from the context of the word.

- A. **Affordable:** Housing that costs no more than thirty percent (30%) of a household's income.
- B. **Affordable Housing:** Housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income of the metropolitan statistical area for households of the same size. Such housing cannot cost more than 30% of a household's income.
- C. **Affordable Housing Agreement:** A legally binding agreement between a Developer and Heber City and the Wasatch County Housing Authority which ensures that the requirements of this ordinance are satisfied.
- D. **Allowable Housing Expense:** The total monthly or annual recurring expenses required of a household to obtain shelter. These expenses include loan principal and interest, property and mortgage insurance, property taxes, homeowner's association dues, etc. unit only, this amount would include the cost of obtaining basic public utility services.
- E. **Affordable Housing Unit:** A dwelling unit that will be offered for rent or sale exclusively to, and which shall be affordable to, lower-income households as required by this ordinance.
- F. **Base Residential Units:** The number of lots or equivalent residential units associated with each development from which are calculated the number of affordable units to be provided or the amount of the fee-in-lieu to be paid.
- G. **Conversion:** The change of status of a dwelling unit from a purchased unit to a rental unit or vice versa.
- H. **Equivalent Residential Unit (aka ERU):** One residential ERU is equivalent to one dwelling unit.
- I. **Financial Assistance:** Assistance to include, but not be limited to, the subsidization of fees, infrastructure, land costs, or construction costs, the use of Community Development Block Grant (CDBG) Funds, down payment assistance, interest buy-downs, or the provision of other direct financial aid or other monetary compensation, by Heber City or the Wasatch County Housing Authority.
- J. **Low Income:** Eighty percent (80%) or less of median family income for Wasatch County.

K. **Market Rate Unit:** A dwelling unit where the rental rate or sales price is not restricted by requirements imposed by local, state or federal affordable housing programs.

L. **Moderate Income:** 81% to 120% of median family income for Wasatch County.

M. **Qualified Applicants:** Applicants for Low-Income units must make 80% or less than median family income for Wasatch County. Applicants for Moderate-Income units must make between 81% and 120% of median family income for Wasatch County. If all other requirements are equal, first preference shall be given to public service employees employed within Wasatch County, including municipal, county, school district, state and federal employees. Second preference shall be given to applicants who have been residents of Wasatch County for at least one year prior to application. Third preference shall be given to applicants who reside elsewhere, but are employed full-time in Wasatch County. Fourth preference shall be given to applicants who neither work nor live in Wasatch County.

This Ordinance shall take effect and be in force from and after its adoption.

ADOPTED and PASSED by the City Council of Heber City, Utah this 16<sup>th</sup> day of August, 2018, by the following vote:

|                                     | AYE           | NAY           |
|-------------------------------------|---------------|---------------|
| Council Member Jeffery M. Bradshaw  | <u>X</u>      | <u>      </u> |
| Council Member Heidi Franco         | <u>      </u> | <u>X</u>      |
| Council Member Jeffrey Smith        | <u>X</u>      | <u>      </u> |
| Council Member Ronald R. Crittenden | <u>X</u>      | <u>      </u> |
| Council Member Wayne Hardman        | <u>X</u>      | <u>      </u> |

APPROVED:

Kelleen L. Potter  
Mayor Kelleen L. Potter



ATTEST:

Amy Bridge Date: 8-16-18  
RECORDER

