

ORDINANCE NO. 2023-20

AN ORDINANCE AMENDING AND UPDATING CHAPTER 18.102 AFFORDABLE HOUSING OF THE HEBER CITY CODE

BE IT ORDAINED by the City Council of Heber City, Utah, Heber City Municipal Code, that Chapter 18.102 Affordable Housing is hereby Amended and Adopted to read as follows:

18.102 Affordable Housing

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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 for moderate income housing, 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 businesses 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 at least 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.

18.102.020 Purpose

The purposes of this Chapter 18.102 is to:

- A. Ensure that all new residential 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.

18.102.030 Applicability

- A. This Chapter applies to any residential development that contains 10 or more residential units and requires a rezone or the use of an overlay zone; any residential or mixed use development where an existing zone allows higher densities by flexible criteria or incentives; or on a voluntary basis in the case of an existing single family detached housing or multi-family zone.
- B. This chapter does not apply to:
 - 1. Any development that, 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 chapter 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.

18.102.040 Incentives for Construction of Affordable Units

At the request of an applicant, the City Council may permit one or more of the following incentives for a development which is required to provide affordable housing, a Fee-in-Lieu, or other acceptable alternatives as negotiated.

Affordable housing units should be located within the development project site to allow for a blending of such units with market rate units as a first preference.

The size, appearance, materials and finished quality of affordable units shall be reasonably consistent with the design of other residential units in the development.

18.102.050 Affordable Housing Development Agreement

- A. An Affordable Housing Plan shall be required for all residential developments that are subject to this Chapter. This plan shall be incorporated into a Development Agreement as directed by the Heber City Attorney.
- B. 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.
- C. Additional incentives for onsite construction include the following:
 - 1. Affordable units within a single-family detached dwelling subdivision may be built as attached units, 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 with long term deed restrictions to preserve affordability as a first preference. If rental units are proposed they shall also be restricted to 80% of AMI or below.
2. Front Setbacks may be reduced to 20 feet from the front property line and reduced to 10 feet for alley loaded units.
 - a. Side setbacks may be reduced by 30 percent, rounded up to the nearest foot.
 - b. Rear setbacks may be reduced by 30 percent, rounded up to the nearest foot.
 3. The building permit fee (not including connection fees or impact fees), to the extent permitted by law, may be waived for the affordable units.
 4. The minimum lot width, lot area, height and open space required within a development may be reduced and/or increased by a proportionate amount to accommodate bonus density units.
 5. Reduction in parking standards for project in a half mile proximity to public transportation facilities.
 6. Expedited permit review of affordable housing unit projects.
- D. The affordable housing units shall be built concurrently with market-rate units.
- E. Affordable housing units should provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demands.
- F. 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 as approved by the City Council and to be entered into prior to receiving final approval on any project.
- G. If on site construction is not feasible as determined by the City and the applicant then 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 with deed restrictions;
 4. Construction of special needs projects or shelters in partnership with Wasatch County;
 5. Dedication of land for future development of Affordable Units;
- H. The following information concerning the development shall be submitted no later than preliminary approval:
1. A calculation of the number of units permitted by the underlying zone.
 2. The need and request for specific incentives offered by this Chapter.
 3. If a fee in lieu is approved a written appraisal by an Master Appraisal Institute (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, a submittal of a copy of the development appraisal used for financing approval of the development.
 4. For construction of affordable housing units, include the following:
 - a. The total number of units proposed in the project;
 - b. The average selling price of a unit for each of the phases of the development;
 - c. The number of affordable units proposed;
 - d. The square footage, calculated ERU's and numbers of bedrooms,
 - e. The proposed location of the units;
 - f. The schedule for production of dwelling units, both affordable and market rate;
 - g. The method of deed restriction for preservation of the units and monitoring agency;
 - h. Production cost associated with dwelling construction;
 - i. Appraisals for units;
 - j. Providing copies of plans for such units;
 - k. 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.
 5. Letter of Recommendation from the City's Community Development staff.
 6. If a Fee-in-Lieu will be used, a calculation of the amount of the Fee-in-Lieu and the 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:

- a. 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
 - b. 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.
7. 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.
 8. 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 100% 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.
 9. Details how qualified applicants will be selected with first preference 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.

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.

18.102.090 Severability

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

18.102.100 Enforcement

- A. The provisions of this Chapter 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 Chapter, 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 Chapter.

18.102.110 Definitions

The following words shall have the described meaning when used in this Chapter. If any words are used in this Chapter are not defined herein, the definitions contained in Chapter 18.08 shall control. In the event of a conflict between Chapter 18.08 and this section, this section shall control. If there is no definition contained in either this section or Chapter 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" means housing that costs no more than thirty percent (30%) of a household's income.
- B. "Affordable Housing" means 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" means a legally binding agreement between a Developer and Heber City and the Wasatch County Housing Authority which ensures that the requirements of this Chapter are satisfied.
- D. "Allowable Housing Expense" means 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" means 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 Chapter.
- F. "Base Residential Units" means 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" means 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)" means one residential ERU is equivalent to one dwelling unit.
- I. "Financial Assistance" means 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" means fifty percent (50%) or less of median family income for Wasatch County.
- K. "Market Rate Unit" means 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" means eighty percent (80%) or less of median family income for Wasatch County.
- M. "Qualified Applicants" means applicants for Low-Income units must make 50% or less than median family income for Wasatch County. Applicants for Moderate- Income units must make between 51% and 80% of median family income for Wasatch County. If all other requirements are equal.

18.102.120 Related Provisions

- Chapter 18.12 Administration

PASSED, APPROVED and ORDERED TO BE PUBLISHED BY THE HEBER CITY COUNCIL this 25 day of September 2023

	AYE	NAY	ABSENT	ABSTAIN
Yvonne M. Barney	<u>X</u>	_____	_____	_____
Mike Johnston	<u>X</u>	_____	_____	_____
Rachel Kahler	<u>X</u>	_____	_____	_____
D. Scott Phillips	<u>X</u>	_____	_____	_____
Ryan Stack	<u>X</u>	_____	_____	_____



APPROVED:

Heidi Franco
Mayor Heidi Franco

ATTEST:

Orina Wlooke Date: 9/25/2023
RECORDER