

Chapter 17.18

**INCLUSIONARY HOUSING**

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**17.18.010 Purpose and Intent**

To provide Affordable Dwelling Units within new residential developments by requiring Developers to provide a proportionate share of affordable housing, or fees in lieu thereof, to ensure that an adequate stock of affordable housing is, and remains, available in the City of St. Charles. While this Chapter provides specific alternatives to the production of on-site affordable Dwelling Units, the intent and preference of this Chapter is for the provision of affordable Dwelling Units constructed on site and privately produced, owned, and managed.

**17.18.020 Definitions**

The following words and phrases shall have the meanings set forth in this Section. Words and phrases not defined in this Section, but defined elsewhere in the St. Charles Municipal Code, shall have the meanings set forth therein. In the event that a word or phrase is not defined, it shall have the common and ordinary meaning ascribed thereto. In interpreting the provisions of this Chapter, in the event there is a conflict between a definition in this Section and one found elsewhere, the definition in this Section shall apply.

- A. Affordable Housing: Housing that has a sales price or rental amount that is within the means of an “Eligible Household” as defined herein. In the case of Dwelling Units for sale, housing that is affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. In the case of Dwelling Units for rent, housing that is affordable means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit.
- B. Affordable Unit: A Dwelling Unit of Affordable Housing that satisfies the requirements of this Chapter.
- C. Affordable Housing Agreement: Any agreement between the City and an Applicant as required by Section 17.18.120 of this Chapter.
- D. Applicant: Any Developer who applies to the City to receive approval of a Residential Development pursuant to this Chapter.

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- E. Area Median Income (AMI): The median income level for the Chicago Primary Metropolitan Statistical area, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, and adjusted for household size.
- F. Base Density: The number of Dwelling Units permitted to be constructed on a parcel in conformance with the requirements of the Zoning District in which it is located, prior to applying any applicable density bonus.
- G. Developer: Any person, firm, corporation, partnership, limited liability company, association, joint venture, or any entity or combination of entities that develops a dwelling or units, not including any governmental entity or a Housing Provider as defined herein.
- H. Director: The Director of the Community Development Department, or his or her designee.
- I. Dwelling Unit: A Dwelling Unit as defined in Chapter 17.30, "Definitions", of the St. Charles Zoning Ordinance. For purposes of this Chapter, the term Dwelling Unit includes Affordable Units and Market Rate Units.
- J. Eligible Household: A household with an income at or below eighty percent (80%) of the Area Median Income (AMI) for for-sale units and at or below sixty percent (60%) of the AMI for rental units, based on the size of the household.
- K. Housing Provider: An entity approved by the City of St. Charles to develop, manage or own Affordable Dwelling Units.
- L. Market Rate Units: All Dwelling Units in a Residential Development that are not Affordable Units as defined herein.
- M. Residential Development: The establishment of one or more Dwelling Units in any of the following instances:
  - 1. Construction of one or more Dwelling Units pursuant to a final Plat of Subdivision, where the Preliminary Plan is approved by the City Council after the effective date of this Chapter.
  - 2. Construction of one or more Dwelling Units within a Planned Unit Development, where the Preliminary PUD Plan is approved by the City Council after the effective date of this Chapter.
  - 3. Construction of one or more Dwelling Units on a lot created after February 15, 2008 by means other than a Plat of Subdivision or Planned Unit Development, including but not limited to a division conforming to the Statutory Plat Act Exemptions.
  - 4. Issuance of a building permit for a new Dwelling Unit following demolition of a Dwelling Unit on the lot, when: a) the new Dwelling Unit is not intended to be occupied by the same household or individual that occupied the Dwelling Unit that was demolished, and b) the last sale price to demolition of the Dwelling Unit was at or below the price of an Affordable Unit with the same number of bedrooms; if the last sale occurred more than two years prior to demolition, then the equalized market value assigned by the Township Assessor as of the date of demolition shall be used.
  - 5. Issuance of a building permit for alteration of an existing building, in whole or in part, that increases the number of Dwelling Units from the number that existed prior to its alteration.

### **17.18.030 Applicability**

- A. The provisions of this Chapter shall apply to any Residential Development, as defined herein. Residential Developments undertaken in phases, stages, or otherwise constructed in distinct parts by one or more developers, but which are located within the same Planned Unit Development or Subdivision, or which are otherwise approved as a whole, shall be considered a single Residential Development.
- B. Notwithstanding the preceding paragraph, the construction of new Affordable Units and the payment of fee in-lieu of Affordable Units shall not be required for any new Residential Development following a determination by the Director that the percentage of the total number of Dwelling Units within the City of St. Charles that are Affordable Units is 25% or greater. Thereafter, the provisions of this Chapter shall apply following a determination by the Director that

the percentage of Dwelling Units within the City of St. Charles that are Affordable Units has fallen below 15%.

- C. The requirements of this Chapter shall not apply in either of the following instances:
1. Moving a building containing one or more Dwelling Units from one location to another within the City.
  2. Construction of a single Dwelling Unit on a lot that was of record prior to February 15, 2008 and upon which no Dwelling Unit or part thereof has existed for a period of ten years or more prior to issuance of a building permit.

**17.18.040 Affordable Units Required**

A. General requirement. Affordable Units, and/or a fee in lieu thereof, shall be required for every Residential Development. The number of Affordable Units required for a Residential Development shall be a percentage of the total number of Dwelling Units to be constructed within the Residential Development, but not including any bonus Market Rate Units permitted by Section 17.18.060. The minimum requirement shall be calculated as follows:

- 1 to 10 Dwelling Units: 5 percent
- 11 to 50 Dwelling Units: 10 percent
- More than 50 Dwelling Units: 15 percent

B. Calculation. In the event that the calculation of the number of required Affordable Units results in a fraction, the following rules shall apply: For that portion of the requirement that is to be satisfied by the construction of Affordable Units, the fraction shall be rounded to the nearest whole number; a fraction of exactly ½ shall not be counted as a required Affordable Unit. For that portion of the requirement that is to be satisfied by payment of a fee in-lieu, any fraction shall be used in calculating the total fee in lieu to be paid by the Developer.

**17.18.050 Fee In-Lieu of Affordable Units**

A. General Applicability. The City Council may permit the Applicant to pay a fee in-lieu of constructing some or all of the required Affordable Units within a Residential Development, in conformance with the following criteria:

- For a Residential Development with 1 to 10 Dwelling Units: Fee in-lieu is acceptable.
- For a Residential Development with 11 to 50 Dwelling Units: A minimum of fifty percent (50%) of the requirement (but not less than one Dwelling Unit) shall be met by constructing Affordable Units on-site and a maximum of fifty percent (50%) of the requirement may be met by payment of a fee in-lieu of Affordable Units.
- For a Residential Development with 50 or more Dwelling Units, the entire requirement shall be met by constructing Affordable Units on-site, except that up to a maximum of fifty percent (50%) of the requirement may be met by payment of a fee in-lieu of Affordable Units if the Applicant demonstrates to the satisfaction of the City Council, following a review and recommendation by the Housing Commission, that developing 100% of the Affordable Units on-site would create a significant hardship or that the alternate means of compliance will afford a comparable level of affordable housing opportunities in the City.

B. Amount of Fee In-Lieu Per Unit. The amount of the per-unit fee in-lieu of Affordable Units shall be determined annually by the City Council. The amount of the per unit fee in-lieu shall be related to the cost of providing an Affordable Unit. For Fiscal Year 2007-2008, the fee shall be one hundred forty thousand dollars (\$140,000) for each required Affordable Unit.

C. Calculation of Total Fee In-Lieu. For purposes of determining the total fee in-lieu payment amount, the per unit fee in-lieu shall be multiplied by the required number of Affordable Units, including any fractional units, as provided in Section 17.18.040.

- D. Payment of Fee In-Lieu. All fee in-lieu payments due under the provisions of this Chapter shall be paid at the time of issuance of the first building permit for the Residential Development, or as otherwise approved by the City Council in the Affordable Housing Agreement.

**17.18.060 Density Bonus**

- A. When Density Bonus is Allowed. A density bonus shall be permitted when Affordable Units are constructed within the Residential Development in accordance with Section 17.18.040 (A). One bonus Dwelling Unit shall be permitted for each Affordable Unit constructed within the Residential Development; however, in no event shall the total number of Dwelling Units constructed within the Residential Development exceed one hundred twenty percent (120%) of the Base Density.
- B. Implementation of Density Bonus. In implementing any density bonus allowed by this Chapter, the following requirements of the Zoning Ordinance may be varied without additional justification, but not by more than the specified percentages:
  1. Reduction of required minimum lot area by not more than 20%, or the percentage by which the total number of Dwelling Units constructed within the Residential Development exceeds the Base Density, whichever is less.
  2. Reduction of required minimum lot width by not more than 20%, or the percentage by which the total number of Dwelling Units constructed within the Residential Development exceeds the Base Density, whichever is less.
  3. Increase of the allowable building coverage on a lot by not more than 20%, or the percentage by which the total number of Dwelling Units constructed within the Residential Development exceeds the Base Density, whichever is less.

**17.18.070 Development Cost Offsets.**

An Applicant that fully complies with the requirements of this Chapter, including any rules or regulations promulgated thereunder, shall, upon written request to the City, receive a waiver of all building permit, demolition, and plan review fees required by Title 15 of the St. Charles Municipal Code, sewer and water connection fees required by Title 13 of the St. Charles Municipal Code, and cash contributions (when required in lieu of park and school land dedications) as required by Title 16 of the St. Charles Municipal Code, but only relative to the required Affordable Units constructed within the Residential Development.

**17.18.080 Location, Phasing and Design.**

Affordable Units shall be integrated into the Residential Development by location, construction phasing, and design as described below. Waivers or variances as to the location, construction phasing, or appearance of Affordable Units may be granted by the City Council following a review and recommendation by the Housing Commission, based on supporting evidence that demonstrates that said waiver(s) or variance(s) will further affordable housing opportunities to an equal or greater extent than compliance with otherwise applicable requirements, or that integrating the Affordable Units will create a hardship.

- A. Location of Affordable Units. Affordable Units shall be dispersed among the Market-Rate Dwelling Units throughout the Residential Development
- B. Phasing of Permits. The Affordable Units shall be constructed concurrently with the Market-Rate Units within the Residential Development. Building and occupancy permits for Market-Rate Units shall be issued only if building and occupancy permits, respectively, for the required Affordable Units have been issued in accordance with the following schedule:

<b>Market-Rate Units (%)</b>	<b>Affordable Units (%)</b>
Up to 50%	At least 30%

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Up to 75%	At least 60%
100%	100%

- C. Exterior Appearance. The exterior appearance of the Affordable Units in any Residential Development shall be visually compatible with the Market-Rate Units in the development. External building materials and finishes shall be substantially the same in type and quality for Affordable Units as for Market-Rate Units.
- D. Interior Appearance and Finishes. Affordable Units may differ from Market-Rate Units with regard to interior finishes and gross floor area, provided that:
  - 1. Bedroom Mix. The number of bedrooms per Dwelling Unit in the Affordable Units within the Residential Development shall be in equal proportion to the number of bedrooms per Dwelling Unit in the Market-Rate Units within the Residential Development. This provision is not intended to require the same floor area in Affordable Units as compared to Market-Rate Units.
  - 2. Energy Efficient Improvements. Affordable Units and Market-Rate Units shall have the same type and quality of improvements related to energy efficiency, including plumbing, insulation, windows, and heating and cooling systems.

**17.18.090 Maximum Price of Affordable Units**

- A. Affordability Controls; Waivers. All Affordable Units developed in accordance with this Chapter shall be subject to affordability controls and resale restrictions as provided herein, unless the property owner is granted a waiver by the City Council based upon supporting market-related evidence of undue hardship on the owner of the Affordable Unit or rental property. The Director of Community Development shall prepare or cause to be prepared detailed requirements, procedures, forms and documents to implement this Section. These requirements, procedures, forms and documents shall be subject to the approval of the City Council.
- B. For-Sale Affordable Units. Affordable Units shall be offered for sale in conformance with the following principles:
  - 1. The initial sale of Affordable Units shall be governed by the following:
    - a. Affordable Units shall be offered for sale at a maximum price that is affordable to an Eligible Household based on household size in accordance with paragraph D of this Section, using the limits established annually by the Illinois Housing Development Authority (IHDA).
    - b. The property shall be subject to a deed restriction or other suitable instrument limiting the maximum sale price of the property for a period of seven years, and specifying the conditions under which title to the property may be transferred to an entity other than an Eligible Household, including but not limited to transfer of title to heirs.
    - c. The purchaser shall execute a deferred payment mortgage lien in favor of the City, in the amount of the difference between the price paid by the purchaser for the Affordable Unit and its market value, at an interest rate comparable to that which is available for a fixed rate, 30-year mortgage.
  - 2. Subsequent sales of Affordable Units during the first seven years following the initial sale shall be governed by following:
    - a. The maximum sale price shall be the initial sale price plus 1) appreciation in the property’s value, but not to exceed the increase in the IHDA affordability limit; 2) an allowance for the cost of repair and/or replacement of heating, electrical,

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- plumbing, roofs, and structural elements necessary to address safety of the occupants or integrity of the structure.
- b. The seller shall receive a percentage of the Affordable Unit's appreciation in value up to the IHDA affordability limit, where the percentage is the original purchase price divided by the market value of the Unit at the time of the seller's original purchase, and the amount of appreciation is the difference between the original purchase price and the price at the time of sale. The remainder of the allowable appreciation shall be deposited into the Housing Trust Fund or other fund devoted to providing affordable housing.
  - c. The purchaser shall execute a deferred payment mortgage lien in favor of the City, in the amount of the difference between the price paid for the Affordable Unit and its market value, at an interest rate comparable to that which is available for a fixed rate, 30-year mortgage.
3. Subsequent sales of Affordable Units after the initial seven-year period shall be governed by the following:
- a. If the sale price does not exceed the initial sale price plus 1) appreciation in the property's value, not to exceed the increase in the IHDA affordability limit; and 2) an allowance for the cost of repair and/or replacement of heating, electrical, plumbing, roofs, and structural elements necessary to address safety of the occupants or integrity of the structure, then the seller shall not be required to pay the deferred payment second mortgage, but the buyer shall execute a deferred payment mortgage lien in favor of the City, in the amount of the difference between the price paid for the Affordable Unit and its market value.
  - b. If the sale price is at market value or otherwise in excess of that described in the preceding paragraph 3) a), the full amount of the deferred payment mortgage lien shall be payable to the City, but the Buyer is not required to execute a deferred payment mortgage lien. Once the mortgage lien is paid, all restrictions of this Chapter applicable to the Affordable Unit, including its designation as such, shall cease.
  - c. So long as the property is designated as an Affordable Unit, the seller shall receive a percentage of the appreciation in the property's value, whether sold at market value or less than market value. The percentage shall be equal to the seller's original purchase price divided by the market value of the Unit at the time of the seller's original purchase, discounted by 50%. The lien payment, plus the percentage of appreciation not received by the seller, shall be deposited into the Housing Trust Fund or other fund devoted to providing affordable housing.
- C. For-Rent Affordable Units. The maximum gross rent (including a utility allowance for utilities not provided with the rent) for Affordable Units offered for rent shall be calculated using the gross rent limits established annually by the Illinois Housing Development Authority on the basis of thirty percent (30%) of gross monthly income at fifty percent (50%) to sixty percent (60%) of AMI, based on household size in accordance with paragraph D of this Section. The net rent charged by the owner shall not exceed the maximum gross rent minus a utility allowance for any utilities to be paid separately by the tenant. All Affordable Units shall be offered at not more than the maximum rent calculated in accordance with this paragraph in perpetuity or as long as permissible by law.
- D. Household Size. In calculating the maximum sale and rental prices of Affordable Units, the following relationship between the number of bedrooms per unit and household size shall apply:

<u>Size of units:</u>	<u>Affordable for:</u>
Efficiency units:	1-person household
One-bedroom units:	2-person household
Two-bedroom units:	3-person household

Three-bedroom units:	4-person household
Four-bedroom and larger units:	5-person households and larger

E. Sale or Rental to Housing Providers. Every Affordable Unit required by this Chapter shall be offered for sale or rental to an Eligible Household as a primary resident, except for units purchased by Housing Providers. Housing Providers designated by the City of St. Charles shall have the right, but not the obligation, to purchase any for-sale Affordable Units, but only for the purpose of reselling to an Eligible Household.

**17.18.100 Ownership and Occupancy of Affordable Units.**

Owner-occupied Affordable Units shall only be sold to and occupied by Eligible Households. Affordable Units that are rented shall only be rented to and occupied by Eligible Households. Subletting of Affordable Units shall not be permitted. Priority will be given to Eligible Households where one or more members live or work in St. Charles, and to employees of the City of St. Charles, the St. Charles Park District, and Community Unit School District No. 303, regardless of their initial place of residence, to the extent permitted by law.

1. Increase in Annual Income for Owner-Occupied Affordable Units. If a Household's gross income increases above the maximum Eligible Household income level for a household of its size, the Household may continue to own and occupy the Affordable Unit, but the Affordable Unit shall otherwise remain subject to the limitations set forth in Section 17.18.090.
2. Increase in Annual Income for Renter-Occupied Affordable Units. If a Household's gross income increases above the maximum Eligible Household income level for a household of its size, the Household may continue to lease and occupy the Affordable Unit, and renew said lease, but the Affordable Unit shall otherwise remain subject to the limitations set forth in Section 17.18.090.

**17.18.110 Development Applications.**

As part of the application for approval of a Residential Development, the Applicant shall submit information describing how the Residential Development will comply with the requirements of this Chapter. The Director of Community Development may require any or all of the following to be submitted for review:

1. The number and rental/for sale status of Market-Rate Units and Affordable Units to be constructed including type of dwelling, number of bedrooms per unit, proposed pricing, and construction schedule, including anticipated timing of issuance of building permits and occupancy certificates.
2. Documentation and plans regarding locations of Affordable Units and Market-Rate Units, and their exterior appearance, materials, and finishes.
3. A description of the marketing plan that the Applicant proposes to utilize and implement to promote the sale or rental of the Affordable Units within the development; and,
4. Any proposal to pay fees in lieu of providing the required Affordable Unit, per section 17.18.050.

**17.18.120 Affordable Housing Agreement and Documents**

Prior to issuance of a building permit for any Residential Development, the Applicant shall have entered into an Affordable Housing Agreement with the City. Said agreement shall set forth the commitments and obligations of the Applicant, including but not limited to the number, timing and location of the required Affordable Units, and/or the amount and payment schedule for any fee in lieu thereof, to ensure that the provisions of this Chapter are met. The Applicant shall execute any and all documents deemed necessary by the City, including without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the Affordable Units in accordance with this Chapter.

**17.18.130 Implementation.**

The Director or Director's designee shall promulgate regulations and forms as may be necessary for the implementation of this Chapter. Said regulations shall be reported to the Housing Commission and City Council.

**17.18.140 Enforcement.**

- A. The provisions of this Chapter shall apply to all agents, successors and assignees of an Applicant.
- B. The City of St. Charles may institute injunction, mandamus, or any other appropriate legal actions or proceedings for the enforcement of this Chapter. In addition, any person, firm, or entity, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by the payment of a fine of not more than \$750.00 dollars per day. Such person, firm, or entity shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this Chapter is commenced, continued, or permitted by such person, firm, or entity, and shall be punishable as herein provided.