

## City of Santa Monica Inclusionary Housing Ordinance

### Municipal Code

#### Chapter 9.56 AFFORDABLE HOUSING PRODUCTION PROGRAM

##### 9.56.010 Findings and purpose.

(a) Santa Monica is a coastal city in a prime location, being bordered by the City of Los Angeles to the north, east and south. The combination of a scenic oceanside location, excellent climate, and the ready availability of urban facilities, services and entertainment make Santa Monica an extremely desirable place to live.

(b) The land area of the City is very small — approximately eight square miles. Santa Monica is already a fully built-out city, with only sixty-two vacant residential parcels. It also has a population of approximately ninety thousand. Santa Monica's population density, eleven thousand two hundred persons per square mile, is the second highest among neighboring and nearby jurisdictions, and is the densest among coastal communities in Los Angeles County.

(c) The vast majority of new market rate multi-family development in the City is not affordable to lower-income households. Moreover, market conditions, including the high cost of residential land, construction costs, and the availability and cost of financing, make the development of affordable housing in the City extremely difficult.

(d) In addition, the consumption patterns of the upper-income households who occupy these new market rate multi-family housing units create a need for affordable housing in the City. More specifically, households create demand for goods and services in the private sector, such as retail goods and medical services, and jobs in the public sector, such as teachers and municipal services. The higher the household's income, the more demand is created. New market rate multi-family housing in Santa Monica accommodates upper-income households almost exclusively because of the high rent or purchase price required to occupy it. Supplying goods and services sufficient to meet the demand created by upper-income households in new market rate multi-family housing requires workers across the pay scale spectrum, including lower-wage employees.

(e) The City has prepared an analysis of this relationship between new market rate apartment and condominium development in the City and the need for affordable housing created by this new development. This study focuses on the relationship between the demand for goods and services created by households who occupy new market rate multi-family development in the City, the number of low-wage workers in public agencies and businesses needed to satisfy this demand, and the costs of producing the affordable housing needed by these workers. This study demonstrates the range per square foot which could be imposed on new market rate multi-family development to help finance the development of affordable housing needed to meet the demand created by market rate development.

(f) In addition, because the City is built-out, land available for residential development in the City is limited. Further, land which could be used for development of housing for low income households is being depleted by development of high cost housing. Thus, continued new residential development which does not include or contribute toward the cost of housing for lower income households will only serve to further exacerbate the current affordable housing shortage.

(g) Requiring developers to assist in the production of affordable housing is also consistent with the City's long-standing commitment to achieve and maintain a suitable living environment including decent housing for persons at all economic levels. This municipal commitment conforms with State and Federal policies and is a principal goal of the City's recently adopted 1998-2003 Housing Element Update.

(h) The City has historically effectuated this commitment through extraordinary efforts manifest in various City laws, policies and programs. For instance, the City's voters have adopted initiative measures which strive to maintain and promote affordable housing in the City. The Rent Control Charter Amendment, adopted in 1979, has as its primary purpose the protection of affordable housing and has historically been the City's most important legislative tool for maintaining the supply of affordable housing. Similarly, Proposition R, adopted by the voters in 1990, mandates that thirty percent of all new multi-family housing units constructed in the City each year be affordable.

(i) The City's zoning laws and policies also include substantial incentives for the production of affordable housing, including height and density bonuses and reduced parking requirements. In addition, the City operates a number of programs which facilitate the production of affordable housing. These include loans to private, for-profit developers and owners and funding to non-profit agencies to acquire or construct affordable housing units.

(j) Despite the City's prime location and high real estate values, the City has historically been highly successful in maintaining its economic diversity. According to the 1998-2003 Update, twenty-three percent of the City's households are very low income, 16.1 percent are low income, 20.7 percent are moderate income, and 40.1 percent are upper income. Moreover, fifty-three percent of households residing in rent-controlled apartments are very low- and low-income. This diversity is an essential element of the City's character. It sets the City apart from all other similarly situated coastal cities in California.

(k) However, notwithstanding the City's ongoing commitment and efforts, changes in State and Federal law and market conditions are making it increasingly difficult for the City to ensure a continued supply of affordable housing. In 1986, the State enacted the Ellis Act which enables a property owner to cease operating property as residential rental property. More recently, in 1995, the State enacted the Costa-Hawkins Rental Housing Act which phases out limits on the rents which a property owner may charge when re-renting voluntarily vacated units. Except in limited circumstances, it eliminates the City's ability to control the rent a property owner can impose when a unit is initially rented.

Although the full impacts of Costa-Hawkins will not be felt until 1999 and the years thereafter, studies prepared by the Santa Monica Rent Control Board tracking the rent levels of units decontrolled as a result of Costa-Hawkins demonstrates that these units are already losing their affordability. Thus, this law is having and will continue to have a significant impact on the City's supply of affordable housing. Moreover, there is an extremely low vacancy rate for the existing rental housing stock. In addition, reductions in State and federal funding for affordable housing, changes in these programs, and the potential expiration of controls on rents in federally-assisted projects all hinder the City's ability to provide or promote affordable housing. In short, changes in State and federal law seriously threaten the City's existing affordable housing stock. The decline in the affordability of this housing stock is further exacerbated by the production of luxury market rate housing. Given current economic conditions and the general desirability of the City; the new housing costs will only continue to increase, thereby further exacerbating the growing shortage of housing affordable to very low- and low-income households in the City.

(l) California's Housing Element law requires each city and county to develop local housing programs designed to address its "fair share" of existing and future housing needs for all income groups. The City's 1998-2003 Housing Element Update establishes the City's fair share at 3,219 housing units of which 1,369 (43%) should be affordable to very low- and low-income households.

(m) The Housing Element Update catalogues a dozen funding sources that the City utilizes to assist in the development of affordable housing. These substantial resources are projected to assist in the development of 403 new units affordable to low- and moderate- income households. However, this represents only twenty-one (21%) of the estimated need for new affordable housing in the City as established by the City's fair share. Consequently, the total housing needs of the City exceed the City's available resources and the City's ability to meet these needs. The vast majority of housing units have been and will continue to be produced by the private housing industry.

(n) This Affordable Housing Production Program will benefit the City as a whole. Each development which contributes to affordable housing through the provisions of this Chapter augments the City's housing mix, helps to increase the supply of housing for all economic segments of the community, addresses the affordable housing need generated by the development, and thereby supports a balanced community which is beneficial to the public health, safety and welfare of the City. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.020 Definitions.**

The following words or phrases as used in this Chapter shall have the following meanings:

**Affordable Housing Fee.** A fee paid to the City by a multi-family project applicant pursuant to Section 9.56.070 of this Chapter to assist the City in the production of housing affordable to very low- and low-income households.

**Affordable Housing Unit.** A housing unit developed by a multi-family project applicant pursuant to Sections 9.56.050 or 9.56.060 of this Chapter which will be affordable to very low- or low-income households.

**Dwelling Unit.** One or more rooms, designed, occupied or intended for occupancy as separate living quarters, with full cooking, sleeping and bathroom facilities for the exclusive use of a single household. Dwelling unit shall also include single-room occupancy units as defined in Santa Monica Municipal Code Section 9.04.02.030.790.

**Floor Area.** Floor area as defined in Santa Monica Municipal Code Section 9.04.02.030.315.

**HUD.** The United States Department of Housing and Urban Development or its successor.

**Income Eligibility.** The gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members, and all other sources of household income.

**Industrial/Commercial District.** Any district designated in the Santa Monica Zoning Ordinance as a commercial or industrial district.

**“Low,” “Very Low,” and “Moderate” Income Levels.** Income levels determined periodically by the City based on the United States Department of Housing and Urban Development (HUD) estimate of median family income in the Los Angeles-Long Beach Primary Metropolitan Statistical Area. The major income categories are: “low-income” (sixty percent or less of the area median), “very low-income” (fifty percent or less of the area median), and “moderate-income” (one hundred percent or less of the area median). Adjustment shall be made by household size as established by the City.

**Market Rate Unit.** A dwelling unit as to which the rental rate or sales price is not restricted by this Chapter.

**Maximum Affordable Rent.** A monthly housing charge which does not exceed one-twelfth of thirty percent of the maximum very low-, low-, and moderate-income levels as defined in this Chapter and adopted each year by the City. This charge shall represent full consideration for housing services and amenities as provided to market rate dwelling units in the project, whether or not occupants of market rate dwelling units pay separate charges for such services and amenities. Housing services and common area amenities include, but are not limited to, the following: parking, use of common facilities including pools or health spas, and utilities if the project is master-metered. Notwithstanding the foregoing, utility charges, to the extent individually metered for each unit in the project,

may be passed through or billed directly to the occupants of affordable housing units in the project in addition to maximum allowable rents collected for those affordable housing units.

**Multi-family Project.** A multi-family residential development, including but not limited to apartments, condominiums, townhouses or the multi-family residential component of a mixed use project, for which City permits and approvals are sought.

**Multi-family Project Applicant.** Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks City development permits or approvals to develop a multi-family project.

**Multi-family Residential District.** Any district designated in the Santa Monica Zoning Ordinance as a multi-family residential district.

**Parcel.** Parcel as defined in Santa Monica Municipal Code Section 9.04.02.030.570.

**Vacant Parcel.** A parcel in a multi-family residential district that has no residential structure located on it as of August 20, 1998 or which had a residential structure located on it on that date which was subsequently demolished pursuant to a demolition order of the City. No demolition of structures shall be permitted except in accordance with Santa Monica Municipal Code Section 9.04.10.16 et seq. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98; amended by Ord. No. 1926CCS § 1, adopted 10/13/98)

#### **9.56.030 Applicability of chapter.**

(1) The obligations established by this Chapter shall apply to each multi-family project for which a development application was deemed complete on or after March 1, 1998 involving the construction of two or more market rate units. No building permit shall be issued for any multi-family project unless such construction has been approved in accordance with the standards and procedures provided for by this Chapter.

(2) Multi-family projects for which a development application was deemed complete prior to March 1, 1998 shall be subject to the provisions of Santa Monica Municipal Code Section 9.28 et seq. as they existed on the date the application for the project was deemed complete. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.040 Affordable housing obligation.**

All multi-family project applicants subject to the provisions of this Chapter pursuant to Section 9.56.030 shall choose one of the following options to meet the requirements of this Chapter:

- (a) Providing affordable housing units on-site in accordance with Section 9.56.050;
- (b) Providing affordable housing units off-site in accordance with Section 9.56.060;
- (c) Paying an affordable housing fee in accordance with Section 9.56.070;
- (d) Acquiring land for affordable housing in accordance with Section 9.56.080.

A multi-family project application will not be deemed complete until the applicant has submitted plans and proposals which demonstrate the manner in which the requirements of this Chapter will be met. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.050 On-site option.**

A multi-family project applicant may meet the affordable housing obligations established by this Chapter by providing affordable housing units on-site in accordance with the following requirements:

(a) The multi-family project applicant agrees to construct at least: (1) twenty percent of the total units of a project for low-income households, or (2) ten percent of the total units of a project for very-low income households, or (3) one hundred percent of the total units of a project for moderate-income households in an Industrial/Commercial District. Any fractional affordable housing unit that result from the formulas of this subsection shall be treated as a whole affordable housing unit (i.e.: any resulting fraction shall be rounded up to the next larger integer) and that unit shall also be built pursuant to the provisions of this section. The Planning and Community Development Department shall make available a list of very low-, low-, and moderate-income levels adjusted for household size, the corresponding maximum affordable rents adjusted by number of bedrooms, and the minimum number of very low- or low-income units required for typical sizes of multi-family projects, which list shall be updated periodically.

(b) The multi-family project applicant may reduce either the size or interior amenities of the affordable housing units as long as there are not significant identifiable differences between affordable housing units and market rate units visible from the exterior of the dwelling units, provided that all dwelling units conform to the requirements of the applicable Building and Housing Codes. However, each affordable housing unit provided shall have at least two bedrooms unless (1) the proposed project comprises at least ninety-five percent one bedroom units, excluding the manager's unit, in which case the affordable housing units may be one bedroom, (2) the proposed project comprises at least ninety-five percent zero bedroom units, excluding the manager's unit, in which case the affordable housing units may be zero bedroom units, or (3) the proposed project comprises zero and one bedroom units, excluding the manager's unit, in which case the affordable housing units must be at least one bedroom units. The design of the affordable housing units shall be reasonably consistent with the market rate units in the project. An

affordable housing unit shall have a minimum total floor area, depending upon the number of bedrooms provided, no less than the following:

0 bedrooms 500 square feet

1 bedroom 600 square feet

2 bedrooms 850 square feet

3 bedrooms 1080 square feet

4 bedrooms 1200 square feet

Affordable housing units in multi-family projects of one hundred units or more must be evenly disbursed throughout the multi-family project to prevent undue concentrations of affordable housing units.

(c) All affordable housing units in a multi-family project or a phase of a multi-family project shall be constructed concurrently with the construction of market rate units in the multi-family project or phase of that project.

(d) On-site affordable housing units must be rental units in rental projects. In ownership projects, affordable housing units may be either rental units or ownership units. Affordable housing ownership units shall comply with requirements concerning sales price, monthly payment, and limited equity and resale restrictions as established by resolution of the City Council to ensure that subsequent purchasers are also income-qualified households.

(e) Each multi-family project applicant, or his/her successor, shall submit an annual report to the City identifying which units are affordable units, the monthly rent (or total housing cost if an ownership unit), vacancy information for each affordable unit for the prior year, verification of income of the household occupying each affordable unit throughout the prior year, and such other information as may be required by City staff.

(f) A multi-family project applicant who meets the requirements of this Section shall be entitled to the density bonus development standards established in Santa Monica Municipal Code Section 9.04.10.14.040.

(g) All residential developments providing affordable housing on-site pursuant to the provisions of this Section shall receive priority building department plan check processing by which housing developments shall have plan check review in advance of

other pending developments to the extent authorized by law. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.060 Off-site option.**

A multi-family project applicant may meet the affordable housing obligations established by this Chapter by providing affordable housing units off-site in accordance with the following requirements:

(a) The multi-family project applicant shall agree to construct the same number of affordable housing units as specified in Section 9.56.050.

(b) The multi-family project applicant shall identify an alternate site suitable for residential housing which the project applicant either owns or has site control over (e.g., purchase agreement, option to purchase, lease) subject to City review to ensure that the proposed development is consistent with the City's housing objectives and projects.

(c) The off-site units shall be located within a one-quarter mile radius of the market rate units.

(d) The off-site units shall satisfy the requirements of subsections (b) through (f) of Section 9.56.050.

(e) The off-site units shall not count towards the satisfaction of any affordable housing obligation that development of the alternative site with market rate units would otherwise be subject to pursuant to this Chapter.

(f) Exceptions to the location of the off-site units specified in this Section may be granted by the Planning Commission on a case-by-case basis upon a showing by the multi-family project applicant, based upon substantial evidence, that the location of off-site units in a location different from that specified in this Section better accomplishes the goals of this Chapter, including maximizing affordable housing production and dispersing affordable housing throughout the City.

(g) The Housing Division of the Resource Management Department shall prepare administrative guidelines to implement this Section. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.070 Affordable housing fee.**

A multi-family project applicant may meet the affordable housing obligations established by this Chapter by paying an affordable housing fee in accordance with the following requirements:

(a) An affordable housing fee may be paid in accordance with the following formulas:

(1) Multi-family Projects in Multi-family Residential Districts:

affordable housing unit base fee x floor area of multi-family project;

(2) Multi-family Projects in Multi-family Residential Districts on Vacant Parcels:

affordable housing unit base fee x floor area of multi-family project x 75%;

(3) Multi-family Projects in Industrial/Commercial Districts on Parcels that are either not already developed with multi-family housing or are already developed with multi-family housing, but the multi-family project preserves the existing multi-family housing or a Category C Removal Permit has been obtained for the existing multi-family housing:

affordable housing unit base fee x floor area of project devoted to residential uses x 50%.

(b) For purposes of this Section, the affordable housing unit base fee may be established at least every two years by resolution of the City Council. The amount of the affordable housing fee that the multi-family project applicant must pay shall be based on the affordable housing unit base fee resolution in effect at the time that the application for the multi-family project is deemed complete or based on Resolution No. 9295 (CCS), whichever resolution is adopted later in time.

(c) The amount of the affordable housing unit base fee may vary by product type (apartment or condominium) and shall reflect, among other factors, the relationship between new market rate multi-family development and the need for affordable housing and the impact that the fee will have on the financial return of multi-family project applicants.

(d) The fee shall be paid in full to the City prior to the City granting any approval for the occupancy of the project.

(e) The City shall deposit any payment made pursuant to this Section in a Reserve Account separate from the General Fund to be used only for development of very low- and low-income housing, administrative costs related to the production of this housing, and monitoring and evaluation of this Affordable Housing Production Program. Any monies collected and interest accrued pursuant to this Chapter shall be committed within five (5) years after the payment of such fees or the approval of the multi-family project, whichever occurs later. Funds that have not been appropriated within this five-year period shall be refunded on a pro rata share to those multi-family project applicants who have paid fees during the period. Expenditures and commitments of funds shall be reported to the City Council annually as part of the City budget process.

(f) An affordable housing fee payment pursuant to this Section shall not be considered provision of affordable housing units for purposes of determining whether the multi-family project qualifies for a density bonus pursuant to Government Code Section 65915. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98; amended by Ord. 1926CCS § 2, adopted 10/13/98)

#### **9.56.080 Land acquisition.**

A multi-family project applicant may meet the affordable housing obligations established by this Chapter by making an irrevocable offer: (a) dedicating land to the City or a non-profit housing provider, (b) selling of land to the City or a non-profit housing provider at below market value, or (c) optioning of land on behalf of the City or a non-profit housing provider. Each of these options must be for a value at least equivalent to the affordable housing obligation otherwise required pursuant to this Section. The multi-family project applicant must identify the land at the time that the development application is filed with the City. Any land offered pursuant to this Section must be located within one-quarter mile radius of the market rate units unless the multi-family project applicant demonstrates that locating the land outside of this radius better accomplishes the goals of this Chapter, including maximizing affordable housing production and dispersing affordable housing throughout the City. The City may approve, conditionally approve or reject such offers subject to administrative guidelines to be prepared by the Housing Division of the Resource Management Department. If the City rejects such offer, the multi-family project applicant shall be required to meet the affordable housing obligation by other means set forth in this Chapter. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.090 Fee waivers.**

The Condominium and Cooperative Tax described in Section 6.76.010 of the Santa Monica Municipal Code and the Park and Recreation Facilities Tax established in Chapter 6.80 of Article 6 of the Santa Monica Municipal Code shall be waived for required affordable housing units and for low and very low income dwelling units developed by the City or its designee using affordable housing fees. However, any multifamily project applicant who elects to pay an affordable housing fee shall not be eligible for any fee waiver under this Section. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.100 Pricing requirements for affordable housing units.**

The City Council shall, by resolution, on an annual basis, set maximum affordable rents and maximum affordable purchase prices for affordable housing units, adjusted by

the number of bedrooms. Such maximum affordable rents shall be set at rates such that qualified occupants for low-income units pay monthly rent that does not exceed thirty percent of the gross monthly household income for households earning sixty percent of the median income and that qualified occupants for very low income units pay monthly rent that does not exceed thirty percent of the gross monthly household income for households earning fifty percent of the median income. Such maximum affordable purchase price shall be set at rates such that qualified occupants for low income units pay total monthly housing costs (mortgage payment, property taxes, homeowners' insurance, property mortgage insurance, homeowners' association fees) that do not exceed thirty-eight percent of the gross monthly household income for households earning sixty percent of the median income and that qualified occupants for very low-income units pay total monthly housing costs (mortgage payment, property taxes, homeowners' insurance, property mortgage insurance, homeowners' association fees) that do not exceed thirty-eight percent of the gross monthly household income for households earning fifty percent of the median income. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.110 Eligibility requirements.**

(a) Only low-income and very low-income households shall be eligible to occupy or own and occupy affordable housing units. The City shall develop a list of income-qualified households. Multi-family project applicants shall be required either to select households from the City-developed list of income-qualified households or to themselves select income-qualified households which shall be subject to eligibility certification by the City.

(b) The City shall develop administrative guidelines for the tenant and purchaser selection process detailed in this Section, which shall establish, at a minimum, the timing by which affordable housing units in a project must be leased or sold and occupied, both initially after issuance of the certificate of occupancy for the project and upon subsequent vacancies in the affordable housing unit. The guidelines may also establish priorities for income-qualified tenants.

(c) The following individuals, by virtue of their position or relationship, are ineligible to occupy an affordable housing unit:

(1) All employees and officials of the City of Santa Monica or its agencies, authorities, or commissions who have, by the authority of their position, policy-making authority or influence over the implementation of this Chapter and the immediate relatives and employees of such City employees and officials;

(2) The immediate relatives of the applicant or owner, including spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, sister-in-law, and brother-in-law. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.120 Relation to units required by Rent Control Board.**

Very low-income and low-income dwelling units developed as part of a market rate project, pursuant to replacement requirements of the Santa Monica Rent Control Board, shall count towards the satisfaction of this Chapter if they otherwise meet applicable requirements for this Chapter including, but not limited to, the income eligibility requirements, deed restriction requirements, and pricing requirements. New inclusionary units required by the Rent Control Board which meet the standards of this Chapter shall count towards the satisfaction of this Chapter. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.130 Deed restrictions.**

Prior to issuance of a building permit for a project meeting the requirements of this Chapter by providing affordable units on-site or off-site, the multi-family project applicant shall submit deed restrictions or other legal instruments setting forth the obligation of the applicant under this Chapter for City review and approval. Such restrictions shall be effective for at least fifty-five years. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.140 Enforcement.**

No building permit or occupancy permit shall be issued, nor any development approval granted, for a project which is not exempt and does not meet the requirement of this Chapter. All affordable housing units shall be rented or owned in accordance with this Chapter. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

#### **9.56.150 Annual report.**

The Housing Division of the Resource Management Department shall submit a report to the City Council on an annual basis which shall contain information concerning the implementation of this Chapter. This report shall also detail the projects that have received planning approval during the previous year and the manner in which the provisions of this Chapter were satisfied. This report shall further assess whether the provisions of Proposition R have been met and whether changes to this Chapter or its implementation procedures are warranted. In the event the provisions of Proposition R have not been met, the City Council shall take such action as is necessary to ensure that the provisions will be met in the future. This action may include, but not be limited to,

amending the provisions of this Chapter or its implementation. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)

**9.56.160 Principles and guidelines.**

(a) In addition to the administrative guidelines specifically required by other provisions of this Chapter, the City Manager or his or her designee shall be the designated authority to develop and implement rules and regulations pertaining to this Chapter, to enter into recorded agreements with multi-family project applicants, and to take other appropriate steps necessary to assure that the required affordable housing units are provided and are occupied by very low- and low-income households.

(b) Within one year from the passage of this Chapter, administrative rules and regulations pertaining to this Chapter shall be brought before the City Council for adoption. (Added by Ord. No. 1918CCS § 1 (part), adopted 7/21/98)