# Chelsea City Council

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D/C not Pass as Amended Passed 11-0-0-0

March 13, 2017

WHEREAS, It is the express purpose of municipal zoning to promote the health, safety, and general welfare of the inhabitants of the City of Chelsea; and,

WHEREAS, A specific objective of the City of Chelsea's Zoning Ordinance states the need to encourage the most appropriate use of land throughout the City of Chelsea; and,

WHEREAS, The City Administration and the City Council wish to ensure affordability in new and renovated housing developments;

WHEREAS, The City Administration and the City of Chelsea Planning Board has recommended after a public hearing, the adoption of the amendment to revision of the City of Chelsea Zoning Ordinance - Chapter 34 Article VII Special Residential Regulations,

WHEREAS, the Chelsea City Council, after due notice, public hearing, and deliberation finds:

1) That the amendment to Section 34-156 – Inclusionary Housing advances legitimate aspects of public interest;
2) That it further promotes the health, safety, and general welfare of the inhabitants of the City of Chelsea; and
3) That it encourages the most appropriate use of land throughout the City of Chelsea;

**NOW, THEREFORE, BE IT ORDAINED,** that the Revised Code of Ordinances of the City of Chelsea as amended, be further amended and adopted as follows:

That Chapter 34, Article VII Special Residential Regulations be amended by adding a new Section 34-156 Inclusionary Housing, which shall read as follows:

**Section 34-156. Inclusionary housing.**

***(a) Purpose and Intent***

The purpose of this Section is as follows:

(1) To ensure that affordable housing is made available to eligible households on a non-discriminatory basis in accordance with the federal Fair Housing Act of 1968 and M.G.L. c. 151, as amended, and any regulations promulgated under federal and state law;
(2) To ensure that such housing remains affordable over the long term, and that to the extent allowed by law, preference is given to Chelsea residents;
(3) To maintain an economically integrated community by promoting a mix and distribution of affordable housing opportunities throughout Chelsea;

(4) To increase the production of affordable housing units to meet existing and anticipated housing and employment needs within the City;
(5) To mitigate the impacts of commercial and residential development on the availability and cost of housing and especially housing affordable to low and moderate income households;
(6) To provide a mechanism by which an Applicant can contribute in a direct way to increasing the supply of affordable housing through the creation of affordable housing units and fee-in lieu contributions from the application of this Section.

***(b) Definitions***

*Affordable Housing Restriction (AHR):* A deed rider, covenant, contract, mortgage agreement, and/ or other legal instrument, acceptable in form and substance to the City, that effectively restricts occupancy of an affordable housing unit to a qualified purchaser or renter, and that provides for the administration, monitoring, and/or enforcement of the restriction during the term of affordability. An AHR shall be placed on the land in perpetuity or for the maximum period that is legally permissible by Massachusetts General Laws (M.G.L.), and entered into as an agreement under the provisions of M.G.L. c. 184, Sections 31 to 33 or other equivalent state law.

*Affordable Housing Trust Fund (AHTF):* The fund administered by the Affordable Housing Trust Fund Board (AHTFB).

*Affordable Housing Trust Fund Board (AHTFB):* Pursuant to Part II, Section 18 of the City of Chelsea Code of Ordinances, the AHTFB shall serve as the municipal affordable housing trust fund organized under Chapter 44, Section 55C of the Massachusetts General Laws [M.G.L. c. 44, § 55C]. The AHTFB advises and assists in the creation of a new affordable housing and the preservation, rehabilitation and maintenance of existing affordable housing in the City of Chelsea. The AHTFB is authorized to receive and accept contributions to the AHTF. The board ensures the monies in the AHTF are used appropriately.

*Affordable Housing Unit (AHU):* A residential unit that is restricted by deed in its sale, lease, and/or rental to a Qualified Income-Eligible Household at specific price limits not to exceed thirty (30) percent of their income that may qualify such residential unit for inclusion in the DHCD Subsidized Housing Inventory (SHI).

*Area Median Income (AMI):* The median household income as defined by HUD pursuant to section 3 of the 42 U.S.C. 1437 (the Housing Act of 1937), as amended, adjusted for household size.

*DHCD*: Massachusetts Department of Housing and Community Development and its successors, as established and currently existing pursuant to M.G.L. Ch. 23B and c. 6A.

*HUD*: United States Department of Housing and Urban Development.

*Inclusionary Housing Project:* Any new construction or substantial improvement of an existing structure(s) where the proposed development or redevelopment will result in ten (10) or more dwelling units on one (1) or more contiguous parcels, whether such units are proposed as-of-

right, under a special permit process, or proposed pursuant to "the Subdivision Control Law" M.G. L. c. 41, Sections 81K to 81GG inclusive, including divisions of land that do not require subdivision approval (ANR plans).

*Local Action Unit (LAU):* Affordable housing units that are created through local municipal action other than comprehensive permits; for example, through special permits, inclusionary zoning, conveyance of public land, utilization of Community Preservation Act (CPA) funds, etc.

*Local Initiative Program (LIP):* State housing initiative administered by DHCD to encourage communities to produce affordable housing for low- and moderate-income households. The program provides technical and other non-financial assistance to cities or towns seeking to increase the supply of housing for households at or below eighty (80) percent of the area median income. LIP-approved units are entered into the subsidized housing inventory (SHI) pursuant to Chapter 40B. *Low or Moderate Income Housing:* Any units of housing for which a Subsidizing Agency provides a Subsidy under any program to assist the construction or substantial rehabilitation of low or moderate income housing, as defined in the applicable federal or state statute or regulation, whether built or operated by any public agency or non-profit or Limited Dividend Organization. If the applicable statute or regulation of the Subsidizing Agency does not define low or moderate income housing, then it shall be defined as units of housing whose occupancy is restricted to a household of one or more persons whose maximum income does not exceed eighty (80) percent of AMI, or as otherwise established by the guidelines for the Subsidized Housing Inventory and 760 CMR 56.00, as amended.

*Market-Rate Housing:* A residential unit that is not restricted in its sale, lease, and/or rental at specific price limits.

*Qualified Income-Eligible Household:* A household with combined incomes that do not exceed eighty (80) percent AMI.

*Qualified Purchaser:* Qualified Income-Eligible Household that purchases and occupies an Affordable Housing Unit as its principal residence.

*Qualified Renter or Qualified Tenant:* Qualified Income-Eligible Household that rents and occupies an Affordable Housing Unit as its principal residence.

*Subsidizing Agency*: Any agency of state or federal government that provides a Subsidy for the construction or substantial rehabilitation of Low or Moderate Income Housing. If the Subsidizing Agency is not an agency of state government, the DHCD may appoint a state agency to administer some or all of the responsibilities of the Subsidizing Agency with respect to 760 CMR 56.00.

*Subsidy:* Assistance provided by a Subsidizing Agency to assist the construction or substantial rehabilitation of Low or Moderate Income Housing, including direct financial assistance; indirect financial assistance through insurance, guarantees, tax relief, or other means; and non-financial assistance, including in-kind assistance, technical assistance, and other supportive services. A leased housing, tenant-based rental assistance, or housing allowance program shall not be considered a Subsidy for the purposes of 760 CMR 56.00.

*Subsidized Housing Inventory ("SHI")*: a list compiled by the DHDC by city or town containing the count of Low or Moderate Income Housing units consistent with the provisions of 760 CMR 56.00.

*SHI Eligible Housing*: Solely for the purposes of 760 CMR 56.03, (a) any unit of Low or Moderate Income Housing, (b) such other housing units in a Project as may be so defined under the DHCD's guidelines, and, (c) any other housing unit as may be allowed under the DHCD's guidelines, provided that such housing unit is subject to a Use Restriction and Affirmative Fair Marketing Plan, and regardless of whether or not such unit received a Subsidy

Substantial improvement: Any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either: (*1*) Before the improvement or repair is started; or (*2*) if the structure has been damaged, and is being restored, before the damage occurred. Substantial improvement is not defined as a project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions. The market value of the structure shall be calculated by the Applicant, and submitted to the Department of Planning and Development for review and approval.

***(c) Applicability.***

The provisions of this Section shall apply to any new construction or substantial improvement of an existing structure(s) where the proposed development or redevelopment will result in ten or more dwelling units on one or more contiguous parcels, whether such units are proposed as-of-right, under a special permit process, or proposed pursuant to the Subdivision Control Law M.G.L. c. 41, Sections 81K to 81GG inclusive, including divisions of land that do not require subdivision approval (ANR plans). The following provisions shall be required for all inclusionary housing projects.

(1) In any development subject to this Section, at least fifteen (15) percent of the dwelling units shall be Affordable Housing Units (AHU). However, for any development subject to this Section which provides a mix of the required AHU's for households with income at or below thirty (30) percent of AMI, for households with income at or below fifty (50) percent of AMI, and for households with an income at or below eighty (80) percent, all adjusted for household size, and which is reviewed and recommended by the Department of Planning and Development, at least ten (10) percent of the units shall be AHU's. For inclusionary housing projects that require fractional units please see subsection (e)(4). Nothing in this Section shall preclude an Applicant from providing more AHUs than the number required.

(2) Each AHU created under this Section shall be sold or rented to a Qualified Income-Eligible Household.

(3) No occupancy permit shall be issued for any unit in the development until the Director of Inspectional Services/Zoning Enforcement Officer receives verification that the AHR has been approved the City of Chelsea Department of Planning and Development and has been recorded with the Suffolk County Registry of Deeds.

*(d) Exemptions*

(1) This Section shall not apply to the rehabilitation of any building or structure wholly or substantially destroyed or damaged by catastrophe, provided that no rehabilitation or repair shall increase the number of bedroom or dwelling units on the lot as existed prior to the damage or destruction thereof, except in conformance with this Ordinance.

(2) New construction or substantial improvement of an existing structure(s) where the proposed development or redevelopment will result in ten or more dwelling units, and the project includes a Subsidy for at least fifteen (15) percent of the total units from a Subsidy Program which is considered by DHCD as eligible for the purposes of M.G.L. c.40B, sections 20-30, 760 CMR 56.00, as may be modified. Evidence of funding commitments must be provided prior to the issuance of a building permit.

*(e) Mandatory Provision of Affordable Units*

The Department of Planning and Development shall require that the Applicant comply with the following provisions for Inclusionary Housing Projects.

(1) *Siting*: Affordable housing units shall be dispersed and sited throughout a development so as not to be in less desirable locations than the development's market-rate units.

(2) *Design and Construction*: Affordable housing units shall be comparable to and indistinguishable from market-rate units in interior and exterior building materials and finishes, windows, appliances, and other improvements related to the energy efficiency of the units.

(3) *Rights and Privileges*: Owners and tenants of AHUs and market-rate units shall have equal rights and privileges to access and use of the development's amenities and facilities.

(4) *Fractional Units*: Where the required number of AHUs results in a fraction the Applicant shall round up to the nearest whole number or make a fee in lieu contribution equal to but not less than that fraction multiplied by the fee outlined in (f)(2) of this Section.

(5) *Phasing*: Affordable housing units shall not be the last units to be built in any development and/or redevelopment covered by this Section.

(6) *Non-Avoidance by Phasing or Segmentation*: A development shall not be phased or segmented in a manner to avoid compliance with this Section. The Zoning Board of Appeals or Planning Board shall not approve any application for new construction or substantial improvement to a structure(s) where the development or redevelopment results in ten (10) or more dwelling units if the land or parcels of land were held in common ownership (including ownership by related or jointly controlled persons or entities) and were subdivided or otherwise modified within the previous five (5) years to avoid compliance without complying

with this Section. This Section shall also be enforceable against purchasers of land previously held in common ownership with land that received, after the date of adoption of this Section, approvals or permits for development, to the effect that units developed under such previous development shall be counted toward the calculation of number of units under this Section.

***(f) Fees-in-Lieu-of Affordable Housing Units***

(1) As an alternative to the requirements of Subsections (c) and (e) of this Section, and at the sole discretion and majority vote of the City Council upon a recommendation of the City Manager, the developer shall contribute a fee to the City's AHTF in lieu of providing all or a portion of the required AHUs within the proposed development.

(2) The fee in lieu of providing one or more AHUs shall be a minimum of two-hundred thousand dollars ($200,000) per required AHU not provided within the development. This fee may be adjusted upward by a majority vote of the City Council.

(3) Any payment to the AHTF as an in lieu contribution for AHUs shall be made as follows: at least fifty (50) percent of the total owed prior to the issuance of a Building Permit; and the remaining total owed prior to the issuance of an Occupancy Permit.

***(g) Restrictions***

(1) *Restrictive documents*: To ensure unit affordability, AHUs shall be rented or sold subject to applicable AHR, acceptable to the, or such additional programs as may be adopted by the Commonwealth or its agencies, restricting the use and occupancy, rent level, and sales price of such AHUs.

(2) *Term of Affordable Housing Restriction*: An AHR shall ensure that AHUs created under this section shall remain affordable in perpetuity or for the longest period of time as legally permissible. All AHRs, deed riders, and covenants shall be enforceable and renewable by the City pursuant to applicable law.

(3) *Subsequent Resale/Lease*: An AHU shall be restricted in its initial and any subsequent sale, lease, and/or rental to a Qualified Income-Eligible Household at a specific price limit that will qualify such residential unit for inclusion in the DHCD SHI.

(4) *Selection of Eligible Tenants and Homeowners*: The Applicant shall conduct a fair and reasonable procedure in compliance with fair housing laws for the selection of tenants for affordable rental units and for the selection of homeowners for affordable homeownership units. Prior to implementing such procedures, the Applicant shall submit an Affirmative Fair Housing Marketing Plan to be reviewed and approved by the Department of Planning and Development.

(5) *Income and Asset Limits*: The Applicant shall verify and provide evidence to the Department of Planning and Development that the income of prospective Qualified Income-Eligible

Households, whether purchasers or renters, shall not exceed eighty (80) percent or a mix of thirty (30) percent, fifty (50) percent and eighty (80) percent, pursuant to subsection (c)(2), of AMI based on household size as determined by HUD. A Qualified Purchaser or Qualified Renter shall also be required to demonstrate that total household assets, other than income, are not so high that a household has no substantial need of a rental unit with a reduced rent or of an ownership unit with a reduced purchase price.

(6) *Occupancy*: The AHR for AHUs shall require, whether the unit initially is sold or rented, that the occupant of that unit must be a Qualified Income-Eligible Household. This provision shall prohibit a unit initially designated as owner-occupied from being leased.

***(h) Monitoring and Enforcement***

(1) *Monitoring of Rental AHUs*: Affordable housing units shall be subject to an AHR that contains limitations on use, occupancy, resale and rents, and provides for periodic monitoring to verify compliance with and enforce said restriction. Developers/owners of rental developments which include rental AHUs must submit to the City of Chelsea Department of Planning and Development and the AHTFB an annual statement of rent level, rental income, and verification of tenant income.

(2) *Monitoring of For Sale AHUs*: If the Owner shall desire to sell, dispose of, or otherwise convey a unit governed by an AHR, the Owner shall notify the City of Chelsea, c/o the Department of Planning & Development prior to listing the property for-sale to ensure compliance with the AHR's resale provisions.

(3) *Eviction*: Nothing in this section shall be construed to permit eviction of a Qualified Purchaser or Qualified Tenant of an AHU due to a change of a household's income status or size during the time of ownership or term of lease or rental.

(4) *Transfer of AHU*: The restrictions governing an AHU shall remain upon resale, re-rental, and/or renewal of lease of the AHU. For owner-occupied units, the use restriction shall ensure that units may only be resold to Qualified Income-Eligible Household who are Qualified Purchasers consistent with the then applicable income qualifications process and approved by the Department of Planning and Development.

(5) *All Restrictions Remain in Effect*: Nothing in this Section shall be construed to permit any AHR, deed rider, covenant, agreement, and/or other mechanism restricting such items as the use and occupancy, rent level, or resale price of AHUs, and the enforcement thereof to expire prior to any maximum limitations set forth by applicable state law. It is intended that the restrictions required herein shall survive, to the limit allowed by law, including, but not limited to, bankruptcy and foreclosure.

(6) *Timing of commitments*: All AHRs required hereunder and any documents necessary to ensure compliance with this section shall be approved as to content by the City of Chelsea Department of Planning and Development and Chelsea City Solicitor prior to the issuance of

any Building Permit.

(7) *Approval of Form and Content of Legal Documents*: The Applicant shall be responsible for preparing any documentation required by DHCD in order to secure LIP approval of the AHU and ensure their eligibility for the DHCD SHI. Furthermore, the Applicant shall prepare all AHR and/or legal instruments required to comply with this Section, and such documents shall be in a form satisfactory to the Chelsea City Solicitor. The Applicant shall reimburse the City for reasonable legal expenses incurred by the Chelsea City Solicitor.

(8) *Recording of Restrictions*: All AHRs required pursuant to this Section shall be recorded at the Suffolk County Registry of Deeds or filed with the Registry District of the Land Court, as applicable, prior to the issuance of any building permit for the development.

***(i) Right of First Refusal***

The AHTFB reserves the right of first refusal or option to purchase all "affordable" for-sale units at the point of original sale or any subsequent resale. This also applies to any subsequent sale of a rental property or units within a rental property. The purchase price shall be the lesser of the price that a household earning no more than thirty (30) percent, fifty (50) percent or eighty (80) percent of the AMI could afford and pay no more than thirty (30) percent of household income in housing costs, depending on the affordability level assigned to the unit at the time of sale, or ninety (90) percent of the then documented appraised value at sale time. The appraisal shall be performed by the Applicant after written review and approval by the Department of Planning and Development.

***(j) Needs Assessment Review***

The City of Chelsea Department of Planning and Development, in cooperation with appropriate Boards and Commissions, shall undertake a housing market assessment not less than every fifth calendar year from the date of enactment of this Section. The purposes of said assessment shall be to assess the performance of the provisions herein in terms of resultant AHUs, to assess any need for improved rules and regulations regarding implementation, and to ascertain the need for revision of any provisions of this Section relative to the provision of AHUs in the City. Provisions subject to review shall include, at minimum: revisions to applicability requirements of this Section, revisions to percentage requirements of AHUs in inclusionary housing developments, and revisions to methodologies for monetary payments or other in lieu of means of compliance with provision of on-site units.

Upon completing its assessment the City of Chelsea Department of Planning and Development, shall recommend to the City Council any amendments to this Ordinance deemed necessary to improve the means of providing AHUs in the City.

Dan Cortell DC

Councilor Dan Cortell, District Eight

City of Chelsea, Massachusetts

MAR 13 2017, 2017

Roll Call In Connection With: D|C roll Call

Adopt Zoning as amended within the Zoning Order.

passed 11-0-0-0

CHELSEA CITY COUNCIL

| | YES | NO | ABSENT | PRESENT |
|---|---|---|---|---|
| Councillor Damali Vidot At-Large | ✓ | | | |
| Councillor Roy Avellaneda At-Large | ✓ | | | |
| Councillor Luis Tejada District Two | ✓ | | | |
| Councillor Yamir G. Rodriguez District Seven | ✓ | | | |
| Councillor Giovanni Recupero District Six | ✓ | | | |
| Councillor Dan Cortell District Eight | ✓ | | | |
| Councillor Paul Murphy District One | ✓ | | | |
| Councillor Enio A. Lopez District Four | ✓ | | | |
| Councillor Leo Robinson At-Large | ✓ | | | |
| Councillor Matt Frank District Three | ✓ | | | |
| Councillor Judith Garcia District Five | ✓ | | | |

Totals: 11-0-0-0

Comments: