

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 180721

Requiring that projects which are primarily residential in nature and are seeking economic incentives in the nature of the capture and redirection, or abatement or exemption of taxes to contain a minimum of **twenty percent (20%)** of the projects' total number of units being deemed affordable for households having incomes equal to or below seventy percent (70%) of the **area median income, as determined by the United States Department of Housing and Urban Development (HUD) Metropolitan Statistical Area (MSA) Median Family Income with half of said units being deemed affordable for households having incomes equal to or below thirty percent (30%) of the area median income and half of said units being deemed affordable for households having incomes equal to or below seventy percent (70%) of the area median income.**

WHEREAS, in November, 2017, the City Council passed unanimously Resolution No. 170825 that directed the City Manager to provide information on the overall state of housing policy at the federal, state and local levels; and

WHEREAS, Resolution No. 170825 also directed the development of a report on the overall state of housing resources, housing policy, programs and funding options for the City, including the role of affordable housing in the development of the City; and

WHEREAS, in May, 2018, the City Council passed Ordinance No. 180370, establishing a definition of "affordable housing" for purposes of implementing the scoring system for certain projects seeking certain economic incentives; and

WHEREAS, the City Council recently mandated a minimum number of affordable units be required as a part of their approval of financial incentives and tax abatement for the construction of new housing units in the City; and

WHEREAS, the City Council continues to recognize the need for the creation of affordable housing units, particularly for households earning incomes below **the Metropolitan Statistical Area median income, as determined by the United States Department of Housing and Urban Development;** NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That all development or redevelopment projects which are primarily residential in nature and **ten or more residential units across all sites and phases of the development project, and** are seeking economic incentives **(defined as the capture and redirection, or abatement or exemption of taxes, or government loans or grants, or issuance of tax exempt bonds for the development or redevelopment of residential units "the project")** are to be required, as a condition of receiving ~~such~~ assistance, to contain at least **ten percent (10%) of the total number of residential units being created as units deemed in the project to be affordable for households having incomes equal to or below thirty percent (30%) of the area median income, as determined by the United States Department of Housing and Urban**

Development, and that for each such development project, the developer shall be required to execute an agreement to rent those residential units deemed affordable to persons or families whose household incomes are equal to or below **thirty percent (30%)** of the above-described median income throughout the period of time that the development is receiving any benefit from the economic incentives granted; and **at least ten percent (10%) of the total number of residential-units being created for households having incomes equal to or below seventy percent (70%) of the area median, as determined by the United States Department of Housing and Urban Development, and that for each such development project, the developer shall be required to execute an agreement to rent those residential units deemed affordable to persons or families whose household incomes are equal to or below seventy percent (70%) of the above-described median income throughout the period of time that the development is receiving any benefit from the economic incentives granted.**

Alternatively, the developer may choose to create affordable units under the following two scenarios: 1) Fifteen percent (15%) of the total number of residential units are created and deemed to be affordable for households having incomes equal to or below at seventy percent 70% of the area median income, five percent (5%) of the total number of residential units are created and deemed affordable to households at or below fifty percent (50%) of the area median income, and five percent (5%) of the total number of residential units are created and deemed affordable to households at or below thirty percent (30%) of the area median income; or 2) twenty five percent (25%) of the total number of residential units are created and deemed affordable to households at or below fifty (50%) of the area median income.¹

Section 2. That the definition of affordable housing for the purposes of this ordinance is as follows: a household having income equal to or below seventy percent (70%) of the **area median income, as determined by the United States Department of Housing and Urban Development adjusted for family size**, would be able to afford if it were to expend not more than thirty percent (30%) of such income for the mortgage or rent, including other housing expenses such as property taxes, insurance, and utilities.

Section 3. In the event a project developer is unable or unwilling to meet the affordable housing requirement established in Sections 1 and 2 of this ordinance, the project developer shall make a payment in lieu of the affordable housing unit provision to the **~~Shared-Success Fund, Housing Trust Fund~~** as established in Second Committee Substitute for Ordinance No. 160383, As Amended, **to be reserved for affordable housing developments within the project census tract or a census tract that is adjacent to the project census tract.**

Section 4. The City Council shall establish the in-lieu per-unit fee on written recommendation by the City Manager and adopt it as part of the City's schedule of fees. The per-unit fee shall **depend on whether the project is located in a Non-Distressed, Distressed, or Severely Distressed Census tract, as designated by the U.S. Bureau of the Census' American Community Survey (ACS) 5-year estimate data for 2013-2017. For projects located in Non-Distressed tracts, the in-lieu per-unit amount shall be no less than one hundred percent (100%) of the actual cost of providing an affordable housing unit multiplied by the number of units**

¹ Based on our calculations, the number of affordable units produced and the monthly rent generated under each scenario would both be maximized with these alternative scenarios.

required for a 20% set aside using actual construction cost data from the current project. For projects located in Distressed tracts, the in-lieu per-unit amount shall be no less than eighty percent (80%) of the actual cost of providing an affordable housing unit multiplied by the number of units required for a 20% set aside using actual construction cost data from the current project. For projects located in Severely Distressed tracts, the in-lieu per-unit amount shall be no less than sixty percent (60%) of the actual cost of providing an affordable housing unit multiplied by the number of units required for a 20% set aside using actual construction cost data from the current project. At least once every three years, the City Council shall, with the written recommendation of the City Manager, review the per-unit fee and amend the schedule of fees. The 5-Year ACS designation shall be updated annually, upon the release by the U.S. Census Bureau of the most recent 5-year data estimate as the basis for determining the distress level of the project census tract.²

Section 5. Determination of individual household eligibility shall be made, by the project manager at the time of lease initiation or sale, and any subsequent lease initiation to a new tenant, using procedures approved by the Director of the City Department of Housing and Community Services (herein “Director”). Records of said determinations must be made available to the Director for periodic audits.³

Section 6. For purposes of this ordinance, affordable housing shall comply with the following criteria:

- (a) That all units qualifying as affordable housing shall be on the principal project site, and shall not be off site from the project.
- (b) That affordable housing units be fully integrated with, and not clustered or segregated in any way from, market-rate units, ~~unless such segregation facilitates additional public subsidy financing for affordable housing units.~~
- (c) That all units qualifying as affordable housing either be at least one-bedroom units in size, or be equal to or share the same size as at least ~~twenty-five percent (25%)~~ of units to be constructed on the project site.
- (d) If the project development contains a phasing plan, the phasing plan shall provide for the development of affordable housing units concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units be built the last units in ~~an Affordable Housing Development~~ a project development.
- (e) The exterior ~~and interior~~ appearance of affordable housing units shall be

² An alternative to basing the in-lieu fee on construction costs is to use a tiered percentage of a flat fee, though, a flat fee may result in a lower payment and would not take into account different levels of finish.

³ It is the intention of the Urban Neighborhood Initiative’s Promoting Equitable Neighborhoods work group to develop additional language around Section 5 to account for different scenarios such as when a tenant’s income rises above their original qualifying income level.

equivalent to market-rate units by the provision of exterior building materials and interior finishes, fixtures, and appliances that are substantially the same in type and quality. ~~The cost per square foot of the exterior and interior of affordable housing units shall be equivalent to the cost of the market-rate units.~~

- (f) The project developer must covenant with City and successors in interest ~~that the units remain affordable for a period of not less than the entire duration of time during which the project developer or its successors in interest receive tax abatements or redirections from the City and related taxing jurisdictions.~~ that the units remain affordable for the period of time that the development is receiving any benefit from the economic incentives granted, and that the remaining requirements of this ordinance shall be satisfied during said period. Such covenant shall be recorded in the county land records prior to issuance of a building permit or at such later time as the Director shall allow, and in addition shall provide that (i) a violation thereof shall result in a recapture of the full value to date of the economic incentives granted and termination of future project economic incentives, or at the discretion of the Director a payment to the City of \$500 per day per housing unit not in compliance with the covenants; and (ii) the project owner or manager shall submit an annual report to the Director on a form prescribed by the Director furnishing evidence of compliance. The Director is authorized in his or her discretion to release said covenant following project mortgage foreclosure if required as a condition to financing.

Section 7. That this ordinance shall be reviewed by the City Council not later than two years from the effective date of this Ordinance. ~~with the review of the minimum percentage of the total number of residential units being created as units deemed affordable for households having incomes equal to or below seventy percent (70%) of the median income for all households within Kansas City, Missouri, as estimated and reported by the American Community Survey 5-Year Estimates~~

Approved as to form and legality:

Galen Beaufort
Assistant City
Attorney