

3/5/2007

**32-O-07**

**AN ORDINANCE**

**Amending Ordinance 27-O-06, that Created  
Title 5, Chapter 7 of the City Code,  
“The Inclusionary Housing Ordinance”**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL  
OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

**SECTION 1:** That Ordinance 27-O-06 is hereby amended to read  
as follows:

**SECTION 1:** That Title 5 of the Evanston City Code of 1979, as  
amended, is hereby further amended by enacting a new Chapter 7, “Inclusionary  
Housing”, to read as follows:

**5-7-1: TITLE:**

This Chapter shall be titled and referred to as the “Inclusionary Housing  
Ordinance”.

**5-7-2: PURPOSE AND INTENT:**

The purpose of this Chapter is to promote the public health, safety, and welfare of the residents of Evanston by requiring residential developments or developments which contain a residential component to include a certain percentage of dwelling units in a proposed development to be priced affordably for low- and moderate-income households or to make a payment in accord with the terms of this Chapter. Based upon the review and consideration of reports and analyses of the housing situation in the City, it is apparent that the diversity of the City’s housing stock has declined as a result of increasing property values and housing costs, and a reduction in the availability of affordable housing; and that, with the exception of housing subsidized by the City, the privately-developed new residential housing that is being built in the City generally is not affordable to low- and moderate-income households. The City recognizes the need to provide affordable owner-occupied housing to low- and moderate-income households in order to maintain a diverse population, and to provide owner-occupied housing for those who live or work in the City. Without intervention, the trend toward increasing housing prices will result in an inadequate supply of owner-occupied affordable housing for City residents and local employees, which will have a negative impact upon the ability

of local employers to maintain an adequate local work force, and will otherwise be detrimental to the public health, safety, and welfare of the City and its residents. Since the remaining land appropriate for new residential development within the City is limited, it is essential that a reasonable proportion of such land be developed into owner-occupied dwelling units affordable to low- and moderate-income households and working families.

**5-7-3: DEFINITIONS:**

For the purposes of administering this Chapter, these definitions shall apply:

**AFFORDABLE DWELLING UNIT:** Any unit of owner-occupied housing, as defined herein, built to satisfy the requirements of this chapter.

**AFFORDABLE HOUSING, OWNER-OCCUPIED:** Decent, safe, sanitary housing that is: (1) affordable to “Relevant Households” as defined herein; and (2) to be sold only to “Qualified Households” as defined herein. The cost of the mortgage payment and relevant expenses (a calculation of property taxes, homeowner’s insurance, and, when applicable, condominium or homeowner association fees) of owner-occupied dwelling units shall not exceed thirty-three percent (33%) of the Relevant Household’s gross annual household income (the total income of all adults over eighteen years of age in the household).

**AFFORDABILITY PERIOD:** The time during which the affordability restrictions imposed by this ordinance shall apply. Affordable Dwelling Units covered by this chapter shall remain affordable in perpetuity or as long as allowable by law. The affordability period begins at the time of first occupancy of the affected unit.

**AFFORDABLE HOUSING AGREEMENT:** The document signed by the purchaser of an Affordable Dwelling Unit at time of sale, along with such other legal documents as may be required, detailing the affordability requirements of the Affordable Dwelling Unit.

**APPLICANT:** Any Developer who applies to the Department to receive approval of a Covered Development pursuant to this Chapter.

**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 United States Department of Housing and Urban Development and adjusted for household size.

**CERTIFICATE OF QUALIFICATION:** A certificate issued by the Department establishing a Qualified Household’s eligibility to purchase an Affordable Dwelling Unit. Certificates of Qualification shall be valid for twelve months.

**COMMUNITY LAND TRUST:** A private, not-for-profit corporation which the City may create, or authorize organized exclusively for charitable, cultural, or other purposes to acquire and own land for the benefit of the City, including the creation and preservation of affordable housing.

**CONSUMER PRICE INDEX:** Consumer Price Index for All Urban Consumers as published annually by the United States Department of Labor, Bureau of Labor Statistics.

**COVERED DEVELOPMENT:** A development containing twenty-five (25) or more owner-occupied Dwelling Units, subject to the planned development requirements of Title 6, Chapter 3 of the Zoning Ordinance, on contiguous land under common ownership or control by an Applicant at one location within the City, when such Dwelling Units are to be sold to owner-occupants. The term "Covered Development" includes, without limitation, the following:

- (A) A development that is new residential construction or new mixed-use construction with a residential component.
- (B) A development that is the renovation or reconstruction of an existing multiple-family residential structure that increases the number of residential units from the number of units in the original structure.
- (C) A development that will change the use of an existing building from non-residential to residential.
- (D) A development built in phases.

**DEPARTMENT:** The Evanston Community Development Department or any successor agency, unless otherwise indicated.

**DEVELOPER:** Any person, firm, corporation, partnership, limited liability company, association, joint venture, or any entity or combination of entities that develops Dwelling Units, but does not include any governmental entity.

**DIRECTOR:** The Director of the Evanston Community Development Department or his designee.

**HOUSING PROVIDER:** A non-profit entity designated by the City to own Affordable Dwelling Units.

**INCLUSIONARY HOUSING PLAN:** The Plan submitted as part of a Planned Development application which details the development's compliance with the Affordable Housing requirements of this Chapter.

**LOW-INCOME HOUSEHOLD:** A household with a total income equal to or below eighty percent (80%) of the AMI.

**MARKET-RATE DWELLING UNITS:** All owner-occupied Dwelling Units in a Covered Development that are not Affordable Dwelling Units as defined herein.

**MODERATE-INCOME HOUSEHOLD:** A household with a total income between eighty percent (80%) and one hundred percent (100%) of the AMI.

**QUALIFIED HOUSEHOLD:** A household that the Department has verified meets the definition of a “Relevant Household” as defined herein and has received a Certificate of Qualification from the Department per Section 5-7-6 of this Chapter.

**RELEVANT HOUSEHOLD:** A household whose total income does not exceed one hundred percent (100%) of the AMI.

**5-7-4: INCLUSIONARY HOUSING REQUIREMENT:**

- (A) **GENERAL REQUIREMENT:** Ten percent (10%) of the total number of owner-occupied Dwelling Units in a Covered Development shall be Affordable Dwelling Units.
- (B) **CALCULATION:** To calculate the number of Affordable Dwelling Units required in a Covered Development, the total number of proposed owner-occupied Dwelling Units shall be multiplied by ten percent (10%), with all fractions rounded up to the nearest whole number.

**5-7-5: INCLUSIONARY HOUSING COMPLIANCE PROCEDURES:**

- (A) **APPLICATION:** The Applicant for approval of a Covered Development shall file an application for approval of the Affordable Dwelling Unit component of a Planned Development on a form provided by the Department and submit it with the application for approval of the Planned Development. The application for Planned Development shall not be considered complete without the information required by this Chapter for the Affordable Dwelling Unit component. The application shall require, and the Applicant shall provide, among other things, general information about the nature and scope of the Covered Development, as well as other documents and information as this Chapter and the Department may require. The Application shall include the Inclusionary Housing Plan referred to under Subsection (B) of this Section.

- (B) **INCLUSIONARY HOUSING PLAN:** The Applicant shall submit an Inclusionary Housing Plan that outlines and specifies the Covered Development's compliance with each of the applicable requirements of this Chapter. The Inclusionary Housing Plan shall specifically contain, as a minimum, the following information regarding the Covered Development:
- (1) A general description of the Covered Development.
  - (2) The total number of Market-Rate Dwelling Units and Affordable Dwelling Units in the Covered Development.
  - (3) The number of bedrooms in each Market-Rate Dwelling Unit and each Affordable Dwelling Unit.
  - (4) The square footage of each Market-Rate Dwelling Unit and each Affordable Dwelling Unit.
  - (5) The general location of each Affordable Dwelling Unit within the Covered Development.
  - (6) The pricing schedule for each Affordable Dwelling Unit and each Market-Rate Dwelling Unit.
  - (7) The phasing and construction schedule for each Market-Rate Dwelling Unit and each Affordable Dwelling Unit.
  - (8) Documentation and plans regarding the exterior and interior appearances, materials, and finishes of the Covered Development and each of its Dwelling Units.
  - (9) A description of the marketing plan that the Applicant proposes to utilize and implement to promote the sale of the Affordable Dwelling Units within the Covered Development.
  - (10) Any proposal to make a cash payment, per Section 5-7-8 of this Chapter, or alternative equivalent action, per Section 5-7-9 of this Chapter, *in lieu* of providing Affordable Dwelling Units.

**5-7-6: ELIGIBILITY AND PREFERENCE OF HOUSEHOLDS FOR AFFORDABLE DWELLING UNITS:**

- (A) **CERTIFICATE OF QUALIFICATION:** The Department shall issue a Certificate of Qualification to any household the Department has verified meets the definition of "Relevant Household" as defined in this Chapter.

- (B) **ELIGIBILITY:** The Affordable Dwelling Units shall be sold only to owner-occupant Qualified Households whose primary residence shall be said Affordable Dwelling Units and whose household income does not exceed one hundred percent (100%) of the AMI. At least twenty-five percent (25%) of the Affordable Dwelling Units shall be sold to Qualified Households whose income is eighty percent (80%) of the AMI or less.
- (C) **PREFERENCE:** Priority for Affordable Dwelling Units will be given first to Qualified Households who currently live in Evanston, or who have lived in Evanston with a member of a household currently living in Evanston, and to households in which the head of the household or the spouse or domestic partner works in Evanston.

**5-7-7: DISTRIBUTION AND ATTRIBUTES OF ON-SITE AFFORDABLE DWELLING UNITS:**

- (A) **LOCATION OF AFFORDABLE DWELLING UNITS:** Affordable Dwelling Units shall be dispersed among the Market-Rate Dwelling Units throughout the Covered Development.
- (B) **PHASING OF CONSTRUCTION:** In a multi-phased development, all phases shall include a proportion of Affordable Dwelling Units throughout the Covered Development. The Affordable Dwelling Units shall never be the last units to be built in any Covered Development.
- (C) **EXTERIOR APPEARANCE:** The exterior appearance of the Affordable Dwelling Units in any Covered Development shall be visually compatible with the Market-Rate Dwelling Units in the Covered Development. External building materials and finishes shall be substantially the same in type and quality for Affordable Dwelling Units as for Market-Rate Dwelling Units.
- (D) **INTERIOR APPEARANCE AND FINISHES:** Affordable Dwelling Units shall have the same interior appearance and finishes as basic Market-Rate Dwelling Units and the bedroom mix of Affordable Dwelling Units shall be in equal proportion to the bedroom mix of the Market-Rate Dwelling Units. If the bedroom mix creates more options than the number of Affordable Dwelling Units to be built, the Affordable Dwelling Units shall be built with the greater number of bedrooms; eg: If the bedroom mix provides for four options – efficiency, one bedroom, two bedroom, or three bedroom – but only three Affordable Dwelling Units are to be built, then a one bedroom-, a two bedroom-, and a three bedroom-unit shall be built.
- (E) **UNIT SIZE:** Affordable Dwelling Units shall have substantially the same square footage as Market-Rate Dwelling Units with a comparable number of bedrooms.

- (F) **ENERGY EFFICIENCY:** Standard components related to energy efficiency, including, but not limited to, mechanical equipment and plumbing, insulation, windows, and heating and cooling systems, shall be the same in Market-Rate Dwelling Units and Affordable Dwelling Units.

**5-7-8: CASH PAYMENT *IN LIEU* OF PROVIDING AFFORDABLE DWELLING UNITS:**

**FEE PAYMENT:** As of right, an Applicant may pay a fee *in lieu* of building each Affordable Dwelling Unit required by Section 5-7-4 for the Covered Development.

- (A) The fee *in lieu* per Affordable Dwelling Unit shall be determined and approved by the City Council. The fee *in lieu* amount per Affordable Dwelling Unit shall be forty thousand dollars (\$40,000.00) from (the effective date of this Ordinance 27-O-06) through April 1, 2008. Thereafter, the fee *in lieu* is subject to review and revision by the City Council at least annually by April 1.
- (B) All cash payments received pursuant to this Chapter shall be deposited directly into the Affordable Housing Tax Fund.
- (C) Unless otherwise pre-empted by law, any fee *in lieu* shall be paid prior to the issuance of a temporary certificate of occupancy for any dwelling unit in the Covered Development.

**5-7-9: ALTERNATIVE EQUIVALENT PROPOSAL**

An Applicant may propose to meet the requirements of Section 5-7-4 by an alternative equivalent action, subject to the review and approval by the Planning and Development Committee. A proposal for an alternative equivalent action may include, but is not limited to, dedication of vacant land, the construction of Affordable Dwelling Units on another site, or acquisition and enforcement of sales price restrictions on existing Market-Rate Dwelling Units so as to render them Affordable Dwelling Units. Any proposal shall show how the alternative proposed will increase affordable housing opportunities in the City to an equal or greater extent than compliance with the express requirements of this Chapter. Such proposals for alternatives shall be considered on a case by case basis by the Planning and Development Committee and may be approved at the Committee's sole discretion, if the Committee determines that such alternative will increase affordable housing opportunities in the City to an equal or greater extent than compliance with the express requirements of this Chapter.

**5-7-10: REDUCTION OR WAIVER OF INCLUSIONARY HOUSING REQUIREMENTS**

(A) **REDUCTION:** If the Applicant presents clear and convincing financial evidence to the Planning and Development Committee that full compliance with Section 5-7-4 of this Chapter, payment in lieu as per Section 5-7-8 of this Chapter, or alternative equivalent action as per Section 5-7-9 of this Chapter, or any combination thereof would render the development financially infeasible, the Applicant may seek a reduction in the required number of Affordable Dwelling Units and/or payment *in lieu* as to render the project financially feasible. If such a reduction is requested, a detailed explanation shall be provided which demonstrates the financial infeasibility of full compliance with the ordinance requirements.

(B) **WAIVER:** If the Applicant presents clear and convincing financial evidence to the Planning and Development Committee that any compliance with Section 5-7-4 of this Chapter, payment in lieu as per Section 5-7-8 of this Chapter, or alternative equivalent action as per Section 5-7-9 of this Chapter, or any combination thereof would render the development financially infeasible, the Applicant may seek a waiver of the required Affordable Dwelling Units and/or payment *in lieu* as to render the project financially feasible. If such a waiver is requested, a detailed explanation shall be provided which demonstrates the financial infeasibility of any compliance with the ordinance requirements.

**5-7-11: AFFORDABILITY CONTROLS:**

(A) **INITIAL SALE PRICES FOR AFFORDABLE OWNER-OCCUPIED DWELLING UNITS:**

- (1) Every Affordable Owner-Occupied Dwelling Unit required to be established under this Chapter shall be offered for sale to a good-faith purchaser to be used for his or her own primary residence.
- (2) The Director shall publish a Pricing Schedule of sales prices for Affordable Dwelling Units in accordance with the provisions of Section 5-7-11(A)5 and 5-7-11(A)(6). The Director shall update the Pricing Schedule at least annually by December 1.
- (3) At least twenty-five percent (25%) of the Affordable Dwelling Units shall be priced so as to be affordable to households earning seventy percent (70%) of AMI or less, with households earning up to eighty percent (80%) of AMI eligible to purchase said unit.

- (4) In calculating the sales prices of Affordable Dwelling Units, the following relationship between unit size and household size shall be used to determine the income figure at which affordable housing payments are calculated.

Unit Size	Income Level for Household Size
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 household

- (5) Prices for a minimum of twenty-five percent (25%) of the units shall be calculated on the basis of:
- (a) Housing Payments at or below thirty-three percent (33%) of the household income for a household at seventy percent (70%) of AMI at the household size corresponding to the size of the unit;
  - (b) an available fixed-rate thirty (30) -year mortgage, consistent with the average rate published from time to time by Freddie Mac;
  - (c) a down payment of no more than five percent (5%) of the purchase price;
  - (d) a calculation of property taxes;
  - (e) a calculation of homeowner's insurance; and
  - (f) a calculation of condominium or homeowner association fees.
- (6) Prices for up to seventy-five percent (75%) of the units shall be calculated on the basis of:
- (a) Housing Payments at or below thirty-three percent (33%) of the household income for a household at ninety percent (90%) of AMI adjusted for household size;
  - (b) an available fixed-rate thirty (30) -year mortgage, consistent with the average rate published from time to time by Freddie Mac;

- (c) a down-payment of no more than five percent (5%) of the purchase price;
- (d) a calculation of property taxes;
- (e) a calculation of homeowner's insurance; and
- (f) a calculation of condominium or homeowner association fees.

(B) PROCEDURE FOR INITIAL SALE TO THE GENERAL PUBLIC:

- (1) Sixty (60) days prior to offering any Affordable Dwelling Unit for sale, the Applicant shall notify the Department in writing of such offering. The notice shall set forth the number, size, price, and location of Affordable Dwelling Units offered, and shall provide a description of each Dwelling Unit's finishes and availability. The notice shall also include a copy of the Inclusionary Housing Plan, and any such additional information the Director may reasonably require to establish compliance with this Chapter.
- (2) Within ten (10) days after receipt of the notification from the Applicant, the Director shall publish the contents of the notice on the City's website and in a prominently-located posting at the Evanston Civic Center. Within that same ten (10) days of receiving such notice, the Director shall also make such notice available, via mail, facsimile, or electronic mail, to all Housing Providers who have expressed interest in receiving such notices.
- (3) The prospective purchaser shall make application for a "Certificate of Qualification" on a form provided by the Department and available on the City's website. If the Director determines an Applicant is qualified pursuant to the requirements of this Chapter to purchase an Affordable Dwelling Unit, he shall issue a "Certificate of Qualification" to that Applicant. An Applicant must provide documents to verify that he or she satisfies these requirements, including an affidavit that the Affordable Dwelling Unit will be his or her primary residence and evidence of income, household size, and residency or employment in Evanston. The Director shall determine whether or not the prospective purchaser satisfies the requirements of this Chapter within six (6) days after receiving the completed application.
- (4) An Applicant shall not sell any Affordable Dwelling Unit without first obtaining a valid Certificate of Qualification from the prospective purchaser.

- (C) **AGREEMENT TO ENSURE COMPLIANCE DURING THE AFFORDABILITY PERIOD:** Prior to issuance of a building permit for any Covered Development or conveyance of title of any dwelling unit in any Covered Development, the Applicant shall have entered into an agreement with the City regarding the specific requirements and restrictions imposed by the City Council upon the approved Planned Development. The Applicant shall agree to execute any and all documents deemed necessary by the City, including without limitation, deed restrictions, restrictive covenants, and other related instruments, to ensure the continued affordability of the Affordable Dwelling Units in accordance with this Chapter. The Agreement shall set forth the commitments and obligations of the City and the Applicant, and shall incorporate, among other documents, the Inclusionary Housing Plan. If applicable, the Agreement shall also detail the fee *in lieu* or alternative equivalent action of providing on-site Affordable Dwelling Units as set forth in Sections 5-7-8 and 5-7-9, respectively, of this Chapter. The Agreement may be modified by mutual consent of the Applicant and the Director, provided that the Agreement as modified remains in conformity with this Chapter, the ordinance approving the Planned Development, and the Zoning Ordinance.
- (D) **CONTROL OF RESALE PRICES:** The maximum sales price, with the exception of foreclosure sales, permitted on resale of an Affordable Dwelling Unit shall be based on the following formula:
- (1) the original purchase price plus:
    - (a) an inflation adjustment of the original purchase price calculated in accordance with the CPI, using the year of the prior sale as the base year;
    - (b) allowances for closing costs and sales commissions paid by the seller; and
    - (c) the fair market value of approved improvements made to the Unit between the date of original sale and the date of resale, up to an average of five thousand dollars (\$5,000.00) per year. "Approved improvements" are capital improvements which add value to the home, prolong its useful life or adapt it to new uses. Repairs to maintain the home in good condition are not allowable capital improvements. A list of general allowable capital improvements shall be included in the affordability documents signed by the purchaser.

- (E) **FIRST SALE AFTER AFFORDABILITY PERIOD ENDS:** This Section 5-7-11(E) shall apply in the event an affordability period in perpetuity is unlawful or becomes unlawful. Upon the first sale of an Affordable Dwelling Unit after the Affordability Period ends, the seller shall pay to the City out of the sale proceeds a percentage of the difference between the actual sales price and the current affordable resale price as determined pursuant to Subsection 5-7-11(D). Such sums shall be deposited into the Affordable Housing Tax Fund. The percentage is based upon the number of years the seller owned and occupied the Unit, as follows:

Years of Ownership	Share to Affordable Housing Tax Fund
(a) 11 to 15 years	50%
(b) 6 to 10 years	60%
(c) 1 to 5 years	70%

- (2) The Director shall determine whether the price and terms of a resale covered by the preceding paragraph meet the requirements of this Chapter. Upon a finding of compliance, the Director shall terminate the affordable housing controls and execute a recordable release of all applicable mortgages and restrictions.
- (3) If an Affordable Dwelling Unit is sold through a foreclosure or other court-ordered sale, the Affordable Restrictions are extinguished, but any remaining net profit shall be returned to the Department and deposited into the Affordable Housing Tax Fund.

**5-7-12: COMMUNITY LAND TRUST**

The City may create or authorize a Community Land Trust to effectuate the purposes of this Chapter.

**5-7-13: INCENTIVES FOR APPLICANTS:**

For any Covered Development project that complies with the requirements of this ordinance, the City shall follow the procedures described below and provide the described incentives:

- (A) **EXPEDITED APPLICATION PROCESS:** All applications shall be processed by all City departments before other residential land use applications regardless of the original submittal date.
- (B) **FEE DEFERRAL:** All City-required fees related to the Covered Development shall be deferred for payment until the issuance of the temporary certificate of occupancy.

- (C) **FEE WAIVER:** All City-required fees that are specifically related to Affordable Dwelling Units built on the site of the Covered Development shall be waived.

**5-7-14: ENFORCEMENT:**

- (A) The provisions of this Chapter shall apply to all agents, successors and assignees of an Applicant.
- (B) The City 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, who violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) for each offense. Each day such violation or failure to comply is permitted to exist after notification thereof shall constitute a separate offense.

**5-7-15: ADMINISTRATION:** In order to ensure compliance with the provisions of this ordinance, the City may utilize a maximum of fifteen percent (15%) each year of funds from the Affordable Housing Tax Fund for administration.

**5-7-16: SEVERABILITY:** The provisions and Sections of this Chapter shall be deemed separable, and the invalidity of any portion of this Chapter shall not affect the validity of the remainder.

**SECTION 2:** That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 3:** If any provision of this Ordinance 27-O-06 or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance 27-O-06 that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

**SECTION 4:** This Ordinance shall be in force and effect ninety (90) days after its passage, approval, and publication in the manner provided by law, but shall not apply to any development agreement or other agreement specifically authorized by the City Council prior to that date.

**SECTION 2:** That this Ordinance 32-O-07 shall take effect immediately upon its passage, due to the impending effective date of Ordinance 27-O-06, specifically March 17, 2007.

Introduced: \_\_\_\_\_, 2007

Approved:

Adopted: \_\_\_\_\_, 2007

\_\_\_\_\_, 2007

\_\_\_\_\_  
Lorraine H. Morton, Mayor

Attest:

Approved as to form:

\_\_\_\_\_  
Mary P. Morris, City Clerk

\_\_\_\_\_  
Corporation Counsel