

ORDINANCE 2010-21

TO BE ENTITLED: “AN ORDINANCE AMENDING THE CITY OF FRANKLIN MUNICIPAL CODE, CREATING CHAPTER 7 OF TITLE 21 AND HEREAFTER REFERRED TO AS THE INCLUSIONARY HOUSING ORDINANCE FOR PREVIOUSLY APPROVED PLANNED UNIT DEVELOPMENTS (PUD).”

WHEREAS, in order to promote the health, safety, human rights, prosperity, and general welfare of the people of Franklin, Tennessee the Board of Mayor and Aldermen is authorized to prescribe regulations and standards to promote affordable and workforce housing choice within the City; and

WHEREAS, in the legislative judgment of the Board of Mayor and Aldermen found that ordinances that further and promote affordable and workforce housing must be dynamic and modified from time to time to reflect changes in best development practices, model codes, and standards necessary to preserve and promote the private and public interest; and

WHEREAS, the Board of Mayor and Aldermen, in conjunction with Franklin’s Community Development Block Grant Consolidated Plan, found that a separate chapter within Title 21 – Affordable/Workforce Housing of the Municipal Code be designated for encouraging and promoting defining, stating, and outlining various strategies that will promote and sustain affordable and workforce housing within the City of Franklin.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF FRANKLIN, TENNESSEE AS FOLLOWS:

SECTION I. BE IT ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee, that Title 21, Chapter 7 of the Franklin Municipal Code is hereby created and approved to read as follows:

TITLE 21 – AFFORDABLE AND WORKFORCE HOUSING
Chapter 7 – Inclusionary Housing for Previously Approved Planned Unit Developments

SECTION

- 21-701. Purpose and Intent
- 21-702. Definitions
- 21-703. Applicability
- 21-704. Mandatory Provision of Affordable Units
- 21-705. Provision of Affordable Units
- 21-706. Provisions Applicable to Affordable Housing Units On- and Off-Site
- 21-707. Provision of Affordable Housing Units Off-Site
- 21-708. Fees-in-Lieu-of Affordable Housing Unit Provision
- 21-709. Maximum Incomes and Selling Prices
- 21-710. Preservation of Affordability; Deed Restrictions on Resale

Sec. 21-701. Purpose and Intent: The purpose of this ordinance is to implement a coherent set of policies and objectives for the development of affordable housing in previously approved Planned Unit developments.

Sec. 21-702. Definitions:

Affordable/Workforce Housing Reserve. An account established by the Board of Mayor and Alderman (BOMA) in the General Fund used for purchasing land or existing dwelling units for development of affordable housing dwelling units or, to defer City of Franklin water and wastewater system development and access fees that are otherwise payable at the time a building permit is ready to be issued for construction of new residential dwelling units.

Affordable housing unit (AHU). A dwelling unit available at a cost of no more than 30% (mortgage principal, interest, taxes, and insurance) of gross household income of households with family incomes at or below 80% of the Greater Nashville, Davidson, Murfreesboro, Franklin MSA as reported annually by the U.S. Department of Housing and Urban Development. The AHU must be owned and occupied by the qualified affordable housing unit purchaser.

Planned Unit Development (PUD). A tract of land developed as a unit under single ownership or unified control, which includes one or more principal buildings or uses and was processed and approved by the Board of Mayor and Alderman prior to April 1, 2010.

Qualified affordable housing unit purchaser. An individual or family with household incomes that do not exceed 80% of the median income, with adjustments for household size, as reported by the U.S. Department of Housing and Urban Development (HUD).

Sec. 21-703. Applicability: This ordinance shall be applicable to all Planned Unit Developments (PUD) approved prior to April 1, 2010 containing residential dwelling units and where an applicant is requesting an increase in density after April 1, 2010.

Sec. 21-704. Mandatory Provision of Affordable Units: As a condition of approval for a revised concept plan any development referred to in Section 21-703, requires that an applicant requesting increased density to comply with the obligation to provide affordable housing pursuant to this ordinance.

Sec. 21-705. Provision of Affordable Units:

(1) The BOMA shall deny any application for a revised concept plan that increases residential density and fails to comply, at a minimum, with the following requirements for affordable units:

(a) At least ten (10) percent of the total number of requested residential units that exceed the originally approved density shall be established as affordable housing units in any one or combination of methods provided below:

- (i) constructed or rehabilitated subject to the revised concept plan (see Sec. 21.706);
or
- (ii) constructed or rehabilitated on a different site (see Sec. 21-707); or
- (iii) an equivalent fees-in -lieu-of payment may be made (see Sec. 21-708); or
- (iv) an applicant may offer, and the BOMA may accept, donations of land in fee simple, on or off-site, or donation of land to a not-for-profit affordable housing entity. Said consideration shall include a recommendation from the Affordable/Workforce Advisory Committee and Franklin Municipal Planning Commission. The value of donated land shall be equal to or greater than the value of the construction of new affordable units or fees-in-lieu as required by this ordinance. The BOMA may require, prior to accepting land as satisfaction of the requirements of this ordinance, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

The applicant may offer, and the BOMA may accept, any combination of the Sec. 21-705(1)(a)(i)-(iv) requirements provided that in no event shall the total number of units or land area accepted be less than the equivalent value of the fees-in-lieu required by this ordinance.

Sec. 21-706. Provisions Applicable to Affordable Housing Units On- and Off-Site:

(1) Location of affordable units. Except as provided affordable housing units constructed or rehabilitated under this ordinance shall not be situated in less desirable locations as market-rate units and on average, be no less accessible to public amenities, such as open space, as the market-rate units.

(2) Minimum design and construction standards for affordable units. Affordable housing units within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units. Exterior and interior features of affordable units shall comply in all respects with the Barrier Free Construction requirements as provided in Chapter 3 of this Title.

(3) Timing of construction of affordable units or deeding lots. Where feasible, affordable housing units or deeding of lots shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-rate Unit %	Affordable Housing Unit %
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%

Fractions of units shall be counted as the next whole unit.

(5) Marketing Plan for Affordable Units. Applicants under this ordinance shall submit a marketing plan or other method as approved by the BOMA, which describes how the affordable units will be marketed to potential qualified homebuyers. This plan shall include a description of the process (lottery) to be used for selecting buyers.

Sec. 21-707. Provision of Affordable Housing Units Off-Site: As an alternative to the requirements of Sec. 21-706 or 21-708, an applicant subject to this ordinance may develop, construct or otherwise provide affordable units equivalent to those required by Sec. 21-705 off-site. All requirements of this ordinance that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of off-site units shall be approved by the BOMA as an integral element of a revised concept plan, where applicable.

Sec. 21-708. Fees-in-Lieu-of Affordable Housing Unit Provision:

(1) As an alternative to the requirements of Sec. 21-706 or Sec, 21-707, an applicant may contribute to the Affordable/Workforce Housing Reserve to be used for the development and/or rehabilitation of affordable housing in lieu of constructing and offering affordable units within the proposed development or an approved off-site location.

(a) Calculation of fees-in-lieu-of units. The applicant for development subject to this ordinance may pay fees-in-lieu of the construction of affordable units. The fee-in-

lieu of the construction or provision of affordable units is determined to be 2.5% of the total value of the additional lots, as verified by appraisal, of the approved, increased density. For example, if the applicant is approved for 10 additional lots with an appraised value of \$60,000 per lot the developer may opt to pay \$15,000 ($10 \times 60,000 = 600,000 \times 2.5\%$) in lieu of constructing the units in their development. The appraisal and fees-in-lieu shall be paid in full within 120 days from the date the BOMA conditionally approves the concept plan or prior to the recording of the plat, whichever occurs first.

- (b) If the City disputes the applicant's appraisal, the City reserves the right to have their own appraisal completed at the City's expense and the BOMA shall decide the appraisal to accept.

Sec. 21-709. Maximum Incomes and Selling Prices:

(1) To ensure that only eligible, low-to-moderate-income families purchase affordable housing units, the builder and future owners of a deed-restricted affordable unit shall be required to verify the incomes of the purchaser to the Housing Development Coordinator in accordance with the U.S. Department of Housing and Urban Development Part 5 - Definition of Income.

(2) The maximum housing cost for affordable units created under this ordinance is established annually by the Affordable/Workforce Housing Advisory Committee.

Sec. 21-710. Preservation of Affordability; Deed Restrictions and Riders:

(1) Each affordable unit created in accordance with this ordinance shall have limitations governing its initial sale and resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. These controls shall be established through a deed restriction on the property with the City named as a party, and shall be in force for a period of forty (40) years.

- (a) Sale price. The initial sale and resale restrictions shall include a provision that establishes the maximum sale/purchase price that an affordable housing unit established under this ordinance. This price varies as it based on the household income of a qualifying low-to-moderate-income family as calculated using criteria reported annually by HUD and endorsed by the Affordable/Workforce Housing Advisory Committee.
- (b) Right of first refusal to purchase. The developer/builder and future owners of a deed-restricted affordable housing unit created under ordinance shall agree to maintain a rider prepared by the City granting, among other things, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located. The rider shall state if after 180 days (6 months) following the unit being approved for occupancy and a good-faith attempt to sell the affordable unit to a qualified buyer the property is not under contract, the City shall have an additional 90 days to find a qualified buyer who enters into a sales contract. During those 90 days, the City at any time may exercise a right of first refusal to purchase the property at the affordable price. The City shall use this time to identify a qualified, low-to-moderate income family or have the right to purchase any deed-restricted affordable housing unit at of the maximum price that could be charged to an eligible low-to-moderate income family. The City's purchase price shall be based on the same criteria utilized by the current owners, specifically family size and income when the dwelling was initially purchased but pro-rated using current Greater Nashville-Davidson-Murfreesboro-Franklin MSA data.

- (c) The BOMA shall require, as a condition for granting approval of a revised concept plan, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed restriction and rider noted in this Section. The Building Official or their designee shall not issue an occupancy permit for any affordable unit until the deed restriction and rider are recorded.

SECTION II. Severability. In the event that any section, clause, provision, or part of this ordinance shall be, found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable full force and effect. If any part of this ordinance is found to be invalid in any one or more of its several applications, all valid applications that are severable from the invalid applications shall remain in effect.

SECTION III. Repeal and Savings Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions or causes of action which shall have accrued to the City of Franklin prior to the effective date of this ordinance.

SECTION IV. BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that this Ordinance shall take effect from and after its passage on second and final reading, the public health, safety and welfare requiring it.

ATTEST:

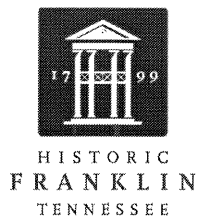
CITY OF FRANKLIN, TENNESSEE:

By: _____
Eric S. Stuckey
City Administrator/Recorder

By: _____
John C. Schroer
Mayor

PASSED FIRST READING


PASSED SECOND READING



MEMORANDUM

February 25, 2010

TO: Board of Mayor and Alderman

FROM: Eric Stuckey, City Administrator 
Vernon Gerth, ACA - Community and Economic Development
Affordable/Workforce Housing Advisory Committee
Clay Matthews, Housing Development Coordinator

SUBJECT: Inclusionary Housing Ordinance for Previously Approved Planned Unit Developments (PUD)

Purpose

The purpose of this memorandum is to provide responses to questions raised during the January Franklin Municipal Planning Commission (FMPC) and Board of Mayor and Alderman (BOMA) joint workshop regarding the proposed Inclusionary Housing Ordinance and to seek BOMA action regarding the proposed Inclusionary Housing ordinance.

Background

In 2008, the City of Franklin Board of Mayor and Alderman adopted an ordinance to establish and promote affordable/workforce housing programs. Affordable and workforce housing has been a concern in Franklin for decades and continues to be a complicated quality of life issue for the community. Some of the key questions that have been part of the community dialog include: Whose responsibility is housing affordability? What are the impacts on Franklin's economy, demographics, diversity, and future development patterns if provisions for affordable housing are not made? Equally important, are provisions for affordable housing best left to the free market or should government intervene? With the appointment of the Affordable/Workforce Housing Advisory Committee (AWHAC), City of Franklin leaders have determined that while the provision of affordable housing is the responsibility of both public and private sectors, the public sector must take the lead.

Over several months the AWHAC has discussed, analyzed, and debated the merits of an Inclusionary Housing Ordinance. The proposed ordinance, applicable to existing, previously approved Planned Unit Developments (PUD), allows Franklin an opportunity to take a small, but meaningful step in developing affordable housing units.

On January 28, 2010, the AWHAC shared the proposed ordinance during the FMPC/BOMA Workshop. During the Workshop, various definitions and implementation responsibilities were discussed. A summary follows.

Summary of January 28, 2010 FMPC/BOMA Workshop Discussion

Questions or concerns to be addressed:

- What is the City's role in the process?
- In the event of mortgage default, what happens?



- Who is responsible for monitoring the deed restrictions?
- Define “previously approved...would this apply to all developments regardless of the stage of completion? (e.g. Fieldstone Farms)
- Can the committee provide examples of other Cities who have successfully implemented an Inclusionary Housing Ordinance?

The City’s role is to:

- Receive the voluntary request from the developer for increased density in a previously approved development.
- Emphasize to the developer that compliance with applicable design guidelines and development ordinances is crucial.
- Require the developer to choose from three options as a condition of the City’s approval of the increased density request.
- Monitor the developer, post increased density approval, to assure their compliance with the conditions.

The Developers role is to:

- Voluntarily request the density increase for a previously approved development.
- Choose their best option of the conditions of approval of their request.
- Comply with the conditions upon approval of their request for increased density.

The Developers options are:

1. **Fees in Lieu** of providing affordable housing.
2. **Renovation of existing housing** in order to provide affordable housing.
3. **New Construction** of affordable housing.

If the developer chooses the **Fees in Lieu** option:

- The Developers role is to:
 - Pay the fee to the City.
- The City’s role is to:
 - Monitor the developer’s compliance with the City’s condition.
 - Calculate the fee.
 - Process the payment of funds.

If the developer chooses the **Renovation** or **New Construction** option:

- The developers role is to:
 - Provide the affordable housing within the corporate limits of the City.
 - Sell the housing to a Low to Moderate income family at an Affordable Price for the family.



- Restrict the deed on the property to require any future transfer/sale of the property be to a qualifying family at an Affordable Price as defined by HUD at the time of the sale or transfer.
- The City's role is to:
 - Monitor the developer's compliance with the City's conditions.

Definitions:

Affordable Price: The mortgage payment would not exceed 30% of the qualifying family's household income, as defined annually by HUD and at the prevailing interest rate at the time for a 30-year conventional loan.

Qualifying Family: Low to Moderate income family with household income not to exceed 80% of the Median Family Income of the Nashville MSA.

Previously Approved Development: Any and all developments previously approved by the City of Franklin, regardless of the construction phase.

Deed Restriction: Restrictions imposed by the developer on the deed of real property that places limitations on the use of the property and remain with the property upon transfer or sale. The developer who imposes the restriction is responsible for the restriction.

Financial Impact

No additional staff is required to implement this ordinance.

Recommendation

Approval of the text amendment is recommended.