

S U M M A R Y

AN ORDINANCE to amend Chapter 14 of the 1984 Detroit City Code, *Community Development*; by adding Article XII, *Inclusionary Housing Requirements*, by adding Sections 14-12-1 through 14-12-16; to set forth the purpose and intent of the Article; to define words and phrases; to set forth the applicability of and exemptions to the ordinance, including establishing the criteria for qualifying transactions subject to the ordinance; to identify the affordability requirements of eligible residential housing projects; to require that qualifying transactions be evidenced by contracts or development agreements that are subject to approval by City Council; to provide for waivers or alternate means of compliance under identified limited circumstances; to require certain minimum requirements in the contracts or development agreements for qualifying transactions; to set forth minimum penalties for violations and options to cure such violations; to establish the Detroit Affordable Housing Development and Preservation Fund; to establish reporting requirements; to provide for the administration and implementation of the ordinance; to require promulgation of affordability guidelines; and to require development of an informational website.

1 **BY COUNCIL MEMBER** _____ :

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5 applicability of and exemptions to the ordinance, including establishing the criteria for qualifying
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7 housing projects; to require that qualifying transactions be evidenced by contracts or development
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9 compliance under identified limited circumstances; to require certain minimum requirements in the
10 contracts or development agreements for qualifying transactions; to set forth minimum penalties for
11 violations and options to cure such violations; to establish the Detroit Affordable Housing
12 Development and Preservation Fund; to establish reporting requirements; to provide for the
13 administration and implementation of the ordinance; to require promulgation of affordability
14 guidelines; and to require development of an informational website.

15 **IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT**
16 **THAT:**

17 Section 1. Chapter 14 of the 1984 Detroit City Code is amended by adding Article XII, *Inclusionary*
18 *Housing Requirements*, Sections 14-12-1 through 14-12-16, to read as follows:

19 **CHAPTER 14. COMMUNITY DEVELOPMENT**

20 **ARTICLE XII. INCLUSIONARY HOUSING REQUIREMENTS**

21 **Sec. 14-12-1. Purpose and intent.**

22 The requirements of this article are intended to:

23 (a) Promote the health, safety and general welfare of the citizens of the City through the

1 implementation of housing goals, objectives and policies that support economically integrated
2 housing opportunities in the development or rehabilitation of housing.

3 (b) Stimulate the production of rental housing available to low income individuals or families.

4 (c) Optimize benefits available to low and moderate income residents by incentivizing
5 affordable residential housing projects.

6 (d) Promote the development of residential housing projects in which at least 20% of
7 the total units are reserved for households with incomes of 80% or less of Area Median Income
8 (AMI).

9 **Sec. 14-12-2. Definitions.**

10 For purposes of this article, the following words and phrases shall have the meaning
11 respectively ascribed to them by this section:

12 *Affordable* means, as generally defined by the U.S. Department of Housing and Urban
13 Development, housing for which the occupants are paying no more than 30% of their income for
14 gross housing costs, including utilities.

15 *Area Median Income (AMI)* means the median family income for the Detroit-Warren-Livonia
16 Metropolitan Statistical Area, as published by the U.S. Bureau of Census and the U.S. Department
17 of Housing and Urban Development.

18 *Consumer Price Index* or *CPI* means the United States Department of Labor Bureau of Labor
19 Statistics Consumer Price Index for all Urban Consumers for the Detroit metropolitan area, or
20 some other comparable index stated in the guidelines established by the department in accordance
21 with Section 14-12-9.

22 *Department* means the housing and revitalization department.

23 *Developer* means the legal or beneficial owner or the representative thereof, of a parcel of

1 land proposed for inclusion in a development, including the holder of an option or contract to
2 purchase. The developer performs the functions necessary to obtain land control and financing to
3 construct or rehabilitate a property and expects to assume the risks and rewards upon completion
4 of the project. For purposes of this article, developer does not include a governmental entity or a
5 commercial lending institution other than a commercial lending institution affiliated with the
6 developer.

7 *Development or develop* means the division of a parcel of land into two or more parcels; the
8 construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any
9 residential buildings; any use or change in use of any buildings or land; any extension of any use
10 of land or any clearing, grading, excavation or other movement of land, for which permission may
11 be required pursuant to the City of Detroit zoning ordinance.

12 *Dwelling* means a building or portion of it designed for or occupied in whole or in part as the
13 home, residence, or sleeping place of one or more individuals, either continuously, permanently,
14 temporarily, or transiently. Dwelling does not include a hotel, motel, bed and breakfast, hostel, or
15 other lodging facilities.

16 *Dwelling unit* means a building or portion of it designed and used for residential occupancy
17 by a single household and that includes exclusive sleeping, cooking, eating and sanitation facilities.

18 *Eligibility criteria* means, with respect to rental housing, at the time of the first rental or any
19 subsequent lease renewals or extensions, 20% of the dwelling units required to be affordable to
20 households earning up to 80% of the AMI.

21 *Fund* means the Detroit Affordable Housing Development and Preservation Fund established
22 under Sec. 14-12-7.

23 *Qualifying transaction* means any of the following:

- 1 (1) Type 1 - The sale or transfer of City-owned real property at less than true cash value
2 which is intended to be developed for a residential housing project; or
- 3 (2) Type 2 - Direct monetary support from the City of at least \$500,000, adjusted
4 annually based on changes in the CPI, for a residential housing project; or
- 5 (3) Type 3 - Commitment of Community Development Block Grant funds of the U.S.
6 Department of Housing and Urban Development controlled by the City of at least
7 \$500,000, adjusted annually based on changes in the CPI, for a residential housing
8 project; or
- 9 (4) Type 4 - Commitment of HOME Investment Partnership Program funds of the U.S.
10 Department of Housing and Urban Development controlled by the City of at least
11 \$500,000, adjusted annually based on changes in the CPI, for a residential housing
12 project; or
- 13 (5) Type 5 - Commitment of funds of at least \$500,000, through an as yet unidentified
14 State of Michigan or Federal housing development program.

15 *Residential housing project* means one or more buildings that collectively contain at least 20
16 dwelling units offered for rent on one or more tax parcels or lots marketed as a single or unified
17 project or sharing common elements. This includes, but is not limited to, dwelling units within a
18 mixed use development or in a planned development district as set forth in the City of Detroit
19 zoning ordinance.

20 *Substitute structure* has the meaning as defined in Sec. 14-12-4(d)(3).

21 **Sec. 14-12-3. Applicability; exemptions.**

22 (a) Subject to subsections (b) and (c), all qualifying transactions brought before the City
23 Council for approval are subject to the affordability requirements set forth in Sec. 14-12-5.

1 (b)The following facilities are exempt from the requirements of this article:

2 (1) Nursing homes, residential care facilities, and assisted care living facilities;

3 (2) Dormitories and group quarters, as defined by the U.S. Bureau of Census; and

4 (3) Predominantly transient-occupied lodging such as hotels, motels, hostels, and bed
5 and breakfasts.

6 (c)The requirements of this article do not supersede requirements or regulations set forth by
7 the United State Department of Housing and Urban Development or its subsidiaries or agencies;
8 or requirements or regulations set forth by the State of Michigan or its subsidiaries or agencies.

9 **Sec. 14-12-4. Council approval; waivers and alternate means of compliance.**

10 (a)Except as provided in this section, the City Council shall not approve any qualifying
11 transaction unless it conforms to this article.

12 (b)All requests for approval of qualifying transactions brought before the City Council shall
13 be accompanied or supplemented by a report from the department which establishes that the
14 evaluation and processing of the qualifying transaction was performed pursuant to the guidelines
15 established in Sec. 14-12-9.

16 (c)If the department concludes that a waiver under subsection (d) is justified for a residential
17 housing project, the report to the City Council shall state the grounds for the department's
18 conclusion and proposed findings for the City Council and be posted on the City's website.

19 (d)Notwithstanding the provisions of subsection (a), if the developer or owner have previously
20 agreed to provide affordable housing subject to an agreement approved by the city council it shall
21 be deemed consistent with this waiver provision. Upon request of the director of the department,
22 the City Council may also approve a qualifying transaction that does not conform to this article,
23 where City Council finds and declares in the authorizing resolution that:

1 (1) The application of the affordability requirements set forth in Sec. 14-12-5 would
2 produce a result inconsistent with the purpose and intent of this article as set forth in
3 Sec. 14-12-1; or

4 (2) The application of the affordability requirements of this article would have a
5 significant negative impact on the economics of the residential housing project thus
6 rendering it unviable; or

7 (3) The developer or owner provides satisfactory assurance that the affordability
8 requirements applicable to the structure(s) comprising the residential housing project
9 are satisfied by the provision of affordable dwelling units in one or more separate
10 structures (“substitute structure”) where all of the following criteria are satisfied:

11 (i) all structures are to be developed and placed into service within a 24 month
12 period from the completion of the first structure comprising the residential
13 housing project,

14 (ii) all substitute structures are either within a comparable neighborhood to that of
15 the residential housing project with comparable access to employment centers,
16 transportation, and other quality of life indicators, or are no more than one-
17 quarter mile away from the residential housing project, and

18 (iii) the affordability requirements including the substitute structures are satisfied for
19 the residential housing project as a whole within the 24 month development
20 period. The 24 month timeframe is calculated from the completion of the first
21 structure comprising the residential housing project. The developer shall notify,
22 in writing, the Director of the Housing and Revitalization Department and the
23 City Council of delays in meeting this timeframe. This notification shall include

1 the reason for such delay(s) and the anticipated completion date.

2 (e) The requirements of this article applicable to a residential housing project under or after
3 development may be waived or modified in accordance with subsections (c) and (d).

4 **Sec. 14-12-5. Affordability requirements of eligible residential housing developments.**

5 (a) All qualifying transactions shall be made pursuant to a contract or development agreement
6 between the City and the developer.

7 (b) The agreement shall at minimum include the following provisions:

8 (1) Applicable affordability requirements:

9 (i) For Type 1 and Type 2 Qualifying Transactions at least 20% of the dwelling units
10 for rent or lease as part of the residential housing project shall be affordable to and
11 provided to households earning up to 80% percent of the AMI. If the product includes
12 a fraction, a fraction of 0.5 or greater shall be rounded up to the next higher whole
13 number and a fraction less than 0.5 shall be rounded down to the next lower whole
14 number.

15 (ii) For Type 3 and Type 4 Qualifying Transactions at least 15% of the dwelling units
16 for rent or lease as part of the residential housing project shall be affordable to and
17 provided to households earning up to 60% percent of the AMI; and at least 5% of the
18 dwelling units are required to be affordable to and provided to households earning
19 up to 50% of AMI. If the product includes a fraction, a fraction of 0.5 or greater shall
20 be rounded up to the next higher whole number and a fraction less than 0.5 shall be
21 rounded down to the next lower whole number. Residential Housing Projects
22 meeting the definition of a Type 1 or Type 2 Qualifying Transaction and a Type 3 or
23 Type 4 Qualifying Transaction are subject to this subpart.

1 (iii) For Type 5 Qualifying transactions affordability requirements shall follow the
2 criteria set forth by the applicable State or Federal regulations of the relevant funding
3 program.

4 (2) The affordable dwelling units shall remain affordable for 30 years after the time of
5 the issuance of the certificate of occupancy for that unit (or after the first day of the
6 initial lease if no such certificate is issued). The affordability requirement shall
7 automatically terminate if the property is taken by eminent domain, foreclosed upon
8 by a bona fide lender, or a deed in lieu of foreclosure is given to a bona fide lender.
9 Upon request after the termination of the affordability requirement, the department
10 shall issue a release of the affordability requirement in recordable form.

11 (3) Income verification and confirmation of eligibility criteria shall occur through
12 production of information, including rent rolls, to the department, on an annual basis
13 or upon request.

14 (4) If the requirements of this article are not met or maintained, the developer or owner
15 shall be responsible for financial penalties as set forth in Sec. 14-12-6.

16 (5) The provisions of the contract or development agreement relating to affordable
17 housing shall run with the land and be binding on all subsequent owners of the
18 residential housing project.

19 (c) The affordability requirements, obligations, and penalties shall be set forth in a restrictive
20 covenant or other appropriate document in recordable form, fully executed by the owner of the
21 residential housing project, and recorded with the Wayne County Register of Deeds.

22 **Sec. 14-12-6. Penalties for violation; options to cure.**

23 (a) The contract or development agreement for the qualifying transaction shall contain

1 provisions such that if the requirements of this article are not met or maintained, the developer or
2 owner shall be responsible for the payment to the City of the following penalties:

3 (1) Upon the failure to maintain and provide the required level of dwelling units
4 available for rent or lease at affordable rates, both of the following:

5 (i) the excess of actual rent received over the affordable rate that would otherwise
6 apply, and

7 (ii) a penalty for each unit not in compliance in the amount not less than 25% of the
8 affordable monthly rent for each month or part of a month of noncompliance.

9 (2) The enforcement costs of the City.

10 (3) Any other sanctions or penalties under applicable laws, rules or regulations.

11 (b)The penalty described in subsection (a)(1)(ii) shall be assessed to the developer or owner
12 subject to the following:

13 (1) Prior to the application of the penalty, the owner shall have 60 days to cure the
14 noncompliance.

15 (2) If the owner has failed to cure the noncompliance within 60 days, the penalty shall
16 be assessed from the first day of noncompliance.

17 (3) The 60 day cure period may be extended by the director of the department for a
18 reasonable specifically-stated period for good cause shown, which shall be stated in
19 the extension document. Examples of good cause include, but are not limited to,
20 situations where the current qualifying tenant's income increases above the
21 applicable AMI thresholds and situations where affordable dwelling units are not
22 currently occupied by qualifying tenants but the owner is actively marketing the units
23 to qualifying tenants.

1 **Sec. 14-12-7. Detroit Affordable Housing Development and Preservation Fund.**

2 (a) The City shall create an appropriation within the department's budget deemed the Detroit
3 Affordable Housing Development and Preservation Fund for the deposit and expenditure of
4 penalties collected pursuant to this article.

5 (b) The purpose of the Fund is to:

6 (1) Foster and promote the purpose and intent of this article;

7 (2) Prioritize the means by which funding for new residential housing projects addresses
8 housing for those with the greatest economic need, being households earning up to
9 50% of AMI;

10 (3) Increase accessibility to safe, affordable housing for those facing high housing costs;

11 (4) Prioritize permanent housing affordability and sustainability within the City; and,

12 (5) Prioritize the preservation of existing affordable housing units.

13 (c) In addition to the deposit of penalties for violations under Sec. 14-12-6, the City's annual
14 budget shall contain an appropriation to the Fund. It is expected that the annual appropriation will
15 be not less than 20% of the net receipts of all commercial property sales during the previous fiscal
16 year.

17 (d) Unless specifically stated otherwise in the budget closing resolution, funds not expended
18 within such appropriation during a given fiscal year shall remain in such appropriation and carry
19 forward into the subsequent fiscal year to fund future affordable residential housing projects and
20 other eligible activities.

21 (e) Subject to approval of the City Council, the City may also accept and deposit into the Fund
22 or subaccounts of the Fund donations and grants from private or public sources, subject to
23 conditions of such grant, for use in accordance with the purpose of the Fund.

1 (f) Agreements or contracts for the expenditures from the Fund shall be authorized by the City
2 Council.

3 (g) In addition to the affordability guidelines established pursuant to Sec. 14-12-9, the
4 department shall develop and publish on the City's website guidelines requiring Fund monies to
5 be used to support housing opportunities for Detroit residents with income up to 50% AMI for
6 activities consistent with this article.

7 (1) To the extent possible, not less than 70% of Fund monies shall be allocated to directly
8 benefit households earning up to 30% of AMI; the remaining 30% of monies may be
9 used to benefit households earning up to 50% AMI. Fund monies shall not be used
10 to benefit households earning more than 50% of AMI.

11 (2) Not less than 70% of Fund monies shall be allocated in areas that are located in areas
12 of persistent poverty, as identified by the U.S. Census Bureau, and/or are located
13 within identified Housing and Revitalization Department Multi-Family Target
14 Areas.

15 (3) Eligible activities include, but are not limited to, enforcement of this article, creation
16 and preservation of affordable housing units, compliance with standards for
17 accessible design and other activities under the Americans with Disabilities Act, 42
18 U.S.C. 12101, et seq. or similar state laws, administration and disbursement of grant
19 funds for home repair, homelessness prevention, neighborhood revitalization,
20 activities of a nonprofit corporation that develops and stewards affordable housing,
21 and any other activities consistent with this article.

22 (4) The department shall provide the city council, planning and development department
23 and the law department with reasonable opportunity to review and comment on the

1 proposed guidelines before final implementation.

2 (5) City Council may select individuals with expertise in the creation and/or
3 sustainability of affordable housing, or individuals directly impacted by or who
4 reside in subsidized housing, to serve in an advisory capacity to City Council as part
5 of its due diligence in considering recommendations from the department. These
6 individuals may include representatives from a disability rights organization, fair
7 housing experts, developers of extremely low income housing, an organization
8 representing people experiencing homelessness, and/or affordable housing policy
9 experts.

10 **Sec. 14-12-8. Reporting requirements.**

11 (a) The department shall prepare and submit an annual report to the Mayor and the City
12 Council that includes, at a minimum, the following information:

13 (1) The number of qualifying transactions presented to City Council in the preceding
14 year.

15 (i) The number of qualifying transactions approved by City Council.

16 (ii) The number of qualifying transactions denied by the City Council.

17 (2) The number of dwelling units created that meet the affordability requirements.

18 (3) The level of compliance in maintaining the affordability of dwelling units created in
19 previous years.

20 (4) The number of written notifications issued for noncompliance with this article.

21 (5) The total amount of penalties issued and collected for failure to cure noncompliance.

22 (6) The number and circumstances of each extension granted under Sec. 14-12-6(b).

23 (7) The list of itemized expenditures from the Detroit Affordable Housing Development

1 and Preservation Fund.

2 **Sec. 14-12-9. Administration and implementation; affordability guidelines.**

3 (a) The director of the department shall establish procedures for the implementation,
4 administration, and enforcement of this article.

5 (b) With the assistance of the department of innovation and technology, the department shall
6 develop and maintain an informational website for the registration and identification of affordable
7 housing opportunities across the City.

8 (c) Within 120 days from the effective date of this ordinance, the department shall develop
9 and publish on the City's website guidelines for the evaluation and processing of any qualifying
10 transactions. The department shall provide the planning and development department and the law
11 department with reasonable opportunity to review and comment on the proposed guidelines before
12 final implementation.

13 (1) The guidelines shall, at minimum, include the affordability requirements set forth in
14 Sec. 14-12-5, the method used to determine the CPI, the current AMI, the currently
15 applicable affordable housing costs based on the current AMI, and the Fund
16 guidelines described in Sec. 14-12-7(g).

17 (2) Any additional requirements or protocols contained in the guidelines shall align with
18 the purpose and intent of this article as set forth in Sec. 14-12-1.

19 (3) The department shall update the website as needed, and at minimum to indicate any
20 adjustments due to changes in the CPI or the AMI.

21 **Secs. 14-12-10 – 14-12-16. Reserved.**

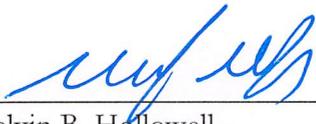
22 **Section 2.** This ordinance is hereby declared necessary to preserve the public peace, health, safety,
23 and welfare of the People of the City of Detroit.

1 **Section 3.** All ordinances, or parts of ordinances, that conflict with this ordinance are repealed.

2 **Section 4.** This ordinance shall become effective one month after publication in accordance with

3 paragraph 3 of Section 4-118 of the 2012 Detroit City Charter.

Approved as to form:



Melvin B. Hollowell
Corporation Counsel