



**PLAN COMMISSION AGENDA ITEM EXECUTIVE SUMMARY**

<b>Project Title/Address:</b>	General Amendment: Inclusionary Housing		
<b>City Staff:</b>	Ellen Johnson, Planner		
<b>PUBLIC HEARING 9/22/15</b>	X	<b>MEETING 9/22/15</b>	X

**APPLICATION:** General Amendment

**ATTACHMENTS AND SUPPORTING DOCUMENTS:**

Staff Report	Application for General Amendment
Ch. 17.18 "Inclusionary Housing"	

**SUMMARY:**

Upon a recommendation from the Housing Commission, staff is proposing to remove the provisions of the Inclusionary Housing Ordinance (IHO), Ch. 17.18, from the Zoning Ordinance for the purpose of the placing the Inclusionary Housing provisions in a stand-alone title of the City Code.

The IHO requires developers of new residential developments to provide a proportionate share of affordable housing units, or a fee in-lieu of providing units.

Over the past several months, the Housing Commission has discussed several amendments to the IHO aimed at making the ordinance less onerous for the development community and bringing it in line with Illinois Housing Development Authority requirements established under the Affordable Housing Planning and Appeals Act.

One of the amendments recommended by the Housing Commission was to remove the IHO from the Zoning Ordinance (Title 17) and place the IHO in its own title of the City Code, based on the following:

- The IHO is not directly related to zoning. The Zoning Ordinance governs the physical form of development, while the IHO relates only to the cost of residential units.
- The location of the IHO within the Zoning Ordinance requires affordable housing proposals and amendments to the IHO to be reviewed by both the Housing Commission and the Plan Commission, even though the Housing Commission is specifically tasked with advising City Council on housing-related policy.

**SUGGESTED ACTION:**

Conduct the public hearing and close if all testimony has been taken.

Staff has placed this item on the meeting portion of the agenda for a vote should the Plan Commission feel that they have enough information to make a recommendation.

**INFO / PROCEDURE – GENERAL AMENDMENT APPLICATIONS:**

- See **Sec. 17.04.320** regarding General (Text) Amendments. A General Amendment (or Text Amendment) is an application requesting a change to the Zoning Ordinance, Title 17 of the City Code. A change may be requested to a numerical standard (such as a setback requirement) or to any other text of the Zoning Ordinance. Often, a General Amendment is proposed to change the standards that apply to a specific zoning district or a specific land use or business category. Changes to the text apply to all properties in the City that are located in the same zoning district or fall within the same category of land use or business. A General Amendment application may also involve changes to procedures or application requirements that are listed in the Zoning Ordinance.
- Public hearing is required. No mailed notice to surrounding property owners.
- Findings: 6 items of information for Plan Commission to consider in making a recommendation; all items need not be in the affirmative to recommend approval.

Community & Economic Development  
Planning Division

Phone: (630) 377-4443

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**Staff Report**

**TO:** Chairman Todd Wallace  
And the Members of the Plan Commission

**FROM:** Ellen Johnson, Planner

**RE:** Application for a General Amendment to Title 17 of the City Code (Zoning Ordinance) regarding removing the Inclusionary Housing chapter from the Zoning Ordinance for the purpose of placing the Inclusionary Housing provisions in a stand-alone title of the City Code.

**DATE:** September 18, 2015

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**I. GENERAL INFORMATION**

Project Name: General Amendment – Inclusionary Housing

Applicant: City of St. Charles

Purpose: Remove the Inclusionary Housing chapter from the Zoning Ordinance for the purpose of placing the Inclusionary Housing provisions in a stand-alone title of the City Code.

**II. BACKGROUND**

The Inclusionary Housing chapter of the Zoning Ordinance (Ch. 17.18), known as the Inclusionary Housing Ordinance (IHO), was adopted in 2008. The IHO requires developers of new residential developments to provide a proportionate share of affordable housing units, or a fee in-lieu of providing units.

Over the past several months, the Housing Commission has discussed several amendments to the IHO aimed at making the ordinance less onerous for the development community, and bringing it in line with Illinois Housing Development Authority requirements established under the Affordable Housing Planning and Appeals Act. City Council also discussed the IHO at its mid-year retreat in June and provided direction to the Housing Commission related to these amendments.

At its August meeting, the Housing Commission unanimously recommended approval of several amendments to the IHO. One of these recommended amendments was to remove the IHO from the Zoning Ordinance (Title 17) and place the IHO in its own title of the City Code.

### **III. ANALYSIS**

#### Rationale

The basis for removing the IHO from the Zoning Ordinance is as follows:

- The Zoning Ordinance governs the physical form of development. The IHO does not relate to the configuration of development, only to the cost of units.
- Due to the fact that the IHO is located within the Zoning Ordinance, the Plan Commission must review developments for compliance with the IHO as part of the development review process. However, the Plan Commission’s charge is to review the physical development of property, regardless of the residential unit cost of a particular development. The Plan Commission does not have the expertise in affordable housing matters that the Housing Commission possesses. This has created complications with the development approval process in the past.
- Similarly, because the IHO is located within the Zoning Ordinance, in order to amend the IHO, a General Amendment application must be filed. As such, the Plan Commission is required to review and provide a recommendation to City Council regarding amendments to the IHO. The Housing Commission also provides a recommendation to both the Plan Commission and City Council regarding amendments to the IHO.

However, it is the duty of the Housing Commission, as stated in Title 2, Ch. 2.25, to provide advice to the City Council on affordable housing and programs and policies, including the IHO. The Housing Commission worked over several years to establish the IHO, and has recommended amendments in the past for making the IHO more workable. The Housing Commission is made up of community members who have background, knowledge, and/or advocacy experience related to affordable housing and/or the housing market. They are well-positioned to advise City Council on these matters. However, due to the IHO’s location in the Zoning Ordinance, both the Housing Commission and the Plan Commission must advise Council on the IHO. This double citizen advisory committee review process is not particularly efficient or effective.

#### Planning Advisory Service Response

Staff submitted a Planning Advisory Service (PAS) inquiry to the American Planning Association regarding the location of IHOs in the municipal codes of other communities around the country. The PAS response indicated that, while relatively few communities have inclusionary housing requirements, for those that do, there is not a consistent location of these provisions within municipal codes. Many IHOs are located within zoning ordinances; however others are located within separate housing chapters, or in stand-alone municipal code titles.

#### Opinion of Legal Counsel

The City Attorney has provided staff with a legal opinion pertaining to the proposed General Amendment. The City Attorney stated that it would be permissible for the IHO to be removed from the Zoning Ordinance and placed in a separate title within the City Code.

### **IV. PROPOSAL**

Staff proposes the following:

- Remove Ch. 17.18 “Inclusionary Housing” from the Zoning Ordinance (Title 17).
- Remove references within the Zoning Ordinance to Ch. 17.18 “Inclusionary Housing”:

- Remove Ch. 17.04 “Administration”, Section 17.04.400.C “Limitations to Relief from the Minimum Requirements of the Zoning Ordinance”, which states, “*The provisions and requirements established in Chapter 17.18, entitled “Inclusionary Housing” are not eligible deviations through a proposed PUD.*”
- In Appendix A “Application Checklists”, Sections 1, 5, 6, and 7, remove reference to Ch. 17.18 Inclusionary Housing. The appropriate title will be referenced once established.

## **V. HOUSING COMMISSION RECOMMENDATION**

The Housing Commission voted 6-0 to recommended approval of the proposed amendment, along with other changes to the IHO, at its meeting on August 20, 2015.

## **VI. SUGGESTED ACTION**

Conduct the public hearing on the General Amendment and close if all testimony has been taken.

Staff has placed this item on the meeting portion of the agenda for a vote should the Plan Commission determine that they have enough information to make a recommendation.

Staff has provided responses to the findings of fact for General Amendment for the Plan Commission’s consideration.

## **VII. ATTACHMENTS**

- Application for General Amendment, filed by staff 9/1/15
- Inclusionary Housing Ordinance, Ch. 17.18 “Inclusionary Housing”

**CITY OF ST. CHARLES**  
TWO EAST MAIN STREET  
ST. CHARLES, ILLINOIS 60174-1984



COMMUNITY & ECONOMIC DEV./PLANNING DIVISION      PHONE: (630) 377-4443    FAX: (630) 377-4062

**GENERAL AMENDMENT APPLICATION**

<b>CITYVIEW</b>	
Project Name:	<u>GA-Inclusionary Housing</u>
Project Number:	<u>2015</u> -PR- <u>020</u>
Application Number:	<u>2015</u> -AP- <u>032</u>



*Instructions:*

*To request an amendment to the text of the St. Charles Zoning Ordinance (City Code Title 17), complete this application and submit it with all required attachments to the Planning Division.*

*City staff will review submittals for completeness and for compliance with applicable requirements prior to establishing a meeting or public hearing date for an application.*

*The information you provide must be complete and accurate. If you have a question please call the Planning Division and we will be happy to assist you.*

<b>Applicant:</b>	Name	City of St. Charles	Phone	630-377-4443
	Address	2 E. Main St. St. Charles, IL 60174	Fax	630-377-4062
			Email	ejohnson@stcharlesil.gov

**Attachment Checklist**

*If multiple zoning or subdivision applications are being submitted concurrently, do not submit duplicate checklist items or plans. Fee must be paid for each application.*

- APPLICATION FEE:** Application fee in accordance with Appendix B of the Zoning Ordinance (\$500)
- REIMBURSEMENT OF FEES AGREEMENT:**  
An original, executed Reimbursement of Fees Agreement and deposit of funds in escrow with the City, as provided by Appendix B of the Zoning Ordinance.
- REIMBURSEMENT OF FEES INITIAL DEPOSIT:**  
Deposit of funds in escrow with the City. (For a General Amendment application only: \$1,000 deposit.)
- FINDINGS:** Fill out the attached form or submit responses on a separate sheet.

□ **WORDING OF THE REQUESTED TEXT AMENDMENT**

**What is the amendment regarding?**

Relocation of the Inclusionary Housing chapter (Ch. 17.18) from the Zoning Ordinance to another Title  
\_\_\_\_\_ of the City Code.  
\_\_\_\_\_

**What sections are proposed for amendment?**

Chapters(s): 17.18 ; 17.04 ; Appendix A

Section(s): Sections 17.18.010 - 17.18.140 (entire chapter) ; Section 17.04.400.C ; Sections 1, 5, 6, 7

**The wording of the proposed amendment:** Insert below or attached wording on a separate page.

See attached.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I (we) certify that this application and the documents submitted with it are true and correct to the best of my (our) knowledge and belief.**

Ellen Johnson                      9-1-15  
Applicant                                      Date

# FINDINGS OF FACT – GENERAL AMENDMENT



The St. Charles Zoning Ordinance requires the Plan Commission to consider factors listed below in making a recommendation to the City Council.

As an applicant, the “burden of proof” is on you to show why the proposed amendment is appropriate. Therefore, you need to “make your case” by explaining how the following factors support your proposal. If a factor does not apply to the amendment in question, indicate “not applicable” and explain why it does not apply.

See attached.

\_\_\_\_\_  
*Amendment Description/Ordinance Section Number* \_\_\_\_\_  
*Date*

### From the Charles Zoning Ordinance, Section 17.04.320.C:

In making its recommendation to grant or deny an application for a Zoning Text Amendment, the Plan Commission shall consider:

1. The consistency of the proposed amendment with the City’s Comprehensive Plan.

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\_\_\_\_\_  
\_\_\_\_\_

2. The consistency of the proposed amendment with the intent and general regulations of this Title.

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3. Whether the proposed amendment corrects an error or omission, adds clarification to existing requirements, is more workable than the existing text, or reflects a change in policy.

\_\_\_\_\_  
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4. The extent to which the proposed amendment would be in the public interest and would not serve solely the interest of the applicant.

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5. The extent to which the proposed amendment creates nonconformities.

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6. The implications of the proposed amendment on all similarly zoned property in the City.

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### **Ch. 17.18 Inclusionary Housing**

Remove entire chapter from the Zoning Ordinance, Title 17 of City Code in order to place all Inclusionary Housing provisions in a stand-alone title of the City Code.

### **Ch. 17.04, Section 17.04.400.C**

Remove this section, which states:

*Limitations to Relief from the Minimum Requirements of the Zoning Ordinance. The provisions and requirements established in Chapter 17.18, entitled “Inclusionary Housing” are not eligible deviations through a proposed PUD.*

### **Appendix A, Sections 1, 5, 6, 7**

Under the Inclusionary Housing Summary checklist item, delete reference to “Ch. 17.18, Inclusionary Housing” and “section 17.18.050”. The appropriate chapter/section will be referenced once established.

## **Findings of Fact – General Amendment**

### **1. The consistency of the proposed amendment with the City’s Comprehensive Plan.**

The Comprehensive Plan states the following as a Residential Land Use Policy: “Maintain a diverse and affordable mix of housing types to allow St. Charles to continue to attract and retain facilities and residents.” The Inclusionary Housing Ordinance (IHO) is referenced as a means to “ensure that an adequate stock of affordable housing is, and remains, available in the City of St. Charles.” The provisions of the IHO, which require developers to provide a proportionate share of affordable housing or fee in-lieu thereof, will remain but will be relocated to a separate title in the City Code.

### **2. The consistency of the proposed amendment with the intent and general regulations of this title.**

The purpose and intent of the Zoning Ordinance, as stated in Section 17.02.020, does not include affordable housing.

The purpose and intent of the IHO, as stated in Section 17.18.010, will remain the same when the provisions are relocated to a separate title in the City Code. Developers will continue to be required to provide a proportionate share of affordable housing in new residential developments, or pay a fee in-lieu of providing units.

### **3. Whether the proposed amendment corrects an error or omission, adds clarification to existing requirements, is more workable than the existing text, or reflects a change in policy.**

As a result of removing the IHO provisions from Title 17, the Zoning Ordinance, the procedure for any future amendments to the Inclusionary Housing provisions of the City Code will not involve a public hearing or recommendation by the Plan Commission. The Plan Commission will continue to advise Council on matters related to physical development, while the Housing Commission will be the only citizen advisory commission that makes a recommendation to Council regarding changes to the IHO. This will streamline the amendment approval process.

### **4. The extent to which the proposed amendment would be in the public interest and would not serve the interest of the applicant.**

The Housing Commission is comprised of citizens that have expertise and familiarity in housing related issues. The Commission will continue to serve the public interest by working to maintain and increase the availability of affordable housing in the community and advising City Council in efforts to do so.

### **5. The extent to which the proposed amendment creates nonconformities.**

The amendment will not create nonconformities. The IHO, no matter its location within the City Code, does not impact existing development and does not regulate the physical development of property.

### **6. The implications of the proposed amendment on all similarly zoned property in the City.**

The IHO provisions will continue to apply to all new residential development regardless of the zoning district in which the development is located.

Chapter 17.18

**INCLUSIONARY HOUSING**

Sections:

17.18.010	Purpose and Intent
17.18.020	Definitions
17.18.030	Applicability
17.18.040	Affordable Units Required
17.18.050	Fee in Lieu of Affordable Units
17.18.060	Density Bonus
17.18.065	Alternative Affordable Housing Plan
17.18.070	Development Cost Offsets
17.18.080	Location, Phasing and Design
17.18.090	Maximum Price of Affordable Housing Units
17.18.100	Ownership and Occupancy of Affordable Units
17.18.110	Development Applications
17.18.120	Affordable Housing Agreement and Documents
17.18.130	Implementation
17.18.140	Enforcement

**17.18.010 Purpose and Intent**

To provide Affordable Dwelling Units within new residential developments by requiring Developers to provide a proportionate share of affordable housing, or fees in lieu thereof, to ensure that an adequate stock of affordable housing is, and remains, available in the City of St. Charles. While this Chapter provides specific alternatives to the production of on-site affordable Dwelling Units, the intent and preference of this Chapter is for the provision of affordable Dwelling Units constructed on site and privately produced, owned, and managed.

**17.18.020 Definitions**

The following words and phrases shall have the meanings set forth in this Section. Words and phrases not defined in this Section, but defined elsewhere in the St. Charles Municipal Code, shall have the meanings set forth therein. In the event that a word or phrase is not defined, it shall have the common and ordinary meaning ascribed thereto. In interpreting the provisions of this Chapter, in the event there is a conflict between a definition in this Section and one found elsewhere, the definition in this Section shall apply.

- A. Affordable Housing: Housing that has a sales price or rental amount that is within the means of an “Eligible Household” as defined herein. In the case of Dwelling Units for sale, housing that is affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. In the case of Dwelling Units for rent, housing that is affordable means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit.
- B. Affordable Unit: A Dwelling Unit of Affordable Housing that satisfies the requirements of this Chapter.
- C. Affordable Housing Agreement: Any agreement between the City and an Applicant as required by Section 17.18.120 of this Chapter.

## INCLUSIONARY HOUSING

- D. Applicant: Any Developer who applies to the City to receive approval of a Residential Development pursuant to this Chapter.
- E. 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 U.S. Department of Housing and Urban Development, and adjusted for household size.
- F. Base Density: The number of Dwelling Units permitted to be constructed on a parcel in conformance with the requirements of the Zoning District in which it is located, prior to applying any applicable density bonus.
- G. Developer: Any person, firm, corporation, partnership, limited liability company, association, joint venture, or any entity or combination of entities that develops a dwelling or units, not including any governmental entity or a Housing Provider as defined herein.
- H. Director: The Director of the Community Development Department, or his or her designee.
- I. Dwelling Unit: A Dwelling Unit as defined in Chapter 17.30, "Definitions", of the St. Charles Zoning Ordinance. For purposes of this Chapter, the term Dwelling Unit includes Affordable Units and Market Rate Units.
- J. Eligible Household: A household with an income at or below eighty percent (80%) of the Area Median Income (AMI) for for-sale units and at or below sixty percent (60%) of the AMI for rental units, based on the size of the household.
- K. Housing Provider: An entity approved by the City of St. Charles to develop, manage or own Affordable Dwelling Units.
- L. Market Rate Units: All Dwelling Units in a Residential Development that are not Affordable Units as defined herein.
- M. Residential Development: The establishment of one or more Dwelling Units in any of the following instances:
  - 1. Construction of one or more Dwelling Units pursuant to a final Plat of Subdivision, where the Preliminary Plan is approved by the City Council after the effective date of this Chapter.
  - 2. Construction of one or more Dwelling Units within a Planned Unit Development, where the Preliminary PUD Plan is approved by the City Council after the effective date of this Chapter.
  - 3. Construction of one or more Dwelling Units on a lot created after February 15, 2008 by means other than a Plat of Subdivision or Planned Unit Development, including but not limited to a division conforming to the Statutory Plat Act Exemptions.
  - 4. Issuance of a building permit for a new Dwelling Unit following demolition of a Dwelling Unit on the lot, when: a) the new Dwelling Unit is not intended to be occupied by the same household or individual that occupied the Dwelling Unit that was demolished, and b) the last sale price to demolition of the Dwelling Unit was at or below the price of an Affordable Unit with the same number of bedrooms; if the last sale occurred more than two years prior to demolition, then the equalized market value assigned by the Township Assessor as of the date of demolition shall be used.
  - 5. Issuance of a building permit for alteration of an existing building, in whole or in part, that increases the number of Dwelling Units from the number that existed prior to its alteration.

### **17.18.030 Applicability**

- A. The provisions of this Chapter shall apply to any Residential Development, as defined herein. Residential Developments undertaken in phases, stages, or otherwise constructed in distinct parts by one or more developers, but which are located within the same Planned Unit Development or Subdivision, or which are otherwise approved as a whole, shall be considered a single Residential Development.
- B. Notwithstanding the preceding paragraph, the construction of new Affordable Units and the payment of fee in-lieu of Affordable Units shall be adjusted to account for the percentage of affordable housing in St. Charles as determined by the Director of Community Development. The rates of adjustment shall be as follows:

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Percentage of Affordable Housing	Percentage of Affordable Units Required
13.75% or less	100%
13.76% to 17.5%	75%
17.51% to 21.25%	50%
21.26% to 24.99%	25%
25% or greater	0%

No Affordable Units shall be required for any new Residential Development following a determination by the Director that the percentage of the total number of Dwelling Units within the City of St. Charles that are Affordable Units is 25% or greater. Thereafter, the provisions of this Chapter shall apply following a determination by the Director that the percentage of Dwelling Units within the City of St. Charles that are Affordable Units has fallen below 15%.

(Ord. 2013-Z-3 § 3.)

- C. The requirements of this Chapter shall not apply in either of the following instances:
1. Moving a building containing one or more Dwelling Units from one location to another within the City.
  2. Construction of a single Dwelling Unit on a lot that was of record prior to February 15, 2008 and upon which no Dwelling Unit or part thereof has existed for a period of ten years or more prior to issuance of a building permit.

### **17.18.040 Affordable Units Required**

- A. General requirement. Affordable Units, and/or a fee in lieu thereof, shall be required for every Residential Development. The number of Affordable Units required for a Residential Development shall be a percentage of the total number of Dwelling Units to be constructed within the Residential Development, but not including any bonus Market Rate Units permitted by Section 17.18.060. The minimum requirement shall be calculated as follows:
- 1 to 10 Dwelling Units: 5 percent
  - 11 to 50 Dwelling Units: 10 percent
  - More than 50 Dwelling Units: 15 percent
- B. Calculation. In the event that the calculation of the number of required Affordable Units results in a fraction, the following rules shall apply: For that portion of the requirement that is to be satisfied by the construction of Affordable Units, the fraction shall be rounded to the nearest whole number; a fraction of exactly  $\frac{1}{2}$  shall not be counted as a required Affordable Unit. For that portion of the requirement that is to be satisfied by payment of a fee in-lieu, any fraction shall be used in calculating the total fee in lieu to be paid by the Developer.

### **17.18.050 Fee In-Lieu of Affordable Units**

- A. General Applicability. The City Council may permit the Applicant to pay a fee in-lieu of constructing some or all of the required Affordable Units within a Residential Development, in conformance with the following criteria:
- For a Residential Development with 1 to 10 Dwelling Units: Fee in-lieu is acceptable.
  - For a Residential Development with 11 to 50 Dwelling Units: A minimum of fifty percent (50%) of the requirement (but not less than one Dwelling Unit) shall be met by constructing Affordable Units on-site and a maximum of fifty percent (50%) of the requirement may be met by payment of a fee in-lieu of Affordable Units.
  - For a Residential Development with 50 or more Dwelling Units, the entire requirement shall be met by constructing Affordable Units on-site, except that up to a maximum of fifty percent (50%) of the requirement may be met by payment of a fee in-lieu of Affordable Units if the Applicant demonstrates to the satisfaction of the City Council, following a review and recommendation by the Housing Commission, that developing 100% of the Affordable Units

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on-site would create a significant hardship or that the alternate means of compliance will afford a comparable level of affordable housing opportunities in the City.

- B. Amount of Fee In-Lieu Per Unit. The amount of the per-unit fee in-lieu of Affordable Units shall be determined annually by the City Council. The amount of the per unit fee in-lieu shall be related to the cost of providing an Affordable Unit. Commencing October 1, 2010 the fee shall be one hundred four thousand five hundred dollars (\$104,500.00) for each required Affordable Unit. Said fee shall remain in effect until the City Council passes a new determination.  
(Ord. 2010-Z-16 § 2.)
- C. Calculation of Total Fee In-Lieu. For purposes of determining the total fee in-lieu payment amount, the per unit fee in-lieu shall be multiplied by the required number of Affordable Units, including any fractional units, as provided in Section 17.18.040.
- D. Payment of Fee In-Lieu. All fee in-lieu payments due under the provisions of this Chapter shall be paid at the time of issuance of the first building permit for the Residential Development, or as otherwise approved by the City Council in the Affordable Housing Agreement.

### 17.18.060 Density Bonus

- A. When Density Bonus is Allowed. A density bonus shall be permitted when Affordable Units are constructed within the Residential Development in accordance with Section 17.18.040 (A). One bonus Dwelling Unit shall be permitted for each Affordable Unit constructed within the Residential Development; however, in no event shall the total number of Dwelling Units constructed within the Residential Development exceed one hundred twenty percent (120%) of the Base Density.
- B. Implementation of Density Bonus. In implementing any density bonus allowed by this Chapter, the following requirements of the Zoning Ordinance may be varied without additional justification, but not by more than the specified percentages:
  - 1. Reduction of required minimum lot area by not more than 20%, or the percentage by which the total number of Dwelling Units constructed within the Residential Development exceeds the Base Density, whichever is less.
  - 2. Reduction of required minimum lot width by not more than 20%, or the percentage by which the total number of Dwelling Units constructed within the Residential Development exceeds the Base Density, whichever is less.
  - 3. Increase of the allowable building coverage on a lot by not more than 20%, or the percentage by which the total number of Dwelling Units constructed within the Residential Development exceeds the Base Density, whichever is less.

### 17.18.065 Alternative Affordable Housing Plan

- A. Alternative Affordable Housing Plan Criteria  
As an alternative to compliance with the provisions of Section 17.18.040 or Section 17.18.050, the Developer may request the City Council to approve, concurrent with the approval of the overall development, one or more of the alternatives listed in Section 17.18.065.B. The City Council shall not approve an Alternative Affordable Housing Plan unless the Developer demonstrates and the City Council finds in the affirmative that the Alternate Affordable Housing Plan is justified based on one or more of the following criteria:
  - 1. A demonstrated financial hardship exists that is not of the developer's own making. Items to be considered shall include but shall not be limited to:
    - a. The financial hardship must be equal to or greater than 10% of the total project cost and purchase price, but cannot include any costs incurred as part of the normal and orderly development of the property.
    - b. Environmentally sensitive or natural areas to be protected are equal to or greater than 20% of the total development site area (not including stormwater retention/detention facilities or park sites related to the construction of the project).
  - 2. The development site does not allow for the density bonus as stated in Section 17.18.060 due to limitations on development capacity. Items to be considered shall include but shall not be limited to:

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- a. Insufficient water or sewer utility capacities.
  - b. Unique parcel configurations shall include but shall not be limited to steep slopes above an 8% grade or irregular shaped parcels that create unbuildable areas equal to or greater than 20% of the development site.
3. The development will fulfill an alternative City Policy or goal such as redevelopment of a vacant, underutilized, or blighted parcel that cannot otherwise be readily redeveloped and comply with all other applicable requirements.
  4. The creation of the Alternative Affordable Housing Plan represents an equal or greater opportunity to create Affordable Housing in the City. Examples of these greater opportunities shall include but shall not be limited to:
    - a. Providing units below the maximum affordability thresholds established by Illinois Housing Development Authority for rental or owner-occupied units. (Example: Pricing rental units at or below 50% of area median income)
    - b. Providing offsite affordable units in vacant or foreclosed homes.
    - c. Providing affordable units for a period of time longer than the seven year minimum affordable period stated in Section 17.18.090 Maximum Price of Affordable Units.
- B. **Alternative Affordable Housing Plan**  
For instances in which the Developer is requesting to utilize an Alternative Affordable Housing Plan, the Developer shall submit the proposed Alternative Affordable Housing Plan. This plan shall detail the Developer's course of action chosen to create Affordable Housing opportunities in St. Charles. This plan is required to be submitted in writing and must detail how the Alternative Affordable Housing Plan fulfills the criteria listed in Section 17.18.065.A.  
One or more of the following options shall be utilized by the Developer:
1. **External Funding Sources** – The Developer will apply for grants, tax credits, and/or any other applicable funding mechanism each year that the project is under construction. These funds will be used to subsidize the costs associated with the construction of onsite or offsite Affordable Housing Units.
  2. **Purchase Offsite Units** – The Developer shall purchase for-sale or foreclosure properties and then sell or rent them at the established Affordable Housing price.
  3. **Construction of a portion of the required Affordable Units onsite and any combination of the two options listed above.**

(Ord. 2013-Z-3 § 4.)

### **17.18.070 Development Cost Offsets.**

An Applicant that fully complies with the requirements of this Chapter, including any rules or regulations promulgated thereunder, shall, upon written request to the City, receive a waiver of all building permit, demolition, and plan review fees required by Title 15 of the St. Charles Municipal Code, sewer and water connection fees required by Title 13 of the St. Charles Municipal Code, and cash contributions (when required in lieu of park and school land dedications) as required by Title 16 of the St. Charles Municipal Code, but only relative to the required Affordable Units constructed within the Residential Development.

### **17.18.080 Location, Phasing and Design.**

Affordable Units shall be integrated into the Residential Development by location, construction phasing, and design as described below. Waivers or variances as to the location, construction phasing, or appearance of Affordable Units may be granted by the City Council following a review and recommendation by the Housing Commission, based on supporting evidence that demonstrates that said waiver(s) or variance(s) will further affordable housing opportunities to an equal or greater extent than compliance with otherwise applicable requirements, or that integrating the Affordable Units will create a hardship.

- A. **Location of Affordable Units.** Affordable Units shall be dispersed among the Market-Rate Dwelling Units throughout the Residential Development
- B. **Phasing of Permits.** The Affordable Units shall be constructed concurrently with the Market-Rate Units within the Residential Development. Building and occupancy permits for Market-Rate Units

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shall be issued only if building and occupancy permits, respectively, for the required Affordable Units have been issued in accordance with the following schedule:

<b>Market-Rate Units (%)</b>	<b>Affordable Units (%)</b>
Up to 50%	At least 30%
Up to 75%	At least 60%
100%	100%

- C. Exterior Appearance. The exterior appearance of the Affordable Units in any Residential Development shall be visually compatible with the Market-Rate Units in the development. External building materials and finishes shall be substantially the same in type and quality for Affordable Units as for Market-Rate Units.
- D. Interior Appearance and Finishes. Affordable Units may differ from Market-Rate Units with regard to interior finishes and gross floor area, provided that:
  - 1. Bedroom Mix. The number of bedrooms per Dwelling Unit in the Affordable Units within the Residential Development shall be in equal proportion to the number of bedrooms per Dwelling Unit in the Market-Rate Units within the Residential Development. This provision is not intended to require the same floor area in Affordable Units as compared to Market-Rate Units.
  - 2. Energy Efficient Improvements. Affordable Units and Market-Rate Units shall have the same type and quality of improvements related to energy efficiency, including plumbing, insulation, windows, and heating and cooling systems.

**17.18.090 Maximum Price of Affordable Units**

- A. Affordability Controls; Waivers. All Affordable Units developed in accordance with this Chapter shall be subject to affordability controls and resale restrictions as provided herein, unless the property owner is granted a waiver by the City Council based upon supporting market-related evidence of undue hardship on the owner of the Affordable Unit or rental property. The Director of Community Development shall prepare or cause to be prepared detailed requirements, procedures, forms and documents to implement this Section. These requirements, procedures, forms and documents shall be subject to the approval of the City Council.
- B. For-Sale Affordable Units. Affordable Units shall be offered for sale in conformance with the following principles:
  - 1. The initial sale of Affordable Units shall be governed by the following:
    - a. Affordable Units shall be offered for sale at a maximum price that is affordable to an Eligible Household based on household size in accordance with paragraph D of this Section, using the limits established annually by the Illinois Housing Development Authority (IHDA).
    - b. The property shall be subject to a deed restriction or other suitable instrument limiting the maximum sale price of the property for a period of seven years, and specifying the conditions under which title to the property may be transferred to an entity other than an Eligible Household, including but not limited to transfer of title to heirs.
    - c. The purchaser shall execute a deferred payment mortgage lien in favor of the City, in the amount of the difference between the price paid by the purchaser for the Affordable Unit and its market value, at an interest rate comparable to that which is available for a fixed rate, 30-year mortgage.
  - 2. Subsequent sales of Affordable Units during the first seven years following the initial sale shall be governed by following:

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- a. The maximum sale price shall be the initial sale price plus 1) appreciation in the property’s value, but not to exceed the increase in the IHDA affordability limit; 2) an allowance for the cost of repair and/or replacement of heating, electrical, plumbing, roofs, and structural elements necessary to address safety of the occupants or integrity of the structure.
  - b. The seller shall receive a percentage of the Affordable Unit’s appreciation in value up to the IHDA affordability limit, where the percentage is the original purchase price divided by the market value of the Unit at the time of the seller’s original purchase, and the amount of appreciation is the difference between the original purchase price and the price at the time of sale. The remainder of the allowable appreciation shall be deposited into the Housing Trust Fund or other fund devoted to providing affordable housing.
  - c. The purchaser shall execute a deferred payment mortgage lien in favor of the City, in the amount of the difference between the price paid for the Affordable Unit and its market value, at an interest rate comparable to that which is available for a fixed rate, 30-year mortgage.
3. Subsequent sales of Affordable Units after the initial seven-year period shall be governed by the following:
- a. If the sale price does not exceed the initial sale price plus 1) appreciation in the property’s value, not to exceed the increase in the IHDA affordability limit; and 2) an allowance for the cost of repair and/or replacement of heating, electrical, plumbing, roofs, and structural elements necessary to address safety of the occupants or integrity of the structure, then the seller shall not be required to pay the deferred payment second mortgage, but the buyer shall execute a deferred payment mortgage lien in favor of the City, in the amount of the difference between the price paid for the Affordable Unit and its market value.
  - b. If the sale price is at market value or otherwise in excess of that described in the preceding paragraph 3) a), the full amount of the deferred payment mortgage lien shall be payable to the City, but the Buyer is not required to execute a deferred payment mortgage lien. Once the mortgage lien is paid, all restrictions of this Chapter applicable to the Affordable Unit, including its designation as such, shall cease.
  - c. So long as the property is designated as an Affordable Unit, the seller shall receive a percentage of the appreciation in the property’s value, whether sold at market value or less than market value. The percentage shall be equal to the seller’s original purchase price divided by the market value of the Unit at the time of the seller’s original purchase, discounted by 50%. The lien payment, plus the percentage of appreciation not received by the seller, shall be deposited into the Housing Trust Fund or other fund devoted to providing affordable housing.
- C. For-Rent Affordable Units. The maximum gross rent (including a utility allowance for utilities not provided with the rent) for Affordable Units offered for rent shall be calculated using the gross rent limits established annually by the Illinois Housing Development Authority on the basis of thirty percent (30%) of gross monthly income at fifty percent (50%) to sixty percent (60%) of AMI, based on household size in accordance with paragraph D of this Section. The net rent charged by the owner shall not exceed the maximum gross rent minus a utility allowance for any utilities to be paid separately by the tenant. All Affordable Units shall be offered at not more than the maximum rent calculated in accordance with this paragraph in perpetuity or as long as permissible by law.
- D. Household Size. In calculating the maximum sale and rental prices of Affordable Units, the following relationship between the number of bedrooms per unit and household size shall apply:

<u>Size of units:</u>	<u>Affordable for:</u>
Efficiency units:	1-person household
One-bedroom units:	2-person household
Two-bedroom units:	3-person household
Three-bedroom units:	4-person household

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Four-bedroom and larger units:

5-person households and larger

- E. Sale or Rental to Housing Providers. Every Affordable Unit required by this Chapter shall be offered for sale or rental to an Eligible Household as a primary resident, except for units purchased by Housing Providers. Housing Providers designated by the City of St. Charles shall have the right, but not the obligation, to purchase any for-sale Affordable Units, but only for the purpose of reselling to an Eligible Household.

### **17.18.100 Ownership and Occupancy of Affordable Units.**

Owner-occupied Affordable Units shall only be sold to and occupied by Eligible Households. Affordable Units that are rented shall only be rented to and occupied by Eligible Households. Subletting of Affordable Units shall not be permitted. Priority will be given to Eligible Households where one or more members live or work in St. Charles, and to employees of the City of St. Charles, the St. Charles Park District, and Community Unit School District No. 303, regardless of their initial place of residence, to the extent permitted by law.

1. Increase in Annual Income for Owner-Occupied Affordable Units. If a Household's gross income increases above the maximum Eligible Household income level for a household of its size, the Household may continue to own and occupy the Affordable Unit, but the Affordable Unit shall otherwise remain subject to the limitations set forth in Section 17.18.090.
2. Increase in Annual Income for Renter-Occupied Affordable Units. If a Household's gross income increases above the maximum Eligible Household income level for a household of its size, the Household may continue to lease and occupy the Affordable Unit, and renew said lease, but the Affordable Unit shall otherwise remain subject to the limitations set forth in Section 17.18.090.

### **17.18.110 Development Applications.**

As part of the application for approval of a Residential Development, the Applicant shall submit information describing how the Residential Development will comply with the requirements of this Chapter. The Director of Community Development may require any or all of the following to be submitted for review:

1. The number and rental/for sale status of Market-Rate Units and Affordable Units to be constructed including type of dwelling, number of bedrooms per unit, proposed pricing, and construction schedule, including anticipated timing of issuance of building permits and occupancy certificates.
2. Documentation and plans regarding locations of Affordable Units and Market-Rate Units, and their exterior appearance, materials, and finishes.
3. A description of the marketing plan that the Applicant proposes to utilize and implement to promote the sale or rental of the Affordable Units within the development; and,
4. Any proposal to pay fees in lieu of providing the required Affordable Unit, per section 17.18.050.
5. Alternative Affordable Housing Plan Submittal Requirements
  - a. The applicant shall submit a financial statement or pro-forma including the following:
    - i. Purchase price of the property.
    - ii. Identification of the financial hardship and cost estimates associated with absorbing and/or remediating the identified hardship.
    - iii. All non-hardship development costs and expected profits.
  - b. Application for External Funding Sources
    - i. An action plan clearly identifying the external funding sources that will be applied for during the construction phase and frequency of application to each funding source. The Action Plan shall clearly demonstrate that the project is eligible for the funding source that will be utilized.
    - ii. Commit to providing a copy of all grant applications at the same time the application is submitted to the funding authority.

- iii. State the number of Affordable Units targeted to be affordable.
- iv. Include documentation and plans regarding locations of Affordable Units and Market-Rate Units onsite or offsite, and their exterior appearance, materials, and finishes should external funding be awarded.
- c. Purchase and Resale of Offsite Units
  - i. An action plan or market study identifying the number of offsite units planned for purchase, the location of available offsite units, and purchase price of these units.
  - ii. Any supplemental information necessary to support the proposed plan such as, anticipated cost of renovations for offsite properties.
  - iii. The expected timing for the purchase of offsite units.
  - iv. Commit to submitting a copy of the home inspection report to the City for review. This report shall include the following:
    - Identification of the age and condition of all major systems (plumbing, HVAC, electrical, and structural)
    - Identification and condition of all major appliances
    - The Developer shall provide a copy of this inspection report to the affordable household who has signed a contract to purchase the unit
    - As part of this report the Developer shall submit a list of all necessary repairs that the Developer proposed to perform before the offsite unit is resold to an Eligible Household.

(Ord. 2013-Z-3 § 5.)

**17.18.120 Affordable Housing Agreement and Documents**

Prior to issuance of a building permit for any Residential Development, the Applicant shall have entered into an Affordable Housing Agreement with the City. Said agreement shall set forth the commitments and obligations of the Applicant, including but not limited to the number, timing and location of the required Affordable Units, and/or the amount and payment schedule for any fee in lieu thereof, to ensure that the provisions of this Chapter are met. The Applicant shall execute any and all documents deemed necessary by the City, including without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the Affordable Units in accordance with this Chapter.

**17.18.130 Implementation.**

The Director or Director's designee shall promulgate regulations and forms as may be necessary for the implementation of this Chapter. Said regulations shall be reported to the Housing Commission and City Council.

**17.18.140 Enforcement.**

- A. The provisions of this Chapter shall apply to all agents, successors and assignees of an Applicant.
- B. The City of St. Charles 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, violating or causing the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by the payment of a fine of not more than \$750.00 dollars per day. Such person, firm, or entity shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this Chapter is commenced, continued, or permitted by such person, firm, or entity, and shall be punishable as herein provided.