

ORDINANCE NO.

FILE OF CITY COUNCIL

BILL NO.51 - 2023

June 13, 2023

AN ORDINANCE

Amending the Allentown City Code by Adding Chapter 670, Workforce Housing Zoning creating requirements for land development plans that contain 10 or more additional residential dwelling units to provide work force units; providing certain types of relief for the construction of work force units; allows for alternatives to on-site construction – fee in-lieu of construction, off site development, land, or land and building donation; authorizes a review of the legislation after 18 months.

Section One: That the following be added as Chapter 670 to the City Code and read as follows:

Chapter 670
Workforce Housing Zoning

§ 670-1 Purpose and Authority

a. Purpose and Uses. The intent of this ordinance is:

- (1) To support the adopted City of Allentown Vision 2030 Strategic Plan, Goal that “Allentown will be a place where people of all ages and incomes can obtain quality affordable housing in well-connected neighborhoods near greenspaces, good schools, and other essential services”;
- (2) To support the adopted City of Allentown Vision 2030 Strategic Plan, Principal 2: “increase the quantity of healthy, safe, and affordable housing”;
- (3) To support goal H2C of the Vision 2030 Strategic Plan, “Zoning Update: Inclusionary Zoning”;
- (4) To prevent overcrowding and deterioration of the limited supply of housing, and thereby promote the public health, safety, and general welfare;

- (5) To increase the number of owner-occupied and rental housing units for households with an income of 80% or less of Area Median Income;
- (6) To support the Lehigh Valley Planning Commission Comprehensive Plan's goal to "provide an adequate supply of affordable housing which meets the needs of all income and social groups";
- (7) To facilitate and encourage development and redevelopment that includes a range of housing opportunities through a variety of residential types, forms of ownership, home sale prices and rental rates;
- (8) To support the objectives of the current City of Allentown housing study;
- (9) To ensure affordable homeownership which is, a mortgage payment and housing expenses (principal, interest, taxes and insurance no greater than 30% of a family's gross month income, per the HUD definition.)
- (10) To adhere to the Market Analysis conducted by Goody Clancy the annual absorption of market-rate units is: 157 to 192 annually and 47 to 57 total affordable/workforce units per year

b. Authority. Provisions for the Workforce Housing Ordinance are intended to comply with the following Articles of the Municipal Planning Code.

(1) Article VI Zoning.

Section 603. Ordinance Provisions where:

- (a) Zoning ordinances should reflect the policy goals of the statement of community development objectives and give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality.
- (b) Zoning ordinances may contain:
 - (1) Provisions to encourage innovation and to promote flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act;
 - (2) Provisions authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance;
- (c) Zoning ordinances adopted by municipalities shall be generally consistent with the municipal or multi-municipal Comprehensive Plan or, where none exists, with the municipal statement of community development objectives and the county Comprehensive Plan.

Section 604. Zoning Purposes. The provisions of zoning ordinances shall be designed:

(a) To promote coordinated and practical community development and proper density of population.

Section 605. Classifications.

(a) For the purpose of encouraging innovation and the promotion of flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act, and for the purpose of authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance.

(2) These regulations are enacted under the authority of the Pennsylvania Human Relations Act (Act of October 27, 1995, P.L. 744, as amended), which guarantees fair housing.

(3) Posting of the Fair Housing Practices Notice is required pursuant to the Pennsylvania Human Relations Act.

§ 670-2 Workforce Units

a. Applicability. This applies to all land development plans within all Zoning Districts that permit residential dwelling units, and for all of the following types of land development that contain 10 or more additional residential dwelling units shall also contain inclusionary units as determined by the calculation in paragraph b below.

(1) New residential construction, regardless of the type of dwelling unit.

(2) New mixed-use development with a residential component.

(3) Renovation of a multiple-family residential structure that increases the number of residential units from the number of units in the original structure.

(4) Conversion of an existing residential structure regardless of dwelling type to a multiple-family residential structure.

(5) Conversion of a nonresidential property to a residential property.

b. Calculation of Workforce Units. To calculate the minimum number of Workforce units required in any land development listed in paragraph a., Applicability, above, the total number of proposed units shall be multiplied by 10%. If the product includes a fraction, a

fraction of 0.5 or more shall be rounded up to the next whole number, and a fraction of less than 0.5 shall be rounded down to the next whole number. (See the table in paragraph Section 4a(8) for the percentage of the type of Workforce units to be provided to specific qualified households.)

c. Alternatives to On-Site Construction of Workforce Units. The use of alternatives to on-site construction of Workforce units in whole or in part will result in the same reduction in whole or in part of the bonus units permitted on site.

(1) Fee in-Lieu Workforce Housing.

(a) An applicant may pay a fee in-lieu constructing some or all of the required minimum number of Workforce units required in any development listed in paragraph a, Applicability, above.

(b) Allentown City Council shall establish by resolution the amount of the fee-in-lieu payment per unit following written recommendation by the Director of Planning and adopt it as part of the City's schedule of fees. The per-unit amount shall be based on an estimate of the actual cost of providing an Workforce unit using actual construction cost data, which shall include a consideration of land purchase costs. The per-unit amount shall be provided in accordance with the policy and procedures manual for administration of the program.

(c) All fee-in-lieu payments received pursuant to this ordinance shall be paid directly to the City of Allentown and be used to further the City's mission of providing housing opportunities by purchasing, rehabilitating, and selling homes in the City to income-qualified buyers and/or providing rentals to income-qualified renters. The City shall create and administer an Workforce Housing Fund for such payments.

(d) To determine the total fee-in-lieu payment, the per-unit amount established by the City shall be multiplied by at least 10% of the number of proposed units in the development pursuant to paragraph a, Applicability, above. For the purposes of such calculation, if 10% of the number of proposed units results in a fraction, the fraction shall not be round up or down. If the fee-in-lieu payment is made to substitute providing one or more of the required units, the calculation shall be prorated as appropriate.

(2) Off-Site Development. Workforce units otherwise required to be constructed as specified under paragraph a., Applicability, above, maybe constructed or rehabilitated off-site within the City of Allentown. To determine the total number of off-site units, multiply the number of proposed units in the development by 10%. Applicant must obtain off-site development plan approval from the City at the same time the Applicant obtains plan approval for the proposed market-rate units within the covered development. The off-site development plan must include, among other land development plan requirements, documentation of site control, necessary financing in place to complete the off-site development or rehabilitation, architectural designs and elevations, and an Workforce Housing Development Agreement as required under Section 1952.a(3), below. As a condition of approval for the Applicant's off-site development, the City shall require that off-site Workforce units shall be completed no later than completion of the Applicant's market-rate units. See Section 1952.e., Phasing of Workforce Units, for requirements of the off-site Workforce units are not completed as required within the specified time frame as described in the Workforce Housing Agreement.

(3) Land Donation. Land within the City of Allentown may be donated to the City or its designee with City Council's approval. The land value must be equal to or greater than the value of fee-in-lieu payment in paragraph c(1). The value of the land will be determined by an appraisal completed by a certified appraiser shall be submitted to the City. If the submitted appraisal is in question the value of the land will be determined as outlined in the policy and procedures manual.

(a) The land to be donated must meet all applicable zoning and land development standards to construct the required units.

(b) The land donation must occur prior to the completion of the market-rate units. See Section 1952.e. Phasing of Workforce Units, for requirements if the land donation is not completed as required within the specified time frame.

(4) Building and Land Donation. Building and Land within the City of Allentown may be donated to the City or its designee with City Council's approval. The building and land value must be equal to or greater than the value of fee-in-lieu payment in paragraph c(1). The value of the building and land will be determined by an appraisal completed by a certified appraiser shall be submitted to the City. If the appraisal submitted is in question the value of the building and land will be determined as outlined in the policy and procedures manual.

(a) The land to be donated must meet all applicable zoning and land development standards to construct the required units.

(b) The building to be donated must meet all applicable building code and zoning requirements to construct the required units.

(c) The building and land donation must occur prior to the completion of the market-rate units. See Section 1952.e. Phasing of Workforce Units, for requirements if the building and land donation is not completed as required within the specified time frame.

§ 670-3 Requirements for Workforce Units

a. General Requirements for Workforce Units. All covered projects must comply with the following requirements:

(1) Permitted Development Modifications. Developments that provide Workforce units on-site will have the option to add one additional equivalent dwelling unit (bonus unit) for each Workforce unit provided as part of the land development plan. The following provisions will be applied to any building on the site that contains Workforce units within it. In order to be eligible for the following modifications, a minimum of 70% of the gross floor area within the building must be used as dwellings and related corridors and common areas for the dwellings.

(a) One-family dwelling and two-family dwelling.

(i) Reduction in lot size by 25%.

(ii) Lot width may be reduced to the extent needed to provide for all Workforce units required and the allowable bonus units provided all setback requirements are met.

(b) Row dwelling or townhomes: seven units per row will be permitted.

(c) Multifamily dwellings.

(i) Off-street parking may be provided but is not required for any Workforce unit.

(ii) Side yard requirements can be reduced to five feet.

(d) Workforce units may be up to 10% smaller than the market-rate units.

(e) Density restrictions (such as FAR, minimum lot area per unit, etc.) may be modified to the extent needed to accommodate all required Workforce units and allowable bonus units.

(f) The overall height for buildings containing Workforce multifamily dwelling units cannot exceed one additional story over and above the underlying zoning.

(2) Development Composition. Workforce units shall be mixed with, and not clustered together or segregated in any way from, market-rate units.

(3) Workforce Housing Development Agreement. Prior to the issuance of a zoning permit for any development in which Workforce units are required, the applicant shall have entered into with the City a Workforce Housing Development Agreement, as defined in the Codification of Ordinances.

(4) Primary Place of Residence. Workforce units required under this ordinance shall be offered for sale or rent to a qualified household to be used for its own primary residence, except for units purchased by the City or its designee.

(5) Phasing Plan. If the development plan, for which Workforce housing is required, contains a phasing plan, the phasing plan shall provide for the development of Workforce units concurrently with the market-rate units. No phasing plan shall provide that the Workforce units built are the last units constructed.

(6) Bedroom mix. In order to ensure an adequate distribution of Workforce units by household size, the bedroom mix of Workforce units in any project shall be in the same ratio as the bedroom mix of the market-rate units of the project. The applicant may pursue altering this provision through a conditional use process as outlined below:

(a) Bedroom mix modification by conditional use.

(i) For a multifamily or mixed-use building project to be eligible for this conditional use the following conditions must be met:

- aa. The project includes multifamily housing of six more units.
- bb. The bedroom mix of the Workforce units may be different from that of the market-rate units. However, equivalency in the total number of bedrooms required as a result of the 10% calculation for Workforce units must be maintained. A calculation must be performed to identify how many total market-rate bedrooms would be included in the development. Ten percent of the total number of bedrooms must still be Workforce; however, the bedroom mix by unit type may be modified as part of the conditional use. In order to meet this standard, the

number of affordable units may necessarily need to be increased.

- cc. A preliminary land development plan is submitted.
- dd. A market analysis is submitted indicating that the demand for affordable housing in the City of Allentown, and the Lehigh Valley, is such that maintaining the same bedroom mix of affordable units as the market-rate units will not sufficiently meet demand for affordable housing. This analysis will, at a minimum, utilize housing cost burden information. The proposed bedroom mix by unit type must meet or exceed the recommendations contained in the submitted market analysis.
- ee. The Workforce housing unit(s) will be leased by the unit. Alteration of the bedroom mix for the Workforce units will not result in additional bonus units for a project.

(ii) Conditional use application for this section may be submitted at the same time as the signature development project conditional use and shall follow the requirements for hearing set forth within the City of Allentown Zoning Ordinance.

(7) Like Units. Workforce units shall be like units with regard to number of bedrooms, amenities and access to amenities, but may differ from the market-rate units in a covered project with regard to interior amenities, provided that:

- These differences, excluding differences related to size differentials, are not apparent in the general interior and exterior appearance of the project's units; and
- These differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency and standard components, as defined by the City, of the project's units.

(8) Qualified Households. The sale or lease of Workforce units shall be limited to households earning up to 80% of area median income, adjusted for household size.

(9) Limitations.

- (a) Priority given to residents of Allentown for a minimum of one year.
- (b) Must use unit as principal place of residence.
- (c) Except for student status, household income, asset limitations and the primary residency requirement as set forth herein, occupancy of any

Workforce unit shall not be limited by any conditions that are not otherwise applicable to all units within the covered project.

(10) Final Number of Units and Pricing shall be determined as outlined in this ordinance and the policy and procedures manual.

b. Calculating Rents and Sales Prices. The following provision shall apply to the calculation of rents, selling prices and/or carrying charges of Workforce units:

(1) Average Rent. Workforce rental units shall be rented at a price which, on average, is affordable for a household with an annual income that is no more than 80% of median income adjusted for household size.

(2) Average Sales Price. Workforce units for sale shall be sold at a price which, on average, is affordable for a household with an annual income that is no more than 100% of median income adjusted for household size.

(3) Unit/Household Size Pricing Calculation. In calculating the rents or carrying charges of Workforce units, the following maximum relationship between unit size and assumed household size shall apply:

- Efficiency units: one person household
- One bedroom units: two person household
- Two-bedroom units: three person household
- Three-bedroom units: four person household
- Four-bedroom units: five person household

Household size numbers used for price calculation will not be used to determine maximum legal occupancy of a dwelling unit. Maximum legal occupancy of a dwelling unit will be based on standards in the City of Allentown Ordinance for one- and two-family dwellings and in the City of Allentown Safety and Property Maintenance Code for multifamily dwellings.

(4) Sales Price Calculation. With respect to Workforce units offered for sale, prices will be calculated on the basis of:

- An available fixed-rate, thirty-year mortgage, consistent with the average rate published from time to time, typically quarterly, by Freddie Mac or its equivalent.
- A down payment of no more than 5% of the purchase price.
- A calculation of property taxes.

- A calculation of homeowner insurance.
- A calculation of condominium or homeowner association fees.
- Other monthly fees, as allowed by the City, such as monthly land lease fees.

(5) Rent Calculation. With respect to Workforce units offered for rent, initial rents are calculated based on HUD Area Median Income (AMI) for the Allentown, Bethlehem, Easton Statistical Area as follows: HUD publishes annual AMI data for one- to eight-person households. Maximum monthly rents would be 30% of designated AMI, divided by 12 based on the number of bedrooms, less the current utility allowance per the Housing Authority of Allentown. Any Owner who charges rent in violation of this provision shall refund excess to tenant.

c. City's Option to Purchase. The following provisions apply to the initial offering of Workforce units for sale or rent:

(1) Notification. As a condition of land development approval, the developer shall notify the City or its designee of the prospective availability of any Workforce units at the time the design and pricing are being established for such units.

(2) Initial Option. From the time of building permit issuance, the City or its designee shall have an exclusive option for 120 days to enter into a purchase and sales agreement at or below the Workforce unit pricing per Section 4. for each Workforce unit offered for sale by the developer. The City may waive or assign this option.

(3) Waiver. If the City or its designee fails to exercise its option for the Workforce units, or if the City or its designee declares its intent not to exercise its option, the developer shall offer the units for purchase or rent to households in accordance to above parameters. If requested by the developer, the City or its designee shall execute documents that may be recorded with the Office of Recorder of Deeds to evidence said waiver of the option.

(4) Time of Closing. Closing on Workforce units purchased by the City or its designee occurs on or after the time of issuance of the certificate of occupancy. If the City or its designee fails to close on these Workforce units, the developer shall offer the unit for purchase or rent to households in accordance to above parameters

(5) Transfer of Option. The City may assign its options under this section, in which event it shall notify the developer of the agency to which it has assigned the option, which agency shall deal directly with the developer, and shall have all of the authority of the City as provided under this section.

(6) Additional Option. At any point after the Initial Option period, c.(2) above, the developer may offer the Workforce units to the City or its assignee for purchase at or below the Workforce unit pricing per Section 4. The City or its assignee then shall have 30 days to enter into a purchase and sales agreement.

d. Continued Affordability Requirements. All covered projects shall comply with the following provisions to ensure continued affordability of Workforce units provided under this ordinance and units required to be continually Workforce hereunder.

(1) Ninety-Nine-Year Requirement. All Workforce units shall remain Workforce for a period of no less than 99 years commencing from the date of initial occupancy of the units.

(2) Affordability Instruments. Provisions to ensure continued affordability of Workforce units shall be embodied in legally binding agreements and/or deed restrictions, which shall be prepared by the City and agreed to by the developer and upon execution, shall be recorded and filed.

(3) Resale Restrictions. The City shall require resale conditions in order to maintain the availability of Workforce units in perpetuity be specified in the Affordability Instrument, including resale calculations.

(a) At the time of purchase, the owners of any Workforce unit shall execute a Resale Restriction Agreement and Option to Purchase provided by the City, stating the restrictions imposed pursuant to this Resale Restrictions section, including but not limited to all applicable resale controls and occupancy restrictions. This Resale Restriction Agreement and Option to Purchase shall be recorded in the Office of Recorder of Deeds and shall afford the City or its designee the right to enforce the declaration of restrictions.

(b) The City or its designee shall be responsible for monitoring and facilitating the resale of Workforce units. Any abuse in the resale provisions shall be referred to the City for action.

(4) Rent Increases. Provisions for continued affordability of Workforce rental units shall limit annual rent increases to the percentage increase in the median household income within the City of Allentown, except to the extent that further increases are made necessary by hardship or other unusual conditions, as defined in the policies and procedures manual, and shall provide that no rent increase may take effect until it has

received approval from the City in writing. Any Owner who charges rent in violation of this provision shall refund excess to tenant.

(5) Purchase Option. Provisions for continued affordability of Workforce units shall provide that the City or its designee shall have an exclusive option to purchase any Workforce unit when it is offered for resale. The purchase option period and process shall be detailed in the Affordability Instrument.

e. **Phasing of Workforce Units.** Workforce units shall be made available for occupancy on approximately the same schedule as a covered project's market-rate units, except that certificates of occupancy for the last 10% of the market-rate units shall be withheld until certificates of occupancy have been issued for all of the Workforce units or the land donation or land and building donation is complete. Where the City determines that completion of Workforce units has been delayed for extraordinary reasons beyond the reasonable control of the Applicant, the City may, in its discretion, permit the Applicant to post a monetary bond and release one or more market-rate units. The amount of the bond shall be sufficient in the determination of the City Planning Department to assure completion of the Workforce units.

A schedule setting forth the phasing of the total number of units in a covered project, along with a schedule setting forth the phasing of the required Workforce units shall be established prior to the issuance of a building permit for any development subject to the provisions of this ordinance.

f. **Certificate of Occupancy.** No certificate of occupancy shall be issued for a covered project unless all Workforce units within the covered project are eligible for a certificate of occupancy; except that with respect to covered projects to be constructed in phases, certificates of occupancy may be issued on a phased basis consistent with the provisions of paragraph e, Phasing of Workforce Units, above.

g. **Enforcement.** Violations of this ordinance shall be punishable as provided by Part I: Remedies, Penalties and Validity

h. **Policy and Procedures Manuals for Administration and the Marketing of Units for Sale and Rent.** The City of Allentown Planning Department shall provide an administrative manual for the execution of the Workforce housing ordinance. This manual shall be followed by the applicant to provide the Workforce units.

The marketing and sales and rents manual shall also be provided to establish requirements for this aspect of the program. Developers and their agents are expected to work closely and

in cooperation with City staff to make the Workforce marketing and sales process as efficient and equitable as possible.

These documents will include clarifying information and procedures when requested by the City. These procedures may be updated from time to time to increase the effectiveness of the Workforce housing program.

i. Inability to Rent or Sell Workforce Units to Qualified Households. If the developer meets or exceeds the marketing requirements, referenced in paragraph h above, for a period of one year from final certificates of occupancy issuance, and is still unable to lease or sell Workforce units to qualified households, the developer shall offer the Workforce units to the City or its designee for purchase per Section 4.c.(6). If the City or its designee does not purchase the Workforce units, the developer may pay the fee-in-lieu for the number of available Workforce units. If the developer has met all the other requirements of this ordinance, this payment shall release the Workforce units to market-rate units.

j. Administration. The City of Allentown Planning Department shall administer and monitor activity under this ordinance and shall report quarterly to Allentown City Council, setting forth its findings, conclusions and recommendations for changes that will render the program more effective.

k. Fees. Fees to administer the program such as a monitoring fee, refinance fee, or resale fee, may be established by Allentown City Council resolution following written recommendation by the Planning Director and adopted as part of the City's schedule of fees.

l. Time Limit The Workforce Zoning Ordinance shall be in effect for no more than eighteen (18) months from its effective date, except that one (1) six-month extension may be granted by Council if requested by the City Planning Commission before the end of the 18-month period.

SECTION 2. That these provisions shall be evaluated after 18 months.

SECTION 3. That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.