

Proposed Inclusionary Zoning Ordinance Amendments

Based upon the comments made at the May 4, 2017 Council workshop, the May 16, 2017 Council meeting and on comments suggested by various Council members the following is a list of the new proposed key amendments to the SPA Housing Ordinance.

1. More specific direction was provided to indicate when the Planning Board may temporarily suspend the inclusionary requirements. See Article 4.4.4C on page 4.
2. Established specific minimum sizes for the inclusionary units to ensure some comparability with the market rate units. See Article 4.4.6C(3)(c) on page 8.
3. Provided clarification that relief of selected zoning requirements for inclusionary projects does not adversely impact historic structures. See Article 4.4.7A on page 9.
4. Provided clarification that a developer may appeal to the Zoning Board of Appeals for an area variance when seeking relief from the ordinance and provided some mitigation guidance for the ZBA should such variance be granted. See Article 4.4.7D on page 10.
5. Reduced the affordability period for inclusionary “for sale” units from perpetuity to 30 years to be consistent to be consistent with the time period for inclusionary “rental” units. See Article 4.4.9B(1) on page 12.
6. Since there are specific other State requirements for dealing with default of tax payments, this provision was deleted from Article 4.4.9B(5) on page 13.

The full text of the amendments is shown in the document below as “track-changed” text to the April 19, 2017 version of the zoning document.

MayApril 19, 2017

Proposed New Text to the Zoning Ordinance of the City of Saratoga Springs

ARTICLE 4.4 – INCLUSIONARY ZONING

240- 4.4.1 LEGISLATIVE FINDINGS

A. The City Council of the City of Saratoga Springs finds that:

- (1) Over the last two decades, rising housing prices and rents have made it increasingly difficult for long-term City residents and workers to afford to live in the City, and may ultimately displace long-term residents who contribute so much to the City. Lack of access to decent affordable housing has a direct negative impact upon the health, safety and welfare of the residents of the City.
- (2) Economic diversity is essential to the health of Saratoga Springs. A sound local economy requires a stable workforce at all wage levels. City businesses and employers are finding it more difficult to attract and retain employees, especially lower wage workers that have to live further from the City and endure longer commutes to work. This has the potential to harm the economic vitality of the City.
- (3) Developers are in a unique position to produce needed units for working households at a reduced cost, provided the City grants them the ability to provide additional units over and above those currently permitted by zoning. Inclusionary zoning is a market-based response that achieves affordable housing by reducing or eliminating land cost through increased density.
- (4) Inclusionary zoning can be enacted without discouraging development or negatively affecting community character. Inclusionary zoning approaches have been used successfully in communities nationwide to provide worker housing. Inclusionary housing policies can ensure an equitable distribution of affordable housing opportunities throughout all neighborhoods and zones of the City without excessive burden to any single site or area.

- B. The City has reviewed inclusionary zoning ordinances and inclusionary housing studies from around the country and adapted provisions that are appropriate to the needs and opportunities that exist in this City, has consulted with the development community and other stakeholders, and has designed an approach that is sensitive to the interests and concerns of this community.

240- 4.4.2 PURPOSE

Now, therefore, the City Council of the City of Saratoga Springs, in accordance with the powers and authority vested in it by General City Law section 20 (24), 20 (25), and 81-d, hereby enacts this article in the best interests of the people of Saratoga Springs. The purposes of this article are to:

- (1) Utilize market forces to produce homebuyer and rental housing units that are affordable to working households in the City through reasonable density bonuses and affordable unit pricing without undue financial burden.
- (2) Encourage the development of housing affordable to a broad range of households with varying income levels, and mitigate the market forces excluding housing that meets the needs of all economic groups within the City.
- (3) Promote the City's goal of increasing the workforce housing stock in a uniform and predictable manner and in proportion to the overall increase in new housing units.
- (4) Ensure the availability of workforce housing throughout the community and equitably share the responsibility for workforce housing across all neighborhoods.
- (5) Mitigate environmental and other impacts that accompany new residential development by reducing traffic, transit and related air quality impacts, promoting a housing balance and reducing the demands placed on transportation infrastructure in the region.
- (6) Prevent overcrowding and deterioration of the limited supply of workforce housing and, thereby, promote public health, safety and general welfare.
- (7) Provide for efficient administration in the approval, implementation and monitoring of projects.

240- 4.4.3 DEFINITIONS

As used in this article, the following terms shall have the following meanings:

AFFORDABLE RENT: Monthly rent that does not exceed one-twelfth of thirty-five percent (35%) of the maximum annual income for a household earning sixty percent (60%) of

City Median Income (Low Income) or ninety percent (90%) of City Median Income (Moderate Income).

AFFORDABLE OWNERSHIP COST: A sales price, based on a household size of 2 persons per bedroom that results in a monthly housing cost (including mortgage, insurance, property taxes and home association costs, if any) that does not exceed one-twelfth of thirty-five percent (35%) of the maximum annual income for a household earning eighty percent (80%) of City Median Income (Moderate Income) or one hundred ten percent (110%) of City Median Income (Middle Income).

CITY MEDIAN INCOME: The median household income as established by HUD for the Albany-Schenectady-Troy Metropolitan Statistical Area, adjusted by the City Office of Planning and Economic Development for the percentage difference between the City Median Income and the MSA Median Income based on the decennial Census, or other method established by the Office of Planning and Economic Development for determining the Median Income of the City on an annual basis.

CITY: The City of Saratoga Springs.

COVERED PROJECT: Any project or projects that meet(s) the criteria of article 240- 4.4.4 "Covered Projects."

DEVELOPER: Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities with an identity of at least 10% proprietary interest, which seeks City approvals for all or part of a Covered Project or Projects.

HIGH COST PROJECT: A residential development in which the addition of the Inclusionary Units will result in higher incremental construction costs directly allocable to the Inclusionary Units. These additional costs may include, but are not limited to, additional garaged parking spaces, required handicapped accessibility modifications, the substantial rehabilitation of unique historic structures or features, or unusual changes or additional requirements imposed by regulatory authorities.

HOUSEHOLD: One person living alone or two or more persons sharing residency whose income is considered for housing payments.

HUD: The U.S. Department of Housing and Urban Development.

INCLUSIONARY HOUSING PLAN: A plan submitted by a Developer to provide compliance with this article.

INCLUSIONARY HOUSING AGREEMENT: A written agreement between a Developer and the City, as provided herein, to be recorded and that would run with the land.

INCLUSIONARY UNIT: A dwelling unit that must be offered at Affordable Rent or available at an Affordable Ownership Cost to Income Eligible Households, and is regulated with regard to selling price or rent level, marketing and initial occupancy, and continued requirements pertaining to resale or rents and occupancy for the minimum compliance period, as provided herein.

INCOME ELIGIBLE HOUSEHOLD: For an Inclusionary Unit for rent, a Household earning less than sixty percent (60%) of City Median Income (Low Income) or ninety percent (90%) of City Median Income (Moderate Income), as provided in article 240- 4.4.6. For an Inclusionary Unit for sale, a Household earning less than eighty percent (80%) of City Median Income (Moderate Income) or one hundred percent (110%) of City Median Income (Middle Income), as provided in article 240-.4.4.6

MARKET UNIT: A dwelling unit in a Covered Project that is not an Inclusionary Unit.

SEQR: New York State Environmental Quality Review.

SUBSTANTIAL REHABILITATION: A cost of rehabilitation that exceeds 50% of the market value of the building based on the quotient of the structure's current assessed value as indicated in the City's Assessment Records divided by the city's Equalization Rate.

240- 4.4.4 COVERED PROJECTS AND EXEMPT PROJECTS

A. Covered Projects

Except as otherwise provided herein, this article shall apply to all building permit requests pertaining to the following projects:

- (1) Any project of ten (10) or more new additional residential dwelling units that are produced through construction, substantial rehabilitation of existing structures, or adaptive reuse or conversion of a nonresidential use to a residential use.
- (2) Multiple developments or projects by a Developer occurring on contiguous parcels or in substantial proximity to one another shall be considered in toto and shall be Covered Projects.
- (3) Any project of less than 10 new residential units that, at the sole discretion of the Planning Board, may be permitted for voluntary inclusion as a Covered Project under this Article of the Zoning Ordinance. If approved, all requirements for Covered Projects shall apply.

B. Exempt Projects

This article shall not apply to all building permit requests pertaining to the following projects:

- (1) Mobile homes.
- (2) Any project that is developed by an educational institution for the exclusive residential use and occupancy by that institution's students.
- (3) Any project that produces affordable units that are subject to state or federal affordability restrictions.
- (4) Any project for which building permit applications were properly filed before the date of enactment of this Article.
- (5) Any project for which a final Planning Board decision of approval (final PUD site plan, final site plan, or final subdivision approval) was issued before the date of enactment of this Article.

- C. Temporary Suspension of Inclusionary Requirements for Covered Projects
In the event that the City’s Office of Planning and Economic Development determines that the number of households in the Developer’s target income category on the City’s Waiting List is not equal to the number of inadequate to support the development of additional Inclusionary Units, the Planning Board may suspend the Inclusionary Unit requirements for a specific Covered Project. In that event, no Density Bonus under 240- 4.4.5 is provided.

240- 4.4.5 DENSITY BONUS

To assist developers in meeting the requirements of this article, all Covered Projects shall be entitled to a density increase of no more than 20% of the number of units that the Covered Project is allowed under existing zoning or a lesser base number of units as originally proposed by the developer, as permitted subsequent to SEQR analysis or as may be established by the Planning Board. When determination of the number of units for a density bonus results in a fractional unit, any fraction of .5 or over shall be one additional unit, and any fraction below .5 will be rounded down. Notwithstanding the above, no provisions herein shall be construed as limiting the discretion of the Planning Board to conduct reviews of Covered Projects and to issue any decisions within the scope of its statutory authority.

240- 4.4.6 REQUIREMENTS OF INCLUSIONARY UNITS

All Covered Projects shall meet the requirements for Inclusionary Units as specified in this section. The percentage of Inclusionary Units shall be calculated with a base number, or as may be established by the Planning Board, that does not include the bonus units added to the Covered Project.

- A. Inclusionary Units – Rental
For Covered Projects where units are offered for rent, the number of Inclusionary Units shall be designated as follows. When determining the number of Inclusionary Units, any fraction of .5 or over shall be one additional unit, while any fraction below .5 will be rounded down.

If Inclusionary Unit rent is affordable to:	Required number of Inclusionary Units as a percentage of the Market Units
Low Income Households (up to 60% of area median)	10%
Moderate Income Households (60% - 90% of area median)	20%

- (1) Affordable Rents. Maximum Affordable Rents for Inclusionary Units will be calculated as follows: one-twelfth of thirty-five percent (35%) of the maximum annual income for a household at the applicable income limit – either sixty percent (60%) of City Median Income (Low Income) or ninety percent (90%) of City Median Income (Moderate Income).

- (2) In calculating the Affordable Rent of Inclusionary Units, the applicable income shall be based on the following relationship between unit size and Household size:

Unit Size	Household (HH) Size for Applicable Income
Efficiency units	1 person HH
One-bedroom units	1.5 person HH
Two-bedroom units	3 person HH
Three-bedroom units	4.5 person HH
Four-bedroom units	6 person HH

- (3) The calculations of the initial rents for the Inclusionary Units shall be made by the City Office of Planning and Economic Development and shall be contained within the Inclusionary Housing Agreement for the Covered Project. The Office of Planning and Economic Development may revise these prices in the event of documented exceptional circumstances.
- (4) In the event that a Covered Project receives additional subsidies from any public source to assist the Inclusionary Units, the value of such subsidies shall be used to reduce the rents and/or income limits for the Income Eligible Households to be served by the Units, as determined by the City Office of Planning and Economic Development.

B. Inclusionary Units – For Sale

For Covered Projects where units are offered for sale via the conveyance of a deed or share for individual units, Inclusionary Units shall be designated in accordance with the following table. When determining the number of Inclusionary Units, any fraction of .5 or above shall be one additional unit, while any fraction below .5 will be rounded down.

If Inclusionary Unit sale is affordable to:	Required number of Inclusionary Units as a percentage of the Market Units
Moderate Income Households (up to 80% of area median)	15%
Middle Income Households (80% - 110% of area median)	20%

- (1) **Sales Price.** Sales prices will be based on calculation of the Affordable Ownership Cost, which means a sales price that results in a monthly housing cost (including mortgage principal and interest, insurance, property taxes and home association costs, if any) that does not exceed one-twelfth of thirty-five percent (35%) of the maximum annual income for the applicable income limit – eighty percent (80%) of City Median Income

(Moderate Income) or one hundred ten percent (110%) of City Median Income (Middle Income).

- (2) With respect to Inclusionary Units offered for sale, the Affordable Ownership Cost will be calculated on the basis of:
 - (a) A down payment of no more than ten percent (10%) of the purchase price; and
 - (b) An available fixed-rate thirty-year mortgage, using Fannie Mae's current interest rate, for the balance of the purchase price. (If the Developer can guarantee the availability of a fixed-rate thirty-year mortgage at a lower rate from the State of New York Mortgage Agency or other public agency for all of the Inclusionary Units in the Covered Project, a lower interest rate as provided by that agency may be used in calculating Affordable Ownership Cost.)
- (3) The calculations of the initial sales prices for the Inclusionary Units shall be made by the City Office of Planning and Economic Development and shall be contained within the Inclusionary Housing Agreement for the Covered Project. The Office of Planning and Economic Development may revise these prices prior to initial occupancy in the event of documented exceptional circumstances.
- (4) In the event that a Covered Project receives additional subsidies from any source to assist the Inclusionary Units, the value of such subsidies shall be used to reduce the sales prices and/or income limits for the Income Eligible Households to be served by the Units, as determined by the City Office of Planning and Economic Development.
- (5) In the event that an individual buyer is able to provide a higher down payment or obtain a higher mortgage loan based on fixed-rate financing at a lower rate than provided in paragraph (2)(b) above, the additional Buyer Funds may be used by the buyer to purchase additional improvements to the Inclusionary Unit. Upon approval of the Office of Planning and Economic Development, said additional improvements can be added to the base price for purposes of determining resale under Article 240- 4.4.9B.

C. General Requirements for Covered Projects – Rental and For Sale Units

- (1) Distribution
In order to assure an adequate distribution of Inclusionary Units by household size, the bedroom mix of Inclusionary Units in any Covered Project shall reflect the same ratio as the bedroom mix of the Market Units of the Project, unless waived by the Planning Board for good cause or requested by the Office of Planning and Economic Development based on the waiting list.
- (2) Phasing
Inclusionary Units shall be made available for occupancy on approximately the same schedule as, or sooner than, a Covered Project's market units, except that certificates of occupancy for the last ten percent

(10%) of the Market Units shall be withheld until certificates of occupancy have been issued for all of the Inclusionary 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 Inclusionary Units, shall be established prior to the issuance of a building permit for any Covered Project.

(3) Comparability

Inclusionary Units may differ from the Market-Rate Units in a Covered Project with regard to interior amenities, finishes and gross floor area provided that:

- (a) These differences, excluding differences related to unit size differentials, are not apparent in the general exterior appearance of the project's units and there is compliance with all exterior site requirements of the City.
- (b) These differences do not include the reduction of insulation, windows, heating systems, and other improvements related to the energy efficiency of the Inclusionary Units.
- (c) Unless waived by the Planning Board for good cause, the average gross floor area of an Inclusionary Units shall not be less than twenty percent (20%) of the average gross square footage of the equivalent bedroom sized market rate unit. (For example, if the average size of the two-bedroom market rate units is 1,600 gross square feet, the average size of the inclusionary units shall be no less than 1,280 gross square feet.)
- (d) Unless waived by the Planning Board for good cause, the minimum heated area of an Inclusionary Unit shall be as follows:

Type of Unit	Rental Units	For Sale Units
Efficiency	450 Sq. Ft.	-
1 Bedroom	625 Sq. Ft.	900 Sq. Ft.
2 Bedroom	950 Sq. Ft.	1000 Sq. Ft.
3 Bedroom	1200 Sq. Ft.	1350 Sq. Ft.
4 Bedroom	1350 Sq. Ft.	1450 Sq. Ft.

D. Inclusionary Housing Agreement

All Covered Projects are required to have an Inclusionary Housing Agreement approved as part of the final PUD site plan, final site plan or final subdivision approval by the Planning Board.

E. Restrictive Covenants

All Inclusionary Units produced shall have restrictive covenants, recorded and filed to run with the land, to ensure compliance with the occupancy, sale, rent and other requirements of this article, and provide for legal remedies for the City to enforce this article. These restrictive covenants shall be contained in the Inclusionary Housing Agreement approved by the City Planning Board.

240- 4.4.7 RELIEF

The section identifies methods of relief from existing regulation to accommodate the requirements of this Article.

A. In order to accommodate the additional residential units required by this Article, the Planning Board shall grant relief from the requirements set forth in the table below to the extent necessary so that the additional units are appropriately incorporated into the overall site plan. In doing so, the Planning Board must find that the resulting development is consistent with the general area and does not negatively impact the character of the surrounding neighborhoods. The intent is to provide a sufficient degree of specificity in site design and layout without unduly restricting creative and diverse solutions. While certain regulations of the Zoning Ordinance may be relaxed, all other requirements must be met, including those of the Architectural and Historic Review Ordinance.

Zoning District	Requirements that may be relieved
T-6 Urban Core:	Height: standard maximum height may be exceeded up to one story. The additional story shall be set back at least 10 feet from the facades of the story below
T-4 Urban Neighborhood T-5 Neighborhood Center	Height: as defined for the T-6 Urban Core district Build-to line, side and rear setbacks Parking requirements
Single-family Residential Districts (RR, SR-1, SR-2, UR-1, UR-2)	Minimum lot size, mean width, maximum lot coverage Minimum yard dimensions Minimum floor area Number of principal buildings & residences: to permit carriage house/accessory apartments and duplexes, and only to the extent to accommodate the additional units Parking requirements
Single- and two-family Residential Districts (UR-3, UR-4, UR-4A, UR-7, NCD-1,2,3)	Minimum lot size, mean width, maximum lot coverage, minimum permeability Minimum yard dimensions Minimum floor area Number of principal buildings & residences – to permit carriage house/accessory apartments and duplexes, and only to the extent to accommodate the additional units Parking requirements
Multi-family Residential Districts (UR-5)	Minimum lot size, mean width, maximum lot coverage, minimum permeability Minimum yard dimensions Minimum floor area Parking requirements

- B. **Reduction in Inclusionary Units**
In the event the Planning Board cannot approve a full density bonus, as prescribed in Section 240- 4.4.5 “Density Bonus”, the number of required Inclusionary Units shall be reduced in proportion to the ratio of proposed Inclusionary Units to the proposed density bonus (i.e., if the developer has proposed that all density bonus units be Inclusionary Units, then 100% (20%/20%) of the reduction shall be Inclusionary Units; if the developer has proposed the 15% Inclusionary Unit option, then 75% (15%/20%) of the reduction shall be Inclusionary Units; if the developer has proposed the 10% Inclusionary Unit option, then 50% of the reduction in units shall be Inclusionary Units.)
- C. **High Cost Project**
In the event a Developer can establish by clear and convincing financial data to the Planning Board that the Covered Project constitutes a High Cost Project, the Planning Board, in consultation with the City Office of Planning and Economic Development, may permit the Developer to offer the required Inclusionary Units to households at up to 10% above the applicable income limits and prices in 240-4.4.6.
- D. **Relief from this Ordinance**
If the developer requests full relief from this Article to eliminate the provision of all Inclusionary Units, relief shall be sought from the Zoning Board of Appeals through an area variance. Should such variance be granted, the Zoning Board of Appeals shall consider conditioning such variance on mitigating measure that would require twice as many inclusionary units at an off-premise site within the City, or, for each of the required inclusionary units payment to the City’s Housing Trust Funds an amount equal to fifty percent of the average market value of the market rate units in the covered project.
- E. **Lower Property Assessments**
If the inclusionary units qualify under the provisions of NYS Real Property Law, Chapter 714, Section 581a, the City Assessment Office shall assess each IZ unit valued by “capitalization of income” method.

240- 4.4.8 SALE/LEASING OF INCLUSIONARY UNITS

Any Developer of a Covered Project shall adhere to the following provisions and to the provisions of the Inclusionary Housing Agreement with respect to the initial offering of Inclusionary Units for sale or rent.

- A. **Ineligible Households.** No Inclusionary Units may be rented or sold to any person who will not reside in that unit year-round, or to any person who is claimed as a dependent on another person’s federal or state tax return.
- B. **Occupant Qualification.** Occupancy of Inclusionary Units shall be by households qualified by the City.
- C. **Notice of Availability.** The Developer shall notify the City Office of Planning and Economic Development of the prospective availability of any Inclusionary Units at

least 180 days before such Units shall be available for lease or sale in a Covered Project.

- D. **Waiting List.** Upon such notice, the Office of Planning and Economic Development shall provide to the Developer a list of qualified Income Eligible Households based upon the City's waiting list for Inclusionary Unit housing. Referrals will be made by the City based on priority to Income Eligible Households who are, at the time that the units are offered for sale or lease, residing or working, first, in the City and, second, in the County of Saratoga. The Developer will consider applicants in the order specified in the list, to rent or sell the Inclusionary Units, and may take into account any standard and lawful screening of applicants uniformly applied to all applicants for Inclusionary and market units. The developer shall comply with all fair housing laws. Referrals from the list will respect any conditions of occupancy, including elderly and/or handicapped occupancy, legally imposed by public financing.
- E. **Unsold Units.** If, after the initial 180 days following the Notice of Availability, a developer is still unable to secure a qualified, Income Eligible Household for an Inclusionary Unit from the City's Waiting List, the City Office of Planning and Economic Development shall consider increasing the income eligibility to permit the unit to be marketed to additional buyers or exercise an assignable right of purchase at the approved sale price.
- F. **Reasonable Accommodations and Modifications.** The City will operate the program and maintain the waiting lists in compliance with the Americans With Disabilities Act to ensure access to persons with disabilities.
 - (1) For homebuyer units, the City will notify the developer of referral of a household that includes a person with disabilities. The developer shall make reasonable accommodations in working with that household, and install reasonable modifications as required by the household to occupy the unit. Said reasonable modifications shall be at the expense of the household, and the sales price of the Inclusionary Unit may be adjusted to reflect the reasonable modifications.
 - (2) For rental units, when the City determines that the likely applicants for Inclusionary Units will include households with disabilities, the City will designate handicapped accessible units in the development to be reserved as Inclusionary Units as part of the Inclusionary Housing Agreement. The developer will make reasonable accommodations to provide housing to the household containing persons with disabilities.

240- 4.4.9 CONTINUED AFFORDABILITY REQUIREMENTS

- A. **Rental Projects**

All rental Covered Projects shall comply with the following provisions, which shall be contained in an Inclusionary Housing Agreement to ensure continued affordability of Inclusionary Units.

 - (1) **Affordability Period.** All Inclusionary Units shall remain affordable for a period of no less than thirty (30) years commencing from the date of initial occupancy of the units.

- (2) Rent Increases. Increases in the annual rent for Inclusionary Units during the minimum affordability period shall be limited to the percentage increase in the Consumer Price Index for the Albany-Schenectady-Troy Metropolitan Statistical Area. Increases above this percentage require the approval in advance and in writing from the City Office of Planning and Economic Development, which shall approve increases based on documented hardship or other exceptional conditions.
- (3) Rental Report. Owners of rental Inclusionary Units shall provide an annual certification of compliance and any information required by the City to monitor compliance. The City Office of Planning and Economic Development reserves the right to inspect records to ensure compliance.
- (4) Maintenance of Units. Owners shall comply with all local codes and standards with respect to Inclusionary Units, and provide maintenance services to the Inclusionary Units in the same manner provided all units in the Project.
- (5) Lease and Sublet Restrictions. During the affordability period, the owner or occupant may not sublet an Inclusionary Unit to a Household other than an Income Eligible Household, or at a rent in excess of the Affordable Rent.
- (6) Sale of Project. If the Covered Project is sold during the Minimum Affordability Period, the use restrictions shall run with the land, and the new buyer will meet all restrictions of the Inclusionary Housing Agreement for the remainder of the period. The City shall charge the seller a fee to cover the costs of approving and recording the transfer.

B. Homebuyer Projects

All homebuyer Inclusionary Units shall comply with resale restrictions, which shall be contained in an Inclusionary Housing Agreement with the Developer and legally recorded with each sale. Transfer to an original co-owner does not constitute a resale for this purpose, but the transfer is subject to all restrictions of the original covenants, and any subsequent resale is subject to these provisions.

- (1) Affordability Period. All Inclusionary Units shall remain affordable for a period of no less than thirty (30) years commencing from the date of initial occupancy of the units.
- (2)
- (3) Shared Interest in Proceeds of Sale. At the time of the initial sale of the Inclusionary Unit, the City will determine the Buyer's Interest and the City's Interest based upon current Market Value determined by appraisal as if the property was unrestricted. The Buyer's Interest will be the percentage that the Buyer's Funds, including down payment and mortgage(s), constitute of the current full market value at time of initial sale. Buyer's Funds can include additional improvements as defined in Article 240- 4.4.6B(5), but do not include any mortgages, subsidies or buy downs provided by the City or other public sources.

The City's Interest will be the remainder interest; that is, the Subsidy Amount (Market Value minus Buyer's Funds) divided by the Market Value at time of initial sale.

- (4) Resale Price. The resale price shall be the Buyer's Interest multiplied by the current Market Value as an unrestricted unit at time of resale. The Office of Planning and Economic Development shall determine the market value of the unit by appraisal, the cost of which is to be borne by the seller.
- (5) Notice of Intent to Sell. At any time the original Buyer wishes to offer an Inclusionary Unit for resale, the Buyer (now the Seller) must notify the City Office of Planning and Economic Development. The City (or its designee) shall provide one or more eligible buyers from the list of eligible buyers within thirty (30) days from notification. If the City declines or fails to provide an eligible buyer after 120 days from the notice to sell, the City Office of Planning and Economic Development may release the Inclusionary Unit restrictions on this unit, and the unit may be sold as an unrestricted unit, with the City recapturing its portion of the gross proceeds based on the City's Interest in Article 240- 4.4.9B(1) above.
- (6) Transaction Fee. The City shall charge a fee to cover the costs of resale charged to the seller out of net proceeds.
- (7) Default. In the event of default of any of the provisions of the restrictive covenants including but not limited to delinquency or default on any mortgages or tax payments, the City shall have an assignable right of repurchase at the original purchase price. In the event the City does not exercise this right, the lender may extinguish the restrictions in foreclosure or deed in lieu of foreclosure.

240- 4.4.10 ADMINISTRATION

- A. Inclusionary Housing Plan
The developer will submit a proposed Inclusionary Housing Plan to the City Office of Planning and Economic Development in advance of Planning Board review. The Office will review the proposed plan for consistency with this Article, and provide comments to the developer and to the Planning Board.
- B. Inclusionary Housing Agreement
All Covered Projects are required to have an Inclusionary Housing Agreement approved as part of the final PUD site plan, site plan or subdivision approval by the Planning Board. The City Office of Planning and Economic Development will prepare the Inclusionary Housing Agreement. Notwithstanding any other provision of this article, no special use permit, site plan, change of use, subdivision approval, building permit or occupancy permit shall be granted for any dwelling unit in a Covered Project unless an Inclusionary Housing Agreement has been approved by the Planning Board.
- C. Expedited Processing and Waiver of Fees

- (1) Expedited Approvals and Permit Review. Structures that provide the required Inclusionary Units shall receive priority for building permit review and development approvals, and multiple IZ units with identical plans will receive single plan review.
- (2) Waiver of Fees. All municipal fees associated with the development and construction of new residential units shall be waived only as they apply to the required Inclusionary Units. In the annual resolution of the City Council there shall be no application fees for the inclusionary units in a site plan or subdivision application. There shall be no cash-in-lieu of recreation land fee for the inclusionary units.

D. Oversight and Enforcement

The City Office of Planning and Economic Development, or its agent, will monitor Covered Projects during implementation, review occupancy reports submitted by developers, and approve the transfer or re-occupancy of Inclusionary Units.

- (1) Post-Approval Administrative Actions. In the event of unforeseen and unavoidable changes in costs, the Office of Planning and Economic Development shall have the authority to adjust pricing and eligible income levels, but changes in the number of Inclusionary Units in the Inclusionary Housing Agreement will require Planning Board approval.
- (2) Certificate of Occupancy. No final certificate of occupancy shall be issued for a Covered Project unless all Inclusionary 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 this Article.
- (3) Enforcement. Violations of this article shall be punishable as provided by Article 240- 9.2. In addition, any certificates of occupancy for Market Units in a Covered Project found to be in violation of this article may be revoked upon a finding of substantial non-compliance hereunder.

E. Annual Report and Evaluation

The City Office of Planning and Economic Development shall monitor activity under this article and shall provide an annual report on activities and costs to the City Council. In addition, the Council shall cause this Article to be evaluated every three years, or in conjunction with the Comprehensive Plan review. In accordance with the City Charter, the Mayor shall have the authority to appoint a committee that includes representation of the inclusionary zoning program administrative staff, the Planning Board, the development industry and affordable housing experts to monitor the initial implementation of the ordinance and make recommendations.