

3.10 Inclusionary Zoning

The Town Council hereby finds and determines as follows:

- (a) *A diverse housing stock is necessary in this community in order to serve people of all income levels. Based upon the review and consideration of recent housing studies, reports and analysis, it has become clear that the provisions of this Section are necessary in order to preserve some diversity of housing opportunities for the Town's residents and working people.*
- (b) *The program defined by this Section is necessary to provide continuing housing opportunities for very low., low. and moderate-income and working people. It is necessary to help maintain a diverse housing stock and to allow working people to have better access to jobs and upgrade their economic status. It is necessary in order to decrease social conflict by lessening the degree of separateness and inequality. The increasingly strong employment base in this region, combined with the special attractiveness of Chapel Hill, its increasing University-related population and its environmentally sensitive urban service boundaries, all combine to make the continued provision of decent housing options for very low., low. and moderate-income and working people in Chapel Hill a difficult but vital objective. The regional trend toward increasing housing prices will, without intervention, result in inadequate supplies of affordable housing here for very low., low. and moderate-income and working people. This in turn will have a negative effect upon the ability of local employers to maintain an adequate local work force.*
- (c) *It is essential that appropriate housing options exist for University students, faculty and staff so that the housing needs of University related populations do not preclude non-University community members from finding affordable housing.*
- (d) *A housing shortage for persons of very low., low. and moderate-income is detrimental to the public health, safety and welfare. The inability of such persons to reside within the Town negatively affects the community's jobs/housing balance and has serious and detrimental transportation and environmental consequences.*
- (e) *Because remaining land appropriate for residential development within the Town is limited, it is essential that a reasonable proportion of such land be developed into housing units affordable to very low., low. and moderate-income residents and working people. This is particularly true because of the tendency, in the absence of intervention, for large expensive housing to be developed within the Town which both reduces opportunities for more affordable housing and contributes to a general rise in prices for all of the housing in the community, thus exacerbating the scarcity of affordable housing within the Town.*
- (f) *The primary objective of this Section is to obtain on-site, privately owned, Affordable Dwelling Units. Some provisions of this Section provide for alternatives to the production of such on-site units. Those provisions recognize the fact that individual site and economic factors can make on-site production less desirable than the alternatives for particular developers. However, the intent and preference of this Section is that wherever possible, Affordable Dwelling Units constructed pursuant to these provisions be located on-site and be privately produced, owned and managed.*

The purposes of this Section are to:

- (a) *Implement the housing goals of the Chapel Hill Comprehensive Plan;*
- (b) *Promote the construction of housing that is affordable to the community's workforce;*
- (c) *Retain opportunities for people that work in the Town to also live in the Town;*

(d) Maintain a balanced community that provides housing for people of all income levels; and

(e) Insure that housing options continue to be available for very low-income, low-income, and moderate-income residents, for special needs populations and for a significant proportion of those who both work and wish to live in the Town.

3.10.1 Applicability and General Inclusionary Housing Requirements.

- (a) **Scope of Section:** No person shall fail to conform to the provisions of this Section for any new development which applies for a development approval or building permit for a dwelling unit after the effective date of this Section. No building permit or certificate of occupancy shall be issued, nor any development approval granted, which does not meet the requirements of this Section.
- (b) **Exemptions.** The provisions of this Section do not apply to:
 - (1) Building permits authorizing development which is not an Equivalent Dwelling Unit.
- (c) **Prohibitions:** No person shall sell, rent, purchase, or lease a Affordable Dwelling Unit created pursuant to this Section except to income eligible households and in compliance with the provisions of this Section.
- (d) **Eligibility of Affordable Dwelling Units.** An Affordable Dwelling Unit shall be considered in meeting the requirements of this Section only if:
 - (1) The unit is owner occupied;
 - (2) Is owned or managed by the Chapel Hill Housing Authority or its agents; or
 - (3) Is a rental unit in which the Town has an interest through the Chapel Hill Department of Housing or a similar agency that is consistent with the Housing Authorities Law, NCGS Section 157.
- (e) Affordable Dwelling Units shall be maintained and restricted as Affordable Dwelling Units through contractual arrangements, restrictive covenants, resale and rental restrictions, subject to reasonable exceptions, including, without limitation, subordination of such arrangements, covenants, and restrictions to a mortgagee, for both owner occupied and rental units. No unit shall be considered a Affordable Dwelling Unit until the location, construction methods, and techniques used to ensure that the dwelling unit will remain affordable have been approved by the Town Manager.
- (f) **Developments Subject to Annexation Agreements:** Developments subject to affordable housing requirements imposed by annexation contracts entered into prior to the effective date of this Section may develop in conformity with those contract provisions.
- (g) **Developments with Pending Project Approval Applications:** Developers of developments for which applications were filed prior to the effective date of this Section may request that the Town Council vary the standards of this Section to allow for development in conformity with the approvals. The Town Council shall grant such variance requests if it finds that:
 - (1) the proposed variance will result in benefits to the Town that are equivalent to the benefits that would otherwise have been created by the application of the provisions of this Section; or

(2) the project has vested rights under state or federal law.

(h) Reference Information: Whenever this Section refers to information generated by HUD but no such information is generated by or available from that agency, the Town Manager shall generate appropriate information which can be utilized in the enforcement of the provisions of this Section.

3.10.2 Inclusionary Obligation

(a) Generally. The applicant shall provide Affordable Dwelling Units at the rate established below:

Size of Project	Percent of Equivalent Dwelling Units (EDU's)		
	Very-Low Income Units	Low-Income Units	Moderate Income Units
< 5 EDU's	*****	*****	*****
5-50 EDU's	*****	*****	*****
51 or more EDU's	*****	*****	*****

(b) Developments Containing Four Dwelling Units or Less: Any development containing four equivalent dwelling units or less may comply with the obligations of this Section either by including one Affordable Dwelling Unit within the project, by dedicating an off-site Affordable Dwelling Unit, by dedicating land that meets the requirements set forth in Section 3.10.____, "Off-site Inclusionary Zoning Option," or by providing a Payment-in-Lieu financial contribution to the Town's affordable housing fund established by Section 3.10.____, "Payment-in-Lieu Equivalent for a Single Affordable Dwelling Unit."

(c) The Town Manager is authorized to enter into agreements allowing Affordable Dwelling Units to constitute a smaller percentage of the total floor area contained within non-Affordable Dwelling Units at a given project if doing so would accomplish additional benefits for the Town consistent with the purposes of this Section or to prevent an unlawful taking of property without just compensation in accordance with Section 3.10.11, "No Taking of Property Without Just Compensation."

3.10.3 Payment-in-Lieu Equivalent for a Single Affordable Dwelling Unit.

(a) Payment-in-Lieu Equivalent: Whenever this Section permits a Payment-in-Lieu contribution as an alternative to the provision of a single Affordable Dwelling Unit, the Payment-in-Lieu contribution shall be as follows:

(1) Detached Dwelling Units: For each unrestricted detached dwelling unit, the Payment-in-Lieu contribution shall be the lesser of \$_____ or \$_____ multiplied by twenty percent of the total floor area of the unrestricted unit.

(2) Attached Dwelling Units: For each unrestricted attached dwelling unit, the Payment-in-Lieu contribution shall be the lesser of \$_____ or \$_____ multiplied by twenty percent of the total floor area of the unrestricted unit.

(c) Annual Escalator: The Town Manager is authorized to adjust the Payment-in-Lieu contribution on an annual basis to reflect changes in the median sale price for detached and attached housing, using information provided by Chapel Hill County Assessor records for the Town of Chapel Hill.

(d) Affordable Housing Fund Established: The Town Manager shall establish an affordable housing fund for the receipt and management of Affordable Dwelling Unit Payment-in-Lieu financial contributions. Monies received into that fund shall be utilized solely for the construction, purchase, and maintenance of affordable housing and for the costs of administering programs consistent with the purposes of this Section.

3.10.4 Off-site Inclusionary Zoning Option.

(a) On-site and Off-site Inclusionary Zoning Requirements: Except as otherwise provided in this Section, in developments that require more than one permanently affordable ownership unit, the developer must construct a minimum of one-half of the required Affordable Dwelling Units on-site.

(b) Waiver of On-site Construction Requirement: The Town Manager is authorized to enter into agreements to allow a greater percentage of the required Affordable Dwelling Unit obligation to be satisfied off-site if the Town Manager finds:

(1) Securing such off-site units will accomplish additional benefits for the Town consistent with the purposes of this Section; or

(2) If zoning, environmental, or other legal restrictions make a particular level of on-site compliance unfeasible.

(c) Requirements for Fulfilling Obligation Off-site: To the extent that a developer is authorized to fulfill some portion of the permanently affordable housing obligation off-site, the developer may satisfy that obligation through any combination of the following alternate means:

(1) In Lieu Contribution: To the extent permitted by this Section, developers may satisfy Affordable Dwelling Unit obligations by making contributions to the Town's affordable housing fund in an amount that is calculated according to the standards set forth in Subsection 3.10._____.

(2) Land Dedication: To the extent permitted by this Section, Affordable Dwelling Unit obligations may be satisfied by dedication of land in lieu of providing affordable housing on-site. Land dedicated to the Town or its designee shall be located in the Town of Chapel Hill. The value of land to be dedicated in satisfaction of this alternative means of compliance shall be determined, at the cost of the developer, by an independent appraiser, who shall be selected from a list of certified appraisers provided by the Town, or by such alternative means of valuation as to which a developer and the Town may agree. The land dedication requirement may be satisfied by:

(A) Land at Equivalent Value: Conveying land to the Town or its designee that is of equivalent value to the Cash-in-Lieu contribution that would be required under Section 3.10.____ "Payment-in-Lieu Equivalent For a Single Affordable Dwelling Unit," , plus an additional fifty percent, to cover costs associated with holding, developing, improving, or conveying such land; or

(B) Land to Construct Equivalent Units: Conveying land to the Town or its designee that is of equivalent value (as of the date of the conveyance) to that land upon which required units would otherwise have been constructed (upon completion of construction). Land so deeded must be zoned such as to allow construction of at least that number of units for which the obligation of construction is being satisfied by the dedication of the land.

(3) Dedication of Existing Units: To the extent permitted by this Section, Affordable Dwelling Unit obligations may be satisfied by restricting existing dwelling units which are approved by the Town as suitable affordable housing dwelling units through covenants, contractual arrangements, or resale

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restrictions, the form and content of which are acceptable to the Town Manager. Off-site units shall be located within the Town of Chapel Hill. The restriction of such existing units must result in the creation of units that are of equivalent value, quality, and size of the Affordable Dwelling Units which would have been constructed on-site if this alternative had not been utilized. Where a proposed development consists of ownership units, units created under this section shall be ownership units. The value of dwelling units created pursuant to this section as a way of meeting the Affordable Dwelling Unit requirement shall be determined, at the expense of the developer, by an appraiser who shall be selected by the developer from a list of certified appraisers provided by the Town or by such alternative means of valuation as to which a developer and the Town may agree.

3.10.4 Affordable Housing Requirements Unit For Rental Projects.

(a) **Manner of Compliance:** For developments containing rental units, Affordable Dwelling Unit obligations for such units shall be met in the following manner:

(1) **On-site or Off-site Units Permitted:** All Affordable Dwelling Unit obligations of rental housing projects may be met through on-site units, off-site units, or by any combination of on-site and off-site units, which satisfy such Affordable Dwelling Unit obligation. Off-site units shall be equivalent in size and quality of on-site units that otherwise would be required by this Section.

(2) **Variance to Permanently Affordable Housing Requirement for Rental Projects:** The Town Manager may enter into agreements with the developers of rental housing projects such that Affordable Dwelling Unit obligations are satisfied in ways other than those listed in this Section upon a finding by the Town Manager that such alternative means of compliance would result in additional benefits to the Town which would further the objectives of this Section.

(b) **Determination of Rental Rates for Affordable Dwelling Units:** If a developer of a rental housing project chooses to meet the Affordable Dwelling Unit requirements imposed by this Section through the provision of on-site or off-site affordable rental housing, affordability of rental units shall be determined as follows:

(1) **Maximum Rent:** Rents charged for Affordable Dwelling Units in any one project must, on average, be affordable to households earning ten percentage points less than the HUD low-income limit for the Chapel Hill MSA, with no unit renting at a rate which exceeds affordability to a household earning ten percentage points more than the HUD low-income limit for the Chapel Hill MSA.

(2) **Maximum Income for Tenants:** No single household in a Affordable Dwelling Unit project shall have an income which exceeds a figure which is ten percentage points greater than the HUD low-income limit for the Chapel Hill MSA.

3.10.5 Affordable Housing Requirements For Ownership Units.

(a) **Maximum Sales Price for Affordable Dwelling Units:** The maximum sale price for an affordable ownership unit shall be set by the Town on a quarterly basis.

(b) **Average Price within a Development:** The prices charged for Affordable Dwelling Units in any one project shall average a price affordable to a household earning the HUD low-income limit, with no unit exceeding a price affordable to a household earning ten percentage points more than the HUD low-income limit for the Chapel Hill MSA.

(c) **Maximum Income for Ownership Units:** An ownership unit shall be sold to, or purchased by an income eligible household that meets the asset limitations established pursuant to this Section.

(d) **Approved Purchasers for Affordable Dwelling Units:** Upon request, the Town may provide the developer or owner of a Affordable Dwelling Unit with a qualified affordable housing household list. However, a developer or property owner may select a low-income purchaser who is not on a furnished list so long as the Town can verify the purchaser's income and asset eligibility and the unit is sold at an affordable price as described in this Section.

(e) **Purchasers of Affordable Dwelling Units Required to Reside in those Units:** A purchaser of Affordable Dwelling Units shall occupy the purchased unit as a primary residence, except subject to rental restrictions for Affordable Dwelling Units.

(f) **Rental Restrictions for Affordable Dwelling Units:** No person shall rent a permanently affordable ownership unit, except as follows:

(1) **Unit Initially Occupied:** The owner shall initially reside in the permanently affordable ownership unit for a period of not less than one year.

(2) **Notice:** The owner shall provide notice to the Town prior to renting of the permanently affordable ownership unit of its intent to rent the unit.

(3) **Limitation on Lease Period:** The owner shall not rent or lease the entirety of the affordable unit for one or more periods aggregating not more than one year out of every seven year period.

(4) **Lease Documentation:** Any lease or rental agreement for the lease or rental of a permanently affordable ownership unit pursuant to this section shall be in writing.

(5) **Prior Approval:** Before the date upon which it becomes effective, a copy of any lease or rental agreement for a Affordable Dwelling Unit shall be provided to the Town, along with those documents which the Town finds to be reasonably necessary in order to determine compliance with this section.

(6) **Scope:** The provisions of this section shall apply to all rental or lease arrangements under which any person, other than the owner, his or her spouse, his or her domestic partner and dependent children or parents, occupies any part of the property for any valuable consideration, whether that agreement is called a lease, rental agreement, or something else.

(7) **Rental of a Bedroom Permitted:** At all other times, the only part of a Affordable Dwelling Unit which an owner may rent or lease is a bedroom, subject to all requirements of Town ordinances concerning the renting of residential property.

(g) **Resale Restrictions Applicable to Affordable Dwelling Units:** All Affordable Dwelling Units developed under this Section shall be subject to the following resale restrictions:

(1) **Approved Purchasers for Resale of Affordable Units:** Upon request, the Town may provide a potential seller of a Affordable Dwelling Unit with a list of eligible purchasers. However, a developer or property owner may select a low-income purchaser who is not on a furnished list at any time so long as the Town can verify the purchaser's income and asset eligibility and the unit is sold at an affordable price as described in this Section. All purchasers of Affordable Dwelling Units shall be part of income eligible households.

(2) **Resale Price for Affordable Dwelling Units:** The resale price of any Affordable Dwelling Unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(A) Customary closing costs and costs of sale;

(B) Costs of real estate commissions paid by the seller if a licensed real estate agent is employed and if that agent charges commissions at a rate customary in Chapel Hill County;

(C) Consideration of permanent capital improvements installed by the seller; and

(D) The resale price may include an inflationary factor or shared appreciation factor as applied to the original sale price pursuant to rules as may be established by the Town Manager to provide for such consideration. In developing rules, the Town Manager shall consider the purposes of this Section, common private, non-profit, and governmental lending practices, as well as any applicable rules or guidelines issued by federal or state agencies affecting the provision or management of affordable housing. In the event that the Town has not adopted rules that contemplate a particular arrangement for the use of an inflationary factor or shared appreciation factor, the Town Manager is authorized to approve a resale price formula that is consistent with the purposes of this Section, common private, non-profit, and governmental lending practices, as well as any applicable rules or guidelines issued by federal or state agencies affecting the provision or management of affordable housing.

(3) No Special Fees Permitted: The seller of a Affordable Dwelling Unit shall not levy or charge any additional fees or any finder's fee nor demand any other monetary consideration other than provided in this Section.

(4) Deed Restriction Required: No person offering a Affordable Dwelling Unit for sale shall fail to lawfully reference in the Grant Deed conveying title of any such unit, and record with the county recorder, a covenant or Declaration of Restrictions in a form approved by the Town. Such covenant or Declaration of Restrictions shall reference applicable contractual arrangements, restrictive covenants, and resale restrictions as are necessary to carry out the purposes of this Section.

3.10.6 Requirements Applicable to all Required Affordable Dwelling Units.

(a) Construction Timing: The construction of required Affordable Dwelling Units in any development shall be timed such that they may be marketed concurrently with or prior to the market rate units in that development.

Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

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

Fractions of units shall not be counted.

(b) Residents Eligible for Affordable Dwelling Units: No person shall sell, lease or rent a Affordable Dwelling Unit except to income eligible households.

(c) Required Agreements: Prior to approval of any _____, applicants shall have entered into affordable housing agreements with the Town. Such agreements shall specify the number, type, location, approximate size, and projected level of affordability of Affordable Dwelling Units. Prior to application for a building permit for a residential development project, developers shall execute such restrictive covenants and additional agreements, in a form acceptable to the Town, as are necessary to carry out the purposes of this Section. No development review application or subdivision application shall be approved in the absence of proof of the execution of required agreements and covenants. No building permit application shall be accepted in the absence of proof of the execution of required agreements and covenants.

(d) Good Faith Marketing Required: All sellers or owners of Affordable Dwelling Units shall engage in good faith marketing efforts each time a Affordable Dwelling Unit is rented or sold such that members of the public who are qualified to rent or purchase such units have a fair chance to become informed of the availability of such units. Every such seller or owner shall submit a public advertising plan targeting the appropriate income range for approval by the Town Manager.

3.10.7 No Taking of Property Without Just Compensation.

(a) Purpose: It is the intention of the Town that the application of this Section not result in an unlawful taking of private property without the payment of just compensation.

(b) Request for Review: Any applicant for the development of a housing project who feels that the application of this Section would effect such an unlawful taking may apply to the Town Manager for an adjustment of the requirements imposed by this Section.

(c) Town Manager Review: If the Town Manager determines that the application of the requirements of this Section would result in an unlawful taking of private property without just compensation, the Town Manager may alter, lessen or adjust Affordable Dwelling Unit requirements as applied to the particular project under consideration such that there is no unlawful uncompensated taking.

(d) Administrative Hearing: If after reviewing such application, the Town Manager denies the relief sought by an applicant, the applicant may request an administrative hearing within which to seek relief from the provisions of this Section. Any such hearing shall be conducted pursuant to the procedures prescribed by § 4.____. At such hearing, the burden of proof will be upon the applicant to establish that the fulfillment of the requirements of this Section would effect an unconstitutional taking without just compensation pursuant to applicable law of the United States and the State of North Carolina. If it is determined at such administrative hearing that the application of the requirements of this Section would effect an illegal taking without just compensation, the Town Manager shall alter, lessen or adjust Affordable Dwelling Unit requirements as applied to the particular project under consideration such that no illegal uncompensated taking takes place.

3.10.8 Administrative Regulations.

To the extent the Town Manager deems necessary, rules and regulations pertaining to this Section will be developed, maintained and enforced in order to assure that the purposes of this Section are accomplished.

3.10.9 Monitoring.

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Prior to _____, the Town Manager will present sufficient information to the Town Council so that it can effectively review the operation of this Section and determine whether any of the provisions of this Section should be amended, adjusted or eliminated. Such information should be sufficient to allow the Town council to evaluate the following:

- (a) The effectiveness of this Section in contributing to the purposes of this Section;
- (b) Any demographic trends affecting housing affordability indicate the need for amendments or alterations to the provisions of this Section;
- (c) The level of integration of the provisions of this Section with other tools being utilized by the Town as part of a comprehensive approach toward obtaining the goals of this Section.

Income eligible households will be approved by the Town Manager and placed on a list of approved households eligible to purchase affordable housing. The Town Manager will provide the list of eligible households to developers upon request. Households will be required to meet the household income requirements of this Section.

