

ORDINANCE NO. 24 - _____

**AN ORDINANCE
AMENDING TITLE 6 (ZONING ORDINANCE)
OF THE NAPERVILLE MUNICIPAL CODE TO ADD
CHAPTER 17 (AFFORDABLE HOUSING INCENTIVE PROGRAM)**

RECITALS

- A. **WHEREAS**, the City of Naperville recognizes the critical need for affordable housing options to support diverse communities and promote economic stability.
- B. **WHEREAS**, a growing number of residents face challenges in accessing affordable housing due to rising housing costs and limited availability.
- C. **WHEREAS**, the City of Naperville's mission is to provide services that ensure a high quality of life, sound fiscal management, and a dynamic business environment, while creating an inclusive community that values diversity.
- D. **WHEREAS**, the City of Naperville aims to foster an inclusive community by providing housing solutions that cater to individuals and families of varying income levels.
- E. **WHEREAS**, research indicates that voluntary incentive programs can effectively encourage developers to integrate affordable housing units into new projects without imposing undue burdens.
- F. **WHEREAS**, the proposed amendment to the Zoning Code will create a framework for collaboration between the City of Naperville and private developers, incentivizing the creation of affordable housing units.
- G. **WHEREAS**, the City of Naperville seeks to enhance the quality of life for all residents by ensuring that affordable housing is integrated into the community, contributing to social equity and economic diversity.
- H. **WHEREAS**, the purpose of the proposed program is to encourage the voluntary production and availability of new affordable residential units in the City of Naperville by providing by-right density bonuses and incentives to projects that set-aside a minimum number of affordable units for low- or moderate-income households for at least 30 years.
- I. **WHEREAS**, the establishment of this program reflects the City of Naperville's proactive approach to addressing housing challenges and promotes long-term community resilience.

- J. **WHEREAS**, the City of Naperville values stakeholder input and will engage with community members, developers, and housing advocates to refine and implement this program effectively.
- K. **WHEREAS**, the City of Naperville acknowledges the importance of monitoring and evaluating the impact of this program to ensure its goals of affordability and access are met.
- L. **WHEREAS**, the adoption of this ordinance will serve as a foundational step towards a comprehensive strategy for addressing, establishing, and maintaining affordable housing within the City of Naperville.
- M. **WHEREAS**, the City of Naperville is a home rule unit of local government under the laws and Constitution of the State of Illinois and is enacting this Ordinance pursuant to its home rule authority.
- N. **WHEREAS**, under the Constitution of the State of Illinois, home rule units of government have broad authority to pass ordinances and promulgate rules and regulations that protect the public health, safety, and welfare of residents unless the state legislature specifically states that state legislation preempts home rule authority.
- O. **WHEREAS**, the Corporate Authorities of the City of Naperville deem it to be in the best interests of the City of Naperville to establish a voluntary affordable housing incentive program as set forth herein.
- P. **WHEREAS**, in an effort to protect the public health, safety, and welfare, the City of Naperville has a clear and compelling interest in exercising its home rule authority as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority, as follows:

SECTION 1: The Recitals set forth above are incorporated herein and made part hereof as though fully set forth in this Section 1.

SECTION 2: Title 6 (Zoning Ordinance) of the Naperville Municipal Code is hereby amended to add Chapter 17 (Affordable Housing Incentive Program) by adding the language as follows:

TITLE 6 – ZONING REGULATIONS

CHAPTER 17 – AFFORDABLE HOUSING INCENTIVE PROGRAM

SECTION:

6-17-1: DEFINITIONS:

Where terms are capitalized within the definitions below and as set forth in this Chapter, they shall have the meaning set forth below.

AFFORDABLE DWELLING UNIT:	A dwelling unit that is required to be set aside for and restricted to occupancy by Eligible Households in accordance with the provisions of this Chapter 17. Affordable Dwelling Units may be either Affordable For-Sale Dwelling Units or Affordable Rental Dwelling Units.
AFFORDABLE FOR-SALE DWELLING UNIT:	An Affordable Dwelling Unit that is sold, or to be sold, and occupied by an Eligible Household as its primary residence at the rates and subject to the terms and conditions set forth herein.
AFFORDABLE HOUSING AGREEMENT (OR AGREEMENT):	An agreement which is entered into between the City of Naperville and an Owner of Affordable For-Sale Dwelling Unit(s) or the Owner of Affordable Rental Dwelling Unit(s) as set forth in Section 6-17-12.
AFFORDABLE RENTAL DWELLING UNIT:	An Affordable Dwelling Unit that is rented to and occupied by an Eligible Household as its primary residence at the rates and subject to the terms and conditions set forth herein and in an Affordable Housing Agreement.
AHIP	Affordable Housing Incentive Program.
AMERICAN COMMUNITY SURVEY:	A demographic survey program conducted by the U.S. Census Bureau.
APPLICATION:	Application has the meaning set forth in Section 6-17-9 of this Chapter.
COMPLIANCE DOCUMENTATION:	Compliance Documentation has the meaning set forth in Section 6-6-10:2.2.2 hereof.
DENSITY BONUS:	An increase in the number of dwelling units over the otherwise maximum number of dwelling units allowed in accordance with the applicable zoning district of the real property as said increase is set forth in Section 6-17-5.
DIRECTOR OF TRANSPORTATION, ENGINEERING, AND DEVELOPMENT BUSINESS GROUP:	The individual appointed by the City Manager to serve as the Director of the City of Naperville Transportation, Engineering, and Development Business Group, or their designee.
ELIGIBLE HOUSEHOLD:	A household that meets the Regional Median Household Income or the Local Median Household Income as set forth in Table 2 of Section 6-17-6:2 as adjusted by household size.
INCENTIVES:	Deviations from requirements of the Naperville Municipal Code which are provided to Qualified Projects in accordance with Section 6-17-6 of this Chapter.

LOCAL MEDIAN HOUSEHOLD INCOME:	Median household income levels at the time an Application for a Qualified Project is submitted to the City as reported by the most recent American Community Survey 5-Year Estimates for the City of Naperville, adjusted for household size. Rent limits will be based on maximum income limits and shall include an allowance for utilities, as categorized below: <ol style="list-style-type: none"> 1. 1-person household: studio dwelling unit 2. 2-person household: one-bedroom dwelling unit 3. 3-person household: two-bedroom dwelling unit 4. 4-person household and larger: three-bedroom dwelling unit
MARKET-RATE DWELLING UNIT:	A dwelling unit that is not set aside for or restricted to occupancy as an Affordable Dwelling Unit in accordance with the provisions of this Chapter.
MINIMUM AFFORDABILITY PERIOD:	A minimum of thirty (30) years from the date the last Affordable Dwelling Unit in a Qualified Project is issued an occupancy permit, or such longer timeframe as may be agreed to in an Affordable Housing Agreement.
NAPERVILLE MUNICIPAL CODE (OR CODE):	The Naperville Municipal Code as amended from time to time.
OWNER(S):	The owner or owners of real property upon which a Qualified Project is located, and the successors, assigns, heirs, transferees, designees, and legal or beneficial owners of any portion of said real property upon which an Affordable For-Sale Dwelling Unit or an Affordable Rental Dwelling Unit is located.
QUALIFIED PROJECT:	A residential development in zoning districts specified in Section 6-17-3 which consists of at least 5 or more new residential dwelling units in which at least 20% of the dwelling units are required to be maintained as Affordable Dwelling Units for the Minimum Affordability Period. For projects consisting of more than one phase, each phase shall be evaluated as a separate project for purposes of determining if that phase constitutes a Qualified Project.
REGIONAL MEDIAN HOUSEHOLD INCOME:	Maximum annual income limits at the time an Application for a Qualified Project is submitted to the City as reported by the most recent Illinois Housing Development Authority, or any successor agency, for the Chicago Region (which includes DuPage and Will Counties), adjusted for household size. Rent limits will be based off maximum income limits and shall include an allowance for utilities, as categorized below: <ol style="list-style-type: none"> 1. 1-person household: studio dwelling unit 2. 2-person household: one-bedroom dwelling unit 3. 3-person household: two-bedroom dwelling unit 4. 4-person household and larger: three-bedroom dwelling unit
REQUEST FOR ADDITIONAL VARIANCES OR DEVIATIONS:	Owner or developer requests for variances or deviations other than the menu of Incentives provided in Section 6-17-6:1 or in excess of the number of Incentives allowed under Section 6-17-6:2 as provided in Section 6-17-6:3.
TRANSPORTATION, ENGINEERING, AND DEVELOPMENT BUSINESS GROUP	The Transportation, Engineering, and Development Business Group of the City of Naperville led by the Director of the Transportation, Engineering, and Development Business Group.

6-17-2: PURPOSE:

The purpose of the Affordable Housing Incentive Program (AHIP) is to encourage the creation and availability of affordable housing in the City by providing Density Bonus and Incentives for Qualified Projects.

6-17-3: QUALIFIED PROJECT:

A property must be able to be improved with a minimum of five (5) or more new residential dwelling units, based on the property's underlying zoning allowances, to participate in the AHIP. Any property zoned R1A, R1B, R2, R1, E1, E2, and E3 shall be prohibited from participating in the AHIP.

A Qualified Project shall be entitled to receive a Density Bonus as set forth in Section 6-17-5 and the Incentives as set forth in Section 6-17-6 herein. When calculating the number of dwelling units allowed on a property, Density Bonus dwelling units shall not be counted in determining whether a property meets the 5-dwelling minimum and any fractional (decimal) result shall be disregarded. For projects consisting of more than one phase, each phase shall be evaluated as a separate project for purposes of determining if that phase constitutes a Qualified Project.

A Qualified Project shall include five (5) or more new residential dwelling units as permitted in the zoning districts set forth above in which the Owner agrees to set aside at least 20% of the total project dwelling units for and restricted to occupancy by an Eligible Household for the Minimum Affordable Period of thirty (30) years. A development may, in its entirety, constitute a Qualified Project, or may include Qualified Projects only in one or more phases.

6-17-4: COMPLIANCE WITH THE CODE AND APPLICABLE REGULATIONS:

Except for the Density Bonus and Incentives specified in this Chapter, a Qualified Project shall be reviewed for compliance with all applicable provisions of the Code, including but not limited to the Engineering Design Manual, the Citywide Design Guidelines, and applicable building and fire codes and local amendments thereto, as any of the foregoing may be amended from time to time.

6-17-5: DENSITY BONUS:

Qualified Projects. A Qualified Project is automatically eligible to receive a Density Bonus of up to 100% Dwelling Units subject to the provisions of Section 6-17-5:1.1. The minimum number of Affordable Dwelling Units to be constructed for a Qualified Project shall be based upon the total number of Dwelling Units to be constructed which may be at or below the maximum numbers as calculated using the chart below.

Multi-Family Project Example		
A	Number of dwelling units allowed by existing zoning	10 dwelling units
B	Maximum 100% Density Bonus	$A \times 100\% = 10 \times 100\% = 10$ additional dwelling units
C	Maximum dwelling units allowed in a Qualified Project with Density Bonus	$A + B = 10$ dwelling units + 10 additional dwelling units = 20 total dwelling units (combination of Affordable Dwelling Units and Market-Rate Dwelling Units)
D	Minimum Affordable Dwelling Units required (based on the number of actual dwelling units to be constructed in the Qualified Project)	$20\% \times C = 20\% \times 20$ total dwelling units = 4 Affordable Dwelling Units

E	Maximum number of Market-Rate Dwelling Units allowed	C - D = 20 total dwelling units – 4 Affordable Dwelling Units = 16 Market-Rate Dwelling Units
F	Actual dwelling units to be constructed	15 dwelling units
G	Minimum Affordable Dwelling Units required	$20\% \times \mathbf{F} = 20\% \times 15$ actual dwelling units = 3 Affordable Dwelling Units
H	Maximum number of Market-Rate Dwelling Units allowed	F - G = 15 actual dwelling units - 3 Affordable Dwelling Units = 12 Market Rate Dwelling Units

1. In implementing the Density Bonus described above, Qualified Projects shall be eligible to receive a reduction in zoning district requirements pertaining to minimum lot area per dwelling unit. Said reduction shall be calculated based upon the density proposed, but in no event shall exceed a 66.7% reduction in zoning district minimum lot area per dwelling unit.

6-17-6: INCENTIVES:

1. **Menu of Incentives:** In addition to a Density Bonus, Owners of Qualified Projects may select any combination of Incentives identified in Table 6-1, up to the maximum number established in Table 6-2.

Table 6-1 Menu of Incentives	
Incentive Category	Qualified Project
Yards/Setbacks	Up to 50% decrease in the required width or depth of any yard or setback requirement, provided that minimum yards or setbacks may not be reduced along the entirety of any property line of a lot where any portion of the property line abuts an E1, E2, E3, R1, or R1A-zoned lot that is not part of the Qualified Project.
Lot Coverage	Up to 33% increase in any applicable lot coverage and building coverage limits.
Parking	Up to a 50% decrease in residential parking requirements for rental residential units only.
Building Height	Up to a 30% increase in any applicable building height limit, provided that no additional building height is permitted for that portion of a building located within 50 feet of an E, R1, or R1A-zoned lot.
Exterior Wall Construction	An exemption from the exterior wall construction regulations of Section 5-2C-3 (requiring at least 50% masonry materials) for the side and rear facades of a proposed building, provided that this exemption is not to be interpreted as allowing use of EIFS, corrugated or channeled metal, or unfinished/smooth face concrete block as an exterior building material. The front façade of a building shall be required to comply with the provisions of Section 5-2C-3.
Park Land Donation or Fee-in-Lieu	A 25% reduction in the applicable park donation fee-in-lieu of payment requirements set forth in Section 7-3-5 of the Code. No reductions shall be offered for any park land dedication which is required in conjunction with Section 7-3-5 of the Code, provided, however, that if the land donation does not fully satisfy the requirements of Section 7-3-5, the remaining fee-in-lieu payment shall be eligible for a 25% reduction.
City Fee Waiver	A 50% reduction in the entitlement and permitting fees assessed by the City in conjunction with an affordable housing development application.
PUD Outdoor Common Area Requirements	Up to 20% decrease in outdoor common area requirements as required for PUDs.

2. Number of Incentives: In addition to the Density Bonus identified in Section 6-17-5, Qualified Projects are automatically eligible to receive the number of Incentives set forth in Table 6-2. Such Incentives must come from the Menu of Incentives provided in Table 6-1.

Table 6-2 Allowed Number of Incentives			
Project Type	Eligible Household Income [to be determined at the time of Application for a Qualified Project]	Number of Incentives Available Based on % of Affordable Housing Units	
		20%	40%
Rental	Up to 60% Regional Median Household Income	3	4
Rental	Up to 50% Local Median Household Income	3	4
Rental	Up to 60% Local Median Household Income	2	3
For-Sale	Up to 80% Local Median Household Income	4	5
For-Sale	Up to 100% Local Median Household Income	2	3

3. **Requests for Additional Variances or Deviations.** Owners of Qualified Projects requesting variances or deviations in addition to or other than the Incentives provided in Table 6-1 and/or Table 6-2 shall be processed in accordance with the applicable variance and/or subdivision deviation procedures of the Code. The Owner shall identify which of the additional variances and/or subdivision deviations in excess of the allowances permitted through Table 6-2 are requested. Those additional variances and/or subdivision deviations shall be processed in accordance with the applicable provisions of the Code then in effect.

6-17-7: CALCULATIONS:

The following rules apply to calculations performed in administering and interpreting the Density Bonus and Incentive provisions of this Chapter.

1. All dwelling units within the project, including Density Bonus units, are counted when determining the number of Affordable Dwelling Units required to be set aside to qualify for a Density Bonus or Incentive. For developments consisting of more than one phase, each phase shall be evaluated as a separate project for purposes of determining eligibility for the Density Bonus set forth in Section 6-17-5 and the Incentives set forth in Section 6-17-6 herein.
2. When calculating the number of Affordable Dwelling Units required to be set aside to qualify for affordable housing Density Bonus and Incentives, any fractional result (decimal) shall be rounded up to the nearest whole number.
3. When calculating the number of Density Bonus dwelling units allowed, any fractional result (decimal) shall be rounded up to the nearest whole number.

6-17-8: PROCEDURES:

1. **Courtesy Notice.** For the purpose of transparency, the owner of a proposed Qualified Project shall give written notice to property owners within 300' of the Qualified Project property which notice shall describe the nature of the Qualified Project and all associated entitlements, including but not limited the Density Bonus and the Incentives selected by the owner as provided for herein. Said notice shall be issued within thirty (30) days of submission of a development application to the City for the proposed Qualified Project and shall be subject to prior review and approval by the City Zoning Administrator prior to issuance. Said timeframe may be modified upon the written approval of the City Zoning Administrator.
2. **Administrative Approval of Qualified Projects.** If the Zoning Administrator determines that a Qualified Project does not require action by the Planning and Zoning Commission and/or the City Council pursuant to the Zoning Title provisions referenced in Section 6-3-5 of the Code, and does not involve a Request for Additional Variances or Deviations per Section 6-17-6:3 of this Chapter, the Qualified Project may be administratively approved by the Zoning Administrator once an Affordable Housing Agreement as set forth in Section 6-17-12 hereof has been approved by the City Manager; all required plans are found to be in technical compliance with all Code requirements; and all required fees have been paid. Following administrative approval of a Qualified Project, the Zoning Administrator provide written notice to the City Council. Except as provided in Section 6-17-8:1 above, notice and public hearings are not required as otherwise provided for in Title 6 for Density Bonus and Incentives which are granted by right as set forth in Section 6-17-5 and Section 6-17-6 above.
3. **Qualified Projects Requiring Action by City Council and/or Planning and Zoning Commission.** If a proposed Qualified Project requires action on a petition by the Planning and Zoning Commission or the City Council relative to entitlements pertaining to annexation, rezoning, or conditional uses, including but not limited planned unit developments, or if the petition seeks a Request for Additional Variances or Deviations per Section 6-17-6:3 of this Chapter, those entitlements and any Request for Additional Variances or Deviations shall be processed in accordance with the Code and subject to City Council approval.

If the proposed petition is approved by the City Council, said approval shall automatically include the Density Bonus provided for in Section 6-17-5 and the applicable number of Incentives provided for in Section 6-17-6 as selected by the owner of the Qualified Project.

Except for the courtesy notice provided for in Section 6-17-8:1 above, notice and public hearings are not required as otherwise provided for in Title 6, for a Density

Bonus or Incentives which are granted by right as set forth in Section 6-17-5 and Section 6-17-6 above. An Affordable Housing Agreement may be approved for a Qualified Project by the City Manager either before or after City Council consideration of the entitlements which require City Council approval as described above.

6-17-9: APPLICATION, TIMING, AND CONSTRUCTION STANDARDS:

The application, timing, and construction standards of this section apply to Qualified Projects.

1. **Affordable Housing Application Requirements.** The Owner shall submit the following information to the Zoning Administrator or their designee:
 - 1.1. A standard City development application.
 - 1.2. A general description of the proposed development and how it will meet the requirements of a Qualified Project.
 - 1.3. The total number of Market Rate Dwelling Units and Affordable For-Sale Dwelling Units and/or Affordable Rental Dwelling Units in the proposed residential development.
 - 1.4. The number of bedrooms in each Market-Rate Dwelling Unit and each Affordable For-Sale Dwelling Units and/or Affordable Rental Dwelling Units.
 - 1.5. The square footage of each Market-Rate Dwelling Unit and each Affordable For-Sale Dwelling Units and/or Affordable Rental Dwelling Units.
 - 1.6. The general location of each Affordable For-Sale Dwelling Unit and Affordable Rental Dwelling Unit within the proposed residential development.
 - 1.7. The pricing schedule for each Affordable For-Sale Dwelling Unit and Affordable Rental Dwelling Unit and each market-rate unit.
 - 1.8. The phasing and construction schedule for each Market-Rate Dwelling Unit and each Affordable For-Sale Dwelling Unit and/or Affordable Rental Dwelling Unit.
 - 1.9. Documentation and plans regarding the exterior and interior appearances, materials, and finishes of the development and each of its units.

1.10. A description of the marketing plan that the petitioner proposes to utilize and implement to promote the sale of Affordable Dwelling Units within the development.

1.11. An approved marketing and buyer selection process. Selection criteria which may include household income, assets, household size, and the size or special needs features of the available unit.

2. **Timing of Construction.** Affordable Dwelling Units shall be constructed concurrently with the Market-Rate Dwelling Units in the Qualified Project. Building and occupancy permits for Market- Rate Dwelling Units and Affordable Dwelling Units shall be issued in accordance with the following schedule:

Market-Rate Dwelling Units (% of total units)	Affordable Dwelling Units (% of total units)
Up to 50%	At least 30%
Up to 75%	At least 60%
100%	100%

2.1. The Owner shall prepare a report documenting the building and occupancy permits that have been issued for the Market Rate Dwelling Units and the Affordable Dwelling Units which demonstrates compliance with the above. Said report shall be submitted quarterly to the Zoning Administrator in a format approved by the Zoning Administrator until issuance of the final occupancy permit for the Qualified Project.

3. **Location Within Overall Development.** Affordable Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this Chapter must be integrated into and reasonably distributed within each dwelling unit type and throughout the Qualified Project, as Qualified Project is defined in Section. When Affordable Dwelling Units are provided only in one or more discrete phases of a development, the Density Bonuses and Incentives provided by this Chapter are limited to the phases of the development in which the Affordable Dwelling Units will be provided and each such phase shall be separately considered a Qualified Project.

4. **Unit Size.**

4.1. The average floor area of the Affordable Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this Chapter must be at least 85% of the average floor area of the Market-Rate Dwelling Units in the Qualified Project.

- 4.2. The mix of unit sizes and numbers of bedrooms in the Affordable Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this chapter must be an equal proportion to the mix of unit sizes and bedroom counts provided in the Market-Rate Dwelling Units unless otherwise approved by the City Council.

5. Features and Amenities.

- 5.1. **Interior Amenities.** To assist in achieving affordability, Affordable Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this Chapter may have different interior finishes, amenities, and features than Market-Rate Dwelling Units, provided the interior finishes, amenities, and features are durable, of good quality, and consistent with contractor grade for new housing.
- 5.2. **Exterior Appearance.** The exterior appearance and quality of the Affordable Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this Chapter must be generally similar to the Market-Rate Dwelling Units.
- 5.3. **Energy Efficiency.** All mechanical equipment, plumbing, insulation, windows, and heating and cooling systems must have energy efficiency ratings that are at least equivalent to those included in Market-Rate Dwelling Units.

6-17-10: AFFORDABLE RENTAL DWELLING UNIT OCCUPANCY AND RENTAL RESTRICTIONS:

Each Affordable Rental Dwelling Unit provided to comply with Density Bonus and Incentive provisions of this Chapter must comply with all the requirements of this section.

1. **Eligibility.** Affordable Rental Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this Chapter may be occupied only by households that meet the respective income limits specified for Eligible Households.
2. **Tenant Certification and Selection.** Affordable Rental Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this Chapter must be rented only to Eligible Households.
 - 2.1. Renters of Affordable Rental Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this Chapter must be selected in

compliance with a tenant selection and marketing program approved as part of the Affordable Housing Agreement.

- 2.2. Monitoring of compliance with this Chapter and the Affordable Housing Agreement shall be provided for in the Affordable Housing Agreement. The owner of the property which is subject to the Affordable Housing Agreement shall promptly respond to any questions or requests for additional information or documentation from the City.
3. **Rent Levels.** Each Affordable Rental Dwelling Unit provided to comply with the Density Bonus and Incentive provisions of this Chapter must be offered to Eligible Households at a rent level that meets the definition set forth in 310 ILCS 67/15 of the Affordable Housing Planning and Appeal Act, as amended from time to time.
 - 3.1. Any Affordable Rental Dwelling Unit rented during the Minimum Affordability Period for more than the amount set forth above or as otherwise allowed by law or in the applicable Affordable Housing Agreement, shall be in violation of the provisions of this Chapter and said Affordable Housing Agreement, and shall be subject to the enforcement provisions set forth in this Chapter and in the applicable Affordable Housing Agreement.
4. **Minimum Term for Continued Affordability.** Each Affordable Rental Dwelling Unit provided to comply with the Density Bonus and Incentive provisions of this Chapter must be restricted to occupancy by Eligible Households for the Minimum Affordability Period.
5. **Monitoring.** The owner of an Affordable For-Sale Dwelling Unit or Affordable Rental Dwelling Unit is responsible for monitoring and ensuring their compliance with the terms of the applicable Affordable Housing Agreement and all applicable provisions of this Chapter.

6-17-11: AFFORDABLE FOR-SALE DWELLING UNIT OCCUPANCY AND SALES RESTRICTIONS:

1. **Eligibility.**
 - 1.1. Affordable For-Sale Dwelling Units provided to comply with the affordable Density Bonus and Incentive provisions of this Chapter may be occupied only by Eligible Households during the Minimum Affordability Period.

- 1.2. The purchaser of any Affordable For-Sale Dwelling Unit provided to comply with the Density Bonus and Incentive provisions of this Chapter must reside in said dwelling unit as their principal residence and may not rent the Unit.
2. **Buyer Certification and Selection.** Affordable Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this chapter must be sold and resold during the Minimum Affordability Period only to households certified by the Director of the Transportation, Engineering, and Development Business Group as constituting Eligible Households.
 - 2.1. Renters of Affordable For-Sale Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this Chapter must be selected in compliance with a tenant selection and marketing program approved as part of the Affordable Housing Agreement.
 - 2.2. Monitoring and enforcement of compliance with this Chapter and the Affordable Housing Agreement shall be provided for in the Affordable Housing Agreement. The owner of the property which is subject to the Affordable Housing Agreement shall promptly respond to any questions or requests for additional information or documentation from the City.
3. **Sale of Affordable For-Sale Dwelling Units.** Throughout the Minimum Affordability Period each Affordable For-Sale Dwelling Unit provided to comply with the Density Bonus and Incentive provisions of this Chapter must be sold to Eligible Households at a sales price which meets the affordability requirements set forth in 310 ILCS 67/15 of the Affordable Housing Planning and Appeal Act, as amended from time to time.

6-17-12: AFFORDABLE HOUSING AGREEMENTS:

The obligations assumed by the owner of a Qualified Project in exchange for the Density Bonus and Incentives provided by this Chapter shall be secured by an agreed upon and recorded Affordable Housing Agreement executed by the owner of the Qualified Project and the City Manager. The Agreement must be recorded with the appropriate county recorder before recordation of a final subdivision plat (if required) or issuance of a building permit for the Qualified Project, whichever occurs first.

1. **Review and Approval.** Subject to review and approval by the City Attorney, the City Manager is hereby delegated the authority to execute, and the City Clerk is authorized to attest, Affordable Housing Agreements required by this section. At the sole discretion of the City Manager, the City Manager may also execute, and the City Clerk shall attest, documents approved by the City Attorney subordinating

Affordable Housing Agreements to acquisition, construction, bridge, and/or long-term permanent financing associated with development of the Qualified Project.

2. **Content of Affordable Housing Agreement (or “Agreement”).** An Affordable Housing Agreement, which shall remain in full force and effect throughout the Minimum Affordability Period, except for provisions which survive the expiration of the Minimum Affordability Period shall include but shall not be limited to:
 - 2.1. Provisions that incorporate and implement the requirements of this Chapter, as amended from time to time.
 - 2.2. A provision restricting the sale of all Affordable For-Sale Dwelling Units to Eligible Households.
 - 2.3. A provision requiring compliance with the Agreement for the Minimum Affordability Period subject only to such provisions that may survive the expiration of the Minimum Affordability Period.
 - 2.4. Incorporation of the submissions included in the Affordable Housing Application unless a modification thereof is approved by the City Manager.
 - 2.5. The marketing and buyer selection process.
 - 2.6. Income eligibility criteria for defining affordability of Affordable For-Sale Dwelling Units or Affordable Rental Dwelling Units, as applicable.
 - 2.7. The affordable sales prices or rents for Affordable For-Sale Dwelling Units and/or Affordable Rental Dwelling Units, as applicable, as may be adjusted as set forth in the Affordable Housing Agreement.
 - 2.8. The criteria for certification and selection of buyers or renters, as applicable. Selection criteria, as set forth in the Agreement, may include household income and assets, household size, and the size or other special needs features of units.
 - 2.9. A fair and equitable marketing and buyer or tenant selection process to ensure the selection of Eligible Households.
 - 2.10. A requirement that each deed conveying all or any portion of the real property which is the subject of the Agreement includes a deed restriction requiring compliance with the Affordable Housing Agreement and the recording number thereof assigned by the Recorder of Deeds of the county in which the property is located.

- 2.11. A provision that the Agreement is binding on all successors, lessees, assignees, and transferees of all or any portion of the real property which is the subject of the Agreement throughout the Minimum Affordability Period.
- 2.12. A guarantee of rental or sale and continuing availability of all Affordable Dwelling Units provided to comply with the Density Bonus and Incentive provisions of this Chapter for the Minimum Affordability Period.
- 2.13. A provision regarding administrative fees to be paid to the city relative to the administration of the provisions of this Chapter and the Affordable Housing Agreement.
- 2.14. A provision that the Agreement shall be subject to and construed in accordance with and governed by the laws of the State of Illinois and that venue for any action arising out of the terms or conditions of the Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- 2.15. Defense and indemnification, holding the City and its officers, agents, and employees harmless from actions arising out of the Agreement.
- 2.16. Reimbursement of the city's reasonable attorneys' fees and costs associated with the enforcement of this Chapter and the Applicable Agreement.

6-17-13: ENFORCEMENT:

Without limitation as to any other rights or remedies the City may elect to pursue, if the City determines that the provisions of this Chapter or an applicable Affordable Housing Agreement have been or may be violated, the City may take such legal action as it deems necessary and appropriate to ensure compliance therewith, including but not limited to:

- 1. Revocation of one or more certificates of occupancy for all or a portion of the dwelling units included within a Qualified Project;
- 2. Injunctive relief to enforce the terms of this Chapter or an applicable Affordable Housing Agreement;
- 3. Payment of liquidated money damages to the City in an amount hereby established to be:
 - 3.1. The difference in the value of the price an Affordable For-Sale Unit was sold for and the price it should have been sold for, plus interest calculated from

the date of sale to the date of payment of liquidated damages at a rate of LIBOR plus two (2) basis points; or (as applicable)

- 3.2. Double the difference between the maximum of what should have been charged for rental of an Affordable Rental Dwelling Unit and what was charged for an Affordable Rental Dwelling Unit for the period of time such excess charge was made, plus interest calculated from the dates excess payments were made to the date of payment of liquidated damages at a rate of LIBOR plus two (2) basis points.
- 4. Prosecution of ordinance violations against the owner of the Qualified Project, or any owner of a portion of real property designated as a Qualified Project, for each day that a violation of this Chapter or an applicable Affordable Housing Agreement exists.

SECTION 3: If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision, shall not affect any of the remaining provisions of this Ordinance or any other City ordinance, resolution, or provision of the Naperville Municipal Code.

SECTION 4: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2024.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2024.

Scott A. Wehrli, Mayor

ATTEST:

Dawn C. Portner, City Clerk