

REGIONAL AFFORDABLE HOUSING INITIATIVE

Carbondale ▼ Garfield County ▼ Glenwood Springs ▼ Basalt ▼ Eagle County

MODEL ORDINANCE: Inclusionary Residential Requirements, Bonus Density & Development Incentives

- The Model Affordable Housing Regulations for Inclusionary Residential Requirements, and Bonus Density and Development Incentives, are based, in part, on the white paper entitled, “Nexus Analysis and Affordability Analysis”, completed by the RRC Associates Team. Among other findings, the paper concludes that Inclusionary Residential Requirements are best based on the rationale that the market is not keeping with the housing demand for local workers and residents.
- Inclusionary Residential requirements are “use regulations”, which essentially require a mandatory set-aside of a percentage of the housing produced as quid pro quo for development.
- Significant aspects of the draft regulations include:
 - The regulations apply to all residential development, except to affordable housing units and the construction of a single-family or duplex on a previously approved lot or parcel.
 - Affordable Housing is defined as deed-restricted housing. All housing units produced pursuant to these regulations are to be Deed Restricted and subject to administrative Guidelines, Rules and Regulations.
 - A 20% set-aside, or mitigation, is initially recommended. The specific mitigation level to be established is primarily a function of local political and economic tolerance. The level established should take into consideration the level established for such regulations by other jurisdictions and the circumstances surrounding those decisions. It should not be so great as to leave property with no reasonable economic use; i.e., avoid a “taking”.
 - Methods of satisfying the requirements include the set-aside of one (1) of every five (5) subdivision lots, and one (1) of every five units in a multi-family structure.
 - Up to 25% bonus density may be permitted for residential projects, subject to specific “use-on-review” criteria, to partially compensate for the financial impact of the inclusionary residential requirements.
 - Up to 25% maximum floor area and increased height of 10 feet may be permitted for non-residential projects, subject to specific “use-on-review” criteria, again to partially compensate for the financial impact of the commercial linkage requirements.
 - Homeowner’s dues and assessments limitations require consideration of the size of Affordable Housing units as compared to other residential or non-residential condominium units in a development. A limitation on the annual increase of such dues and assessment is also suggested to further ensure continued affordability.
 - Issues not addressed by the model regulations include price control mechanisms and specific target groups or categories, relative to AMI. These issues are best addressed in the selected Deed Restriction, to be included on the subdivision plat, and the accompanying Affordable Housing Guidelines.

For questions relating to this model ordinance see the Regional Affordable Housing Initiative Final Report or call Healthy Mountain Communities at 970-963-5502.

**[NAME OF JURISDICTION]
ORDINANCE (OR “RESOLUTION”, IF COUNTY) NO. ____, SERIES ____
AN ORDINANCE (OR RESOLUTION) AMENDING THE
[NAME OF JURISDICTION] LAND USE CODE, ADOPTING
AFFORDABLE HOUSING REGULATIONS:
INCLUSIONARY RESIDENTIAL REQUIREMENTS, AND
BONUS DENSITY AND DEVELOPMENT INCENTIVES**

WHEREAS, by Ordinance (or Resolution) No. ____, Series ____, passed and adopted on _____, the [GOVERNING BODY] of the [NAME OF JURISDICTION], Colorado, adopted the [NAME OF JURISDICTION ZONING AND SUBDIVISION REGULATIONS] (hereinafter referred to as the “Land Use Code” or “Code”) for the purpose of regulating land use, subdivision and development in the [NAME OF JURISDICTION] in accordance with the [NAME OF JURISDICTION] *Comprehensive Plan*;

WHEREAS, the [NAME OF JURISDICTION] *Comprehensive Plan*, which was adopted on [INSERT DATE] includes the following affordable housing policies:

[INSERT LIST OF HOUSING POLICIES AND PROVISIONS]

WHEREAS, amendments to the *Code* have been drafted as necessary to implement the affordable housing policies, goals and objectives of the [NAME OF JURISDICTION] *Comprehensive Plan*;

WHEREAS, upon adoption, the regulations of this ordinance apply uniformly to development, as specified herein, in the [NAME OF JURISDICTION];

WHEREAS, the model affordable housing regulations contained in this ordinance are supported by research data and findings contained in a white paper entitled, “Regional Affordable Housing Initiative, Nexus Analysis (for Commercial Linkage) and Affordability Analysis (for Inclusionary Zoning)”, September 1999, prepared for the Regional Affordable Housing Task Force c/o Healthy Mountain Communities, by the RRC Associates Team (hereinafter referred to as “the White Paper”);

WHEREAS, the White Paper demonstrates that, “the free market is not supplying sufficient numbers of affordable housing units to keep up with the demand from local residents and workers”;

WHEREAS, the Inclusionary Residential provisions of this ordinance seek to ensure that at least some housing is set aside at prices affordable to local residents as part of the residential development process;

WHEREAS, the Density Bonus and Development Incentive provisions of this ordinance are designed to “soften” and otherwise reduce the financial impact of the regulatory requirements contained herein;

WHEREAS, this model ordinance was developed as result of the work of a multi-jurisdictional and multi-disciplinary team, the Healthy Mountain Communities Affordable Housing Task Force, through a series of public workshops held by the Task Force over a five (5) month period, July to November 1999;

WHEREAS, the Planning and Zoning Commission of the [NAME OF JURISDICTION] reviewed proposed changes in a public hearing (or regular meeting) with due notice given that the Commission would meet and hear the subject amendments;

WHEREAS, due notice was given that the [GOVERNING BODY] would meet to hear and consider the adoption of the subject amendments on this date; and

WHEREAS, the [GOVERNING BODY] has heard and considered all evidence and testimony presented with respect to the amendments and has determined, subsequent to said public hearing that the adoption of this Ordinance is in the best interest of the Citizens of the [NAME OF JURISDICTION].

NOW, THEREFORE, BE IT ORDAINED (OR RESOLVED) BY THE [GOVERNING BODY], THAT [NAME OF JURISDICTION] LAND USE CODE IS HEREBY AMENDED BY THE ADDITION OF INCLUSIONARY RESIDENTIAL REQUIREMENTS, BONUS DENSITY AND DEVELOPMENT INCENTIVES, AND AH-PUD, AFFORDABLE HOUSING ZONE “OVERLAY” DISTRICT, AS FOLLOWS:

Article I. Findings.

It is essential for the preservation and maintenance of the [NAME OF JURISDICTION] community to ensure the provision of affordable housing as a part of new development. A healthy community is one that meets the needs of the people who live or work in the community, and “affordable housing” is a critical human need and an essential component of a healthy community. Market conditions in the Lower Roaring Fork Valley are such that affordable housing will not be produced via the less restrictive alternative of eliminating restrictive zoning barriers. Affordable, permanent and long-term, housing serves to maintain a health community; i.e., one that provides a variety of types and sizes of housing to meet the needs of those who live and work in the community. It also serves to reduce regional traffic congestion, to minimize impacts on adjacent communities and to promote economic development. Housing must be affordable to the local labor force in order for the local economy to remain stable.

Article II. Definitions

- A. Affordable Housing** shall mean a residential lot or separate dwelling unit that is deed restricted in accordance with a deed restriction approved by the Governing Body to ownership by the Project Developer or to Employees and their spouses, and to use and occupancy by Employees and their spouses and children.
- B. Density Bonus** shall mean an increase over the base number of units permitted in any residential zone district.
- C. Development** shall mean any man-made change to improved or unimproved real property, the use of any principal structure or land, or any other activity that requires issuance of a building permit. Development activities include: subdivision of land; change in the intensity of use of land; construction, reconstruction, demolition or partial demolition or alteration of buildings, roads, utilities, and other facilities; commencement of drilling (except for a water well or to obtain soil samples), mining, or excavation; installation of septic systems; grading; deposit of refuse, debris, or fill materials; and clearing of natural vegetation cover.

- D. Dwelling** shall mean a structure or portion of a structure, other than a mobile home, that is designed, occupied or intended to be occupied as living quarters and includes facilities for cooking, sleeping and sanitation; but not including hotels, motels, clubs, boarding houses, or any institution such as an asylum, hospital, or jail where human beings are housed by reason of illness or under legal restraints.
1. **Duplex Dwelling** shall mean two (2) residential dwelling units, other than mobile homes, within a single building and under a single roof.
 2. **Employee Dwelling Unit** shall mean a separate Affordable Housing unit that contains not less than 400 square feet and not more than 1200 square feet of floor area and is:{see other ordinance}
 - a. Located within or attached to a non-residential development, but has a separate entrance from such non-residential development;
 - b. Not accessed from another residential dwelling;
 - c. Detached from the non-residential development but located on the same lot.
 3. **Multi-family Dwelling** shall mean three (3) or more residential dwelling units, other than mobile homes, within a single building and under a single roof, including apartments, houses and attached multi-family dwellings.
 4. **Single-family Dwelling** shall mean a dwelling unit [UBC or HUD STANDARD] located on a separate lot or tract that has no physical connection to a building located on any other lot or tract.

Article III. Inclusionary Residential Requirements

- A. Purpose.** The purpose of this Article is to mitigate the impact of market rate housing construction on the limited supply of available land suitable for such housing, thus preventing the [NAME OF JURISDICTION]'s zoning regulations applicable to residential development from having the effect of excluding housing that meets the needs all economic groups within the [NAME OF JURISDICTION]. This is accomplished through the establishment of affordable housing requirements for such development that requires setaside of a portion of new development for affordable housing purposes as a condition of approval for all residential development.
- B. Applicability.** Affordable housing shall be required as a condition of approval for all residential development including: single-family subdivisions, and duplex dwellings and multi-family structures. In the interest of maintaining fairness and simplicity, all fractions shall be rounded to the nearest whole number.
- C. Exemptions.** The following development is exempt from the requirements of this Article:
1. **Affordable Housing and Designated Employee Dwelling Units.** Development of Affordable Housing and Employee Dwelling Units as defined herein are exempt from the requirements of this Article.

2. **Single-family and Duplex Residential Development.** Single-family or Duplex residential density on a single, pre-existing lot shall be exempt from the requirements of this Article.

D. Residential Development Requirements. All new residential subdivisions consisting of five (5) or more lots and of all new multi-unit residential developments comprised of five (5) or more units shall set aside lots or units for affordable housing, as follows:

1. One (1) of every five (5) lots in each new subdivision shall be deed-restricted;
2. One (1) of every five (5) units in each new multi-unit development shall be deed-restricted.

**Table 2
SUMMARY OF INCLUSIONARY RESIDENTIAL REQUIREMENTS**

Type of Development	Mitigation Level	Mitigation Required
Residential Subdivisions	20%	1/5 units
Multi-family	20%	1/5 units

E. Minimum Requirements

1. **Deed restriction.** Any Affordable Housing required by this Article shall be deed restricted, in accordance with a deed restriction enforceable in the State of Colorado, as approved by the City/Town/County Attorney, to rental or ownership and occupancy by the Project Developer or to persons who live or work in [NAME OF JURISDICTION].
2. **Housing Guidelines.** The units shall be developed and comply with the size requirements and other design standards established within the [NAME OF JURISDICTION] Affordable Housing Guidelines.
3. **Timing of Occupancy.** The units shall be ready for occupancy no later than the date of the initial or temporary occupancy of the free market portion of the project. If the free market units are to be developed in phases, then the affordable housing units can be developed in proportion to the phasing of the free market units.
4. **Homeowner's Association Dues and Assessments.**
 - a. If an affordable housing unit is developed as part of a mixed free market/affordable housing development project for sales purposes, then any documents creating the condominium association or homeowners association shall state that the affordable housing unit shall only be assessed monthly dues and other shared assessments based on whichever of the following two (2) formulas results in the lower cost for the affordable housing unit:
 - i. The size of affordable housing unit in square feet as compared to the total size of the other units in the development; or

- ii. The size of the lot on which the affordable housing unit is located as compared to the total size of the other lots in the development.
- B.** Any general annual assessment, special assessment, or any other assessed charge for such Affordable Housing Unit shall be subject to an initial assessment and/or annual assessment increase limitation equal to 3% of the prior year's general annual assessment for the Affordable Housing Unit.

F. Housing Mitigation Plan

- 1. Housing Mitigation Plan Required.** An applicant for any new residential development within the [NAME OF JURISDICTION] shall submit a Housing Mitigation Plan to the [NAME OF JURISDICTION] [ADMINISTRATIVE BODY], unless exempted pursuant to Article III.C., Exemptions.
 - a. *Content.* The Housing Mitigation Plan shall include the following:
 - i. *Calculation and Method.* The calculation of, and method by which housing is to be provided, in compliance with Article III.D. Residential Development Requirements.
 - ii. *Unit Descriptions.* If affordable housing units are to be developed, a site plan and building floor plans (if applicable), illustrating the number of units proposed, their location, the number of bedrooms in and size (s.f.) of each unit, the rental/sale mix of the development, and the categories to which each unit is proposed to be restricted. A tabulation of this information shall also be submitted.
 - b. *Timing of Review/Amendments.* The Housing Mitigation Plan shall be submitted to and approved by the [NAME OF JURISDICTION] [ADMINISTRATIVE BODY] prior to, or concurrent with, application to the [NAME OF JURISDICTION] for the free market portion of the initial development plan. Review and approval of plans by the [NAME OF JURISDICTION] for construction of affordable housing shall be prior to, or concurrent with, the free market portion of the development plan. Any amendment to the Housing Mitigation Plan shall require [NAME OF JURISDICTION] [ADMINISTRATIVE BODY] approval.
- 2. Certification of Decision.** The [NAME OF JURISDICTION] [ADMINISTRATIVE BODY], or its designee, shall certify its approval, approval with conditions, or denial of the Housing Mitigation Plan to the Planning Director. Such approval, approval with conditions, or denial shall be based on compliance with the provisions of this Article and the Affordable Housing Guidelines.
- 3. Appeal.** Upon final approval or denial of the Housing Mitigation Plan by the [NAME OF JURISDICTION] [ADMINISTRATIVE BODY] an appeal to Governing body may be filed pursuant to [INSERT APPROPRIATE ARTICLE CITATION].

Article IV. Density Bonus and Development Incentives for Affordable Housing

- A. Purpose.** The discretionary provisions of this Article provide density bonuses and other incentives to encourage the construction of affordable housing within [NAME OF JURISDICTION] and to reduce the financial impact of the affordable housing that is otherwise required by the Commercial Linkage Requirements of Ordinance (or Resolution) #____, and Inclusionary Residential Requirements.

B. Minimum Requirements

1. **Deed restriction.** Any Affordable Housing required by this Article shall be deed restricted, in accordance with a deed restricted approved by the Governing Body, to ownership and occupancy by the Project Developer or to persons who live or work in [NAME OF JURISDICTION].
2. **Housing Guidelines.** The units shall be developed and comply with the size requirements and other design standards established within the [NAME OF JURISDICTION] Affordable Housing Guidelines.
3. **Homeowner's Association Dues and Assessments**
 - a. If an affordable housing unit is developed as part of a mixed free market/affordable housing development project for sales purposes, then any documents creating the condominium association or homeowners association shall state that the affordable housing unit shall only be assessed monthly dues and other shared assessments based on whichever of the following two (2) formulas results in the lower cost for the affordable housing unit:
 - i. The size of affordable housing unit in square feet as compared to the total size of the other units in the development; or
 - ii. The size of the lot on which the affordable housing unit is located as compared to the total size of the other lots in the development.
 - b. Any general annual assessment, special assessment, or any other assessed charge for such Affordable Housing Unit shall be subject to an initial assessment and/or annual assessment increase limitation equal to 3% of the prior year's general annual assessment for the Affordable Housing Unit.

C. Residential Uses. A residential development of five (5) or more dwelling units complying with the Residential Inclusionary Requirements may be granted density bonus up to 25% above the density permitted by the underlying zone district, pursuant to the terms of this subsection.

1. **Use-on-review Criteria.** Bonus density may be granted by the governing body, in accordance with the jurisdiction's Use-on-review procedures and criteria [as contained in the existing ordinance (or resolution)], subject to the following criteria:
 - a. The maximum density may be increased by up to 25%;
 - b. The proposed project and density shall be compatible with the surrounding land uses and neighborhood character, and suitable for the proposed site; and
 - c. The development shall comply with all other applicable land use regulations.

D. Non-residential Uses. A non-residential development complying with the Commercial Linkage Requirements of Ordinance (or Resolution #____), may be granted bonus floor area

and/or height, above that permitted by the underlying zone district, pursuant to the terms of this subsection.

- I. **Use-on-review Criteria.** Bonus density may be granted by the governing body, in accordance with the jurisdiction’s Use-on-review procedures and criteria [as contained in the existing ordinance (or resolution)], subject to the following criteria:
 - a. The maximum floor area permitted for Affordable Housing purposes may be increased by up to 25%.
 - b. The maximum height permitted for a non-residential use may be increased by up to 10 feet to add deed restricted affordable housing space if such additional space is stepped back from the façade(s) facing the street by one (1) foot for each one (1) vertical foot of height;
 - c. The proposed project and density shall be compatible with the surrounding land uses and neighborhood character, and suitable for the proposed site; and
 - d. The development shall comply with all other applicable land use regulations.

APPROVED BY THE [GOVERNING BODY] AT FIRST READING ON _____, 1999.

[NAME OF JURISDICTION][GOVERNING BODY]

Chairman or Mayor

ATTEST:

CLERK AND RECORDER

PASSED, APPROVED AND ADOPTED BY THE [GOVERNING BODY] AT A PUBLIC HEARING ON FINAL READING THIS ___ DAY OF _____, 1999.

[NAME OF JURISDICTION][GOVERNING BODY]

Chairman or Mayor

ATTEST:

Clerk and Recorder