

AN ORDINANCE TO AMEND CHAPTER 48 OF THE CITY CODE TO PROVIDE A MANDATORY INCLUSIONARY ZONING PROGRAM FOR LOW- TO MODERATE-INCOME RESIDENTS

#0229

Sponsor:

Council
Member
Darby

WHEREAS, there is a severe shortage of affordable rental and owner-occupied housing within the City for residents having low and moderate incomes; and

WHEREAS, the affordable housing crisis will only worsen due to the overall lack of housing supply, and because housing costs have risen much faster than wages of many City residents; and

WHEREAS, numerous jurisdictions throughout the country have implemented mandatory or voluntary inclusionary zoning policies to set aside a certain percentage of units in a new development as affordable housing for low- and moderate-income households; and

WHEREAS, inclusionary housing programs that are mandatory have proven to be more successful than voluntary programs at generating affordable units; and

WHEREAS, City Council believes that the health, safety and welfare of City residents will be better served through the passage of this Ordinance, which will address the shortage of affordable housing through implementation of a mandatory inclusionary zoning policy.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. A new division, Division 4, is hereby added to Chapter 48 (“Zoning”), Article IV (“Residence Districts”) by adding the following underlined language to read as follows:

DIVISION 4. - INCLUSIONARY HOUSING

Sec. 48-181. - Purpose and intent.

The City declares that the provision of a decent home and a suitable living environment for all is a priority of the highest order; and that this priority is consistent with state, regional and national policies. The purpose of this division is to enhance the public welfare through

increasing the production of housing affordable to eligible households. In order to encourage utilization of the city's land in a manner consistent with local housing policies and needs, the city requires new, converted or renovated housing developments to include a proportion of housing units that shall be affordable to persons of low and moderate income. Accordingly, the provisions of this division are intended to:

- (a) Advance the city's compelling interest in providing additional housing throughout the city that is affordable to households of low and moderate income levels;
- (b) Implement the goals, policies, and objectives contained in the city's comprehensive development plan;
- (c) Ensure diverse housing options continue to be available for persons and/or households with low and moderate incomes;
- (d) Maintain a balanced community by encouraging the finite supply of developable land to provide housing opportunities appropriate to meet various needs and income levels;
- (e) Ensure the availability of housing with better access to jobs in the city and thereby promoting household economic mobility through increased access to public transit; and
- (f) Improve the opportunity for low- and moderate-income residents to elevate their economic status and enable them to utilize their resources for other necessary pursuits, such as education, food, and saving for retirement.

Sec. 48-182. - Scope.

The scope of the regulations set forth in this division are as follows:

- (a) The existing zoning map and underlying zoning regulations governing all properties in the city shall remain in full force and effect. The regulations contained within this division shall be overlaid upon, and shall be imposed in addition to, said existing zoning regulations. Except where it is otherwise explicitly provided, whenever the following overlay regulations are at variance with said existing underlying zoning regulations, the regulations of this division shall apply.
- (b) This division shall apply to all new residential developments in the city that involve the creation of ten or more dwelling units, whether rental or ownership. This includes new housing units created by: new construction; renovation that increases the number of residential units from the number of units in the original structure; or conversion of an existing building or other structure.
- (c) Whenever the following regulations are at variance with historic district regulations of article IX of this chapter, the more stringent regulations shall apply so as not to impact designated historic structures or buildings.

Sec. 48-183. - Exemptions.

This division shall not apply to:

- (a) Residential developments with a total of less than 10 dwelling units.

- (b) Publicly subsidized multi-family residential property governed by the Wilmington Housing Authority.

Sec. 48-184. - Requirements for Provision of Affordable Housing Units.

- (a) Number of units to be provided: All developments that include a residential component which are subject to this chapter shall be required to set aside a minimum of thirty percent (30%) of the total number of dwelling units as affordable units that shall be made available for rent or sale to eligible households.
- (b) Fractions: If when applying the percentage to the total number of units to determine the number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction, if over one-half, shall be rounded up to the next whole number. If the resulting number of affordable units includes a fraction of a unit equal to or less than one-half, the fraction shall be rounded down to the next whole number.
- (c) Sale, Lease or Rental of Affordable Units: Affordable units shall be set aside for sale or rental to eligible households and shall be restricted for occupancy only by eligible households set forth in this division.
- (d) Relationships to other organizations: Subject to the approval of the department of land use and planning, developers may elect to work with a local nonprofit housing provider to distribute, maintain or operate the units in accordance with the requirements and intent of this division.
- (e) Duration of affordability; legal restrictions: Affordable units shall be rented or sold subject to deed covenants, contractual agreements, and/or other mechanisms restricting the use and occupancy, rent levels and sales prices of such units to assure their affordability. All restrictive instruments shall be subject to review and approval by the department of land use and planning. Affordable units shall be subject to restrictions that to the extent legally possible shall preserve the permanent affordability (in perpetuity) of the units, but in no case shall be fewer than 30 years. Affordable units purchased or rented by eligible households shall be subject to a deed rider that is approved as to form by the department of land use and planning and resale prices shall be calculated in accordance with the methodology set forth in the approved deed rider.
- (f) Sales prices: Initial purchase prices and resale prices of affordable ownership units shall be established so that households are not required to spend more than 30% of the income of a household earning 80% of area median income, with a ten-percent window adjustment, for annual debt service on a mortgage (at 30-year fixed-interest rates at the time of initial sale), taxes, insurance, and condominium or homeowners fees with no more than a 5 percent down payment, including any required entrance deposit.
- (g) Rental costs: Payment of housing and related costs for affordable rental units shall be established so that households are not required to spend more than 30% of the income of a household earning 80% of area median income, with a ten-percent window adjustment, for monthly rent and utilities (excluding cable and telephone service). Affordable rents shall not exceed the current small area far market rents

for New Castle County, Delaware, set by the U.S. Department of Housing and Urban Development.

- (h) Marketing plan: Affordable units must be rented or sold using marketing and selection guidelines approved by the department of land use and planning.
- (i) Preference for city residents and persons employed within the city. Unless otherwise prohibited by a federal or state agency under a financing or other subsidy program, not less than 70% of the affordable units shall be offered a right of first refusal (a) to individuals whose primary residence is in the city, (b) to households that include an individual who attends or attended a public school in the city, (c) to persons employed at least 30 hours per week within the city, or (d) in accordance with the inclusionary zoning guidelines as approved by the department of land use and planning.

Sec. 48-185. – Standards for Affordable Housing Units.

- (a) Location of affordable units. Affordable units shall be dispersed throughout the development so as to ensure a true mix of market-rate and affordable housing.
- (b) Comparability. Affordable units shall be comparable in size and materials to the market rate units in a development and consistent with local needs for affordable housing. Rental or ownership of affordable units shall proportionally mirror the project as a whole and affordable units should be sold if a majority of the units in a development are offered for sale.
- (c) Unit size. Except as otherwise authorized by the department of land use and planning, affordable units shall contain one or more bedrooms. The bedroom mix among the affordable units shall be proportionate to that of the development as a whole.
- (c) Rights and privileges. The owners or renters of affordable units shall have all rights, privileges and responsibilities accorded to market-rate owners or renters, including access to all non-fee amenities within the development.
- (d) Timeliness: New affordable units shall be built in a timely manner, with a specific phasing and construction schedule as outlined by the applicant and upheld in the approved participation agreement, with said schedule established before the issuance of the certificate of occupancy from the department of land use and planning. Phasing should be such that for every eight market rate units constructed, one affordable unit is constructed.

Sec. 48-186. - Administration and enforcement.

- (a) Inclusionary zoning guidelines. The department of land use and planning shall adopt inclusionary zoning guidelines for the implementation and administration of this division. The guidelines shall be reviewed and updated as needed by the city council.

- (b) *Affordable Housing Plan.* As part of the regular site plan or for rezoning purposes, the applicant shall first submit to the department of land use and planning an affordable housing plan. The plan shall describe, in detail, how the applicant intends to comply with the requirements of this division. The plan shall indicate the number of units in the project and the number of affordable units required broken down by bedroom and square footage.
- (c) *Approval.* The department of land use and planning shall review whether the intent of inclusionary zoning has been carried out by the applicant. If the department deems that it has, it shall recommend approval of the affordable housing application as part of a site plan. Alternatively, the department may request additional information from the applicant, and may reject or require amendments to a proposed affordable housing plan if the proposed plan is incomplete or fails to meet the requirements of this division or affordable housing regulations.
- (d) *Participation agreement.* After the affordable housing plan has been approved, a city/developer participation agreement incorporating the approved affordable housing plan shall be executed by the applicant, signed by the head of the department of land use and planning, and recorded with the New Castle County Recorder of Deeds. The agreement becomes an explicit acknowledgement of the affordability requirements and shall refer to the scope of the project, including the terms of affordability, as described by the affordable housing plan approved by the department. The agreement shall stipulate that an affordable housing declaration of restrictions shall be recorded with the deed and referenced with the deed prior to the occupancy of the project. The city/developer participation agreement shall be legally binding as part of the building permit issued for construction. No building permit for the project shall be issued prior to the execution of the city/developer participation agreement.
- (e) *Reporting.* The department of land use and planning shall prepare an affordable housing report and present it to city council annually. The purpose of the report is to measure the overall effectiveness of the affordable housing provisions of this division and recommend any necessary amendments to this chapter.
- (f) *Violations and penalties.* Violations of the requirements in this division shall be subject to the penalties set forth in City Code section 48-31(a). Further, no certificate of occupancy shall be issued if these inclusionary housing laws are not followed.
- (g) *Additional remedies.* In addition to the penalties set forth above, the city solicitor shall be authorized to enforce the provisions of this division, including participation agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deeds of trust, and other requirements placed on affordable units by civil action and any other proceeding or method permitted by law. The remedies provided for herein are not exclusive and shall not preclude the city from any other remedy or relief to which it is entitled to under law or equity.

Sec. 48-186. - Severability.

The provisions of this division are specifically made severable in accordance with the general severability provisions of section 1-9 of the City Code. If a court of competent

jurisdiction shall adjudge invalid the application of any provision of this division to a particular property, development, building or structure, such judgment shall not affect the application of said provision to any other property, development, building or structure not specifically included in said judgment.

SECTION 2. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading.....May 7, 2026
Second Reading.....May 7, 2026
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved as to form this 7th
day of May 2026


Acting City Solicitor

Approved this _____ day of _____, 2026

Mayor

SYNOPSIS: This Ordinance amends Chapter 48 of the City Code by establishing a mandatory inclusionary housing program that is intended to help address the severe shortage of affordable housing in the city.

FISCAL IMPACT STATEMENT: The Office of Management and Budget (“OMB”), in close collaboration with the Department of Land Use & Planning (“LU&P”), has reviewed and analyzed this Ordinance, which amends Chapter 48 of the City Code to establish a mandatory inclusionary zoning program requiring that 30 percent of dwelling units in new residential developments of ten (10) or more units be set aside as affordable housing for low- to moderate-income households.

The Ordinance assigns primary responsibility for program implementation, administration, compliance monitoring, legal review, and reporting to LU&P. While the Ordinance seeks to advance a policy objective of increasing affordable housing production, it also creates administrative and operational responsibilities that currently do not exist within LU&P’s organizational structure.

Implementation of the program would require LU&P to perform a number of new functions that extend beyond traditional land use regulation, including: development and maintenance of inclusionary zoning implementation guidelines; review and approval of Affordable Housing Plans submitted with development applications; negotiation and execution of City/Developer Participation Agreements; review and approval of affordability covenants, deed restrictions, and resale restrictions; approval of marketing plans and tenant or buyer selection procedures; monitoring compliance with affordability requirements and construction phasing schedules; coordination of enforcement actions with the City Solicitor; and preparation and presentation of an annual affordable housing report to City Council. These responsibilities involve long-term housing program administration functions that are typically performed by housing departments or housing authorities in other municipalities.

Because LU&P does not currently administer housing affordability programs, a significant initial program setup would be required. It is anticipated that the City would rely on external consultants and legal counsel during the first two years to establish the administrative framework necessary to implement the Ordinance. Estimated startup costs include the development of program design and implementation guidelines (\$60,000 to \$80,000), legal framework development for participation agreements and affordability covenants (\$40,000 to \$50,000), an inclusionary zoning feasibility and calibration study (\$100,000 to \$150,000), compliance tracking system identification and setup (\$30,000 to \$40,000), and program documentation and staff training (\$15,000). Based on these estimates, the total startup cost is expected to be between \$245,000 and \$335,000.

After the program is established, ongoing administrative costs would include compliance monitoring and administration, annual reporting and program evaluation, and system maintenance. LU&P anticipates that implementation would likely require the addition of at least one full-time staff position, comparable in compensation and responsibilities to a Senior Planner III, along with clerical or administrative support to ensure that the program meets the requirements identified in the legislation. The estimated annual cost of the new staff position is approximately \$132,000 (\$87,000 in salary and \$45,000 in benefits).

According to the Director of Land Use and Planning, development trends over the past eight to nine years indicate that the City averages approximately five (5) new multifamily residential buildings per year. Of those projects, about one project every two years (0.5 annually) exceeds

the ten-unit threshold that would trigger the inclusionary zoning requirement under the ordinance. Assuming a typical development size of 30 to 50 units, the program could generate approximately five to seven affordable housing units per year, or 50 to 70 affordable units over a ten-year period, assuming current development trends remain consistent.

The Ordinance does not directly appropriate City funds. Affordable housing units required under this program would be provided and financed by private developers as a condition of development approval. However, the legislation may have indirect fiscal impacts, including potential effects on development activity, building permit revenues, real estate transfer taxes, and long-term property tax revenues, which cannot be quantified at this time.

In summary, while no immediate direct expenditure is mandated by this ordinance, implementation will require both initial program startup expenditures of between \$245,000 and \$335,000 and ongoing administrative resources of at least \$132,000 annually to establish and manage the inclusionary housing program. The overall fiscal impact will ultimately depend on the structure of program administration, the level of development activity subject to the Ordinance, and the staffing and consultant resources necessary to implement and enforce the program.