

BILL NO. 2022-29

ORDINANCE NO. _____

AN ORDINANCE RELATED TO AFFORDABLE HOUSING; AMENDING LVMC TITLE 19 TO ADD A NEW CHAPTER GOVERNING BONUSES AND INCENTIVES FOR THE DEVELOPMENT OF AFFORDABLE HOUSING IN REPLACEMENT OF EXISTING PROVISIONS ON THE SUBJECT; ESTABLISHING AN AFFORDABLE HOUSING TRUST FUND; AND PROVIDING FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Brian Knudsen

Summary: Amends LVMC Title 19 to add a new chapter governing bonuses and incentives for the development of affordable housing in replacement of existing provisions on the subject, and establishes an affordable housing trust fund.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Ordinance No. 6289 and the Unified Development Code adopted as Title 19 of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, are hereby amended as set forth in Sections 2 to 4, inclusive, of this Ordinance. The amendments are deemed to be amendments to Ordinance No. 6289 and to the Unified Development Code adopted as Title 19.

SECTION 2: Section 19.09.100 is amended by deleting Subsection (J) in its entirety and replacing it with a new Subsection (J), reading as follows:

19.09.100.J Open Space In-Lieu Fee

1. The owner of a proposed development concerning which open space will be required by the City may request to pay the City a fee in lieu of complying with the open space requirement. The option to pay the fee must be requested in advance of the submittal of any related development applications. Approval of the payment of such an in-lieu fee must be part of the approval of a site development plan review for the development. A request for such a payment must first be approved by the Director, which approval must be based on staff findings as follows:

a. That, within the District in which the development is proposed, there is open space available or planned that is sufficient to offset the need for the open space otherwise required to be provided by the project; and

1 b. That the open space in Subparagraph (a) above will be made available within a reasonable
2 time period after the approval of the development.

3 2. The amount of the in-lieu fee for a particular development shall be determined by the Department
4 based on the current value of land and estimated construction costs for the needed open space, taking into
5 account the square footage of open space required for the project under this Code but not to be provided by
6 the applicant. The in-lieu cost per square footage of required open space, as amended at the beginning of
7 each calendar year, shall be made available to the developer upon request and kept for the Department's
8 records.

9 3. The approval of an in-lieu payment under this Section and the terms thereof must be reflected in an
10 agreement to bind the developer, in a form or format provided by the Department. The agreement shall form
11 part of the project's approval and shall be recorded against the property.

12 SECTION 3: Title 19 is amended by adding thereto a new chapter, designated as Chapter
13 17, consisting of Sections 10 to 100, inclusive, reading as follows:

14 **19.17.010 Density Bonuses, Height Bonuses and Financial Incentives**

15 Certain applications under Chapter 19.16 for the development or maintenance of affordable housing shall be
16 eligible for density bonuses, height bonuses and financial incentives (or a combination thereof) as are
17 authorized by NRS 278.235 and described in this Chapter. The administration and enforcement of the density
18 bonus, height bonus and financial incentive provisions of this Chapter is intended to be a coordinated effort
19 between the Director of Community Development and the Director of Community Services, including their
20 respective designees.

21 **19.17.020 Applicability and Eligibility**

22 The density bonus, height bonus, and financial incentive provisions of this Chapter apply only to residential
23 or mixed-use projects to be located on property whose General Plan category or zoning classification is
24 described in Section 19.17.030. In addition, no project is eligible for a density bonus or financial incentive
25 unless:

26 A. The project qualifies under the affordable housing criteria described on Section 19.17.030;

1 and

2 B. The developer of the project complies with the application and document-related
3 requirements of Section 19.17.040.

4 **19.17.030 Criteria and Requirements for Affordable Housing Bonuses and Incentives**

5 In order for an affordable housing project to qualify for a density bonus, height bonus, or financial incentive
6 under this Chapter, the affordable housing dwelling units must meet all of the following:

7 A. The minimum criteria for such a bonus or incentive as described in Sections 19.17.070 to
8 19.17.090, inclusive; and

9 B. In addition, the following minimum criteria and requirements:

10 1. The creation of a written document regarding the property that details the bonuses
11 and incentives for the property, as well as applicable affordable housing requirements. The document must
12 be recorded against the property and transferred to any future purchaser of the property at point of sale.

13 2 The property owner and any management company must keep all records of rental
14 agreements and property sales, and provide copies to the City in a timely manner upon request.

15 3 All dwelling units available for sale or for rent must retain the same affordable
16 housing status that qualified them for bonuses or incentives for a term of at least thirty years, commencing
17 from the date of the issued certificate of occupancy.

18 4. To the extent practicable, dwelling units qualifying as affordable housing must not
19 be clustered or concentrated within a multi-unit building or within the building site.

20 5. Dwelling units qualifying as affordable housing shall be of the same building
21 materials and finishes and have no other physical characteristics that would distinguish their appearance from
22 the project's non-affordable housing dwelling units

23 6. Dwelling units qualifying as affordable housing shall be of comparable quality to
24 similar market rate units in terms of features, layout, number of bedrooms and bathrooms, and square footage.

25 **19.17.040 Procedure**

26 A. In order to apply for one or more bonuses or incentives under this Chapter, a developer shall complete

an application therefor (an “Incentive Application”) as part of or in connection with an applicable land use application under Chapter 19.16. The developer must also submit an appropriate agreement (the “Binding Agreement”) to obligate the developer regarding its good faith commitments to provide affordable housing under this Chapter. The developer’s signature on the Binding Agreement must be acknowledged by a notary.

B. In addition to the developer’s signature, the Incentive Application and Binding Agreement must be signed and certified by one or more of the following:

1. A land use planner certified by the American Institute of Certified Planners;
2. An architect licensed pursuant to chapter 623 of NRS; or
3. A professional engineer licensed pursuant to chapter 625A of NRS.

C. Upon receipt and review of a completed Incentive Application and Binding Agreement, as well as verification of affordable housing criteria, assigned City staff will determine what bonuses and incentives, if any, are to be offered to the developer. For a developer to whom bonuses or incentives are to be offered, the Director will issue a letter verifying that applicable requirements have been met and referencing the bonuses or incentives that are to be offered the developer, subject to final approval by the Planning Commission or City Council, or both, as may be applicable. In each case where bonuses or incentives are approved, the approval will specify the timing for making the bonuses or incentives avail, whether issued by the City for construction or after a certificate of occupancy has been issued.

D. As a condition of the approval of a bonus or incentive, the developer must agree to all pre-construction reviews and post-construction verification and compliance by City designated staff. Thereafter, the developer and the City will finalize the execution and recordation of the Binding Agreement.

19.17.050 Violations, Remedies and Penalties

A. Projects for which bonuses or incentives have been provided shall be constructed in accordance with plans either as they were approved in connection with the Incentive Application, or with modifications that are minor and would not negate, invalidate, prohibit or significantly limit the project’s contribution to the provision of affordable housing.

B. Any violation of the Binding Agreement by the developer or its successor shall constitute a violation

1 of the corresponding section of this Chapter as well as a contractual violation. Without limiting the scope of
2 such violations, examples of such violations include the failure to provide the number and type and character
3 of affordable dwelling units as agreed; the failure to provide to the City information regarding rent
4 affordability; and the failure to meet the minimum thirty-year affordability requirement.

5 C. Upon verification by the Director of Community Services that a violation of a Binding Agreement
6 has occurred, the City may invoke any of the remedies and penalties specified in the Binding Agreement,
7 which may include, but are not limited to: forfeiture or repayment of any monetary incentives provided by
8 the City; revocation of the property's certificate of occupancy; revocation of a business license; imposition
9 of fines; criminal or civil liability, or a combination thereof.

10 **19.17.060 Prioritized Review**

11 For any project seeking bonuses or incentives for affordable housing units under this Chapter, the Department
12 will:

- 13 A. Prioritize the review of entitlement applications, permits and related plans; and
14 B. Waive for the developer the fees for one express plans check.

15 **19.17.070 Density Bonus**

16 A project seeking a density bonus under this Chapter is eligible for a bonus determined in accordance with
17 Table 1 below, taking into account the applicable zoning district and the percentage of affordable housing
18 units proposed. The density bonus allowable refers to the number of units to be allowed in excess of the
19 number otherwise permitted by the General Plan.

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Table 1 – Density Bonus		
<i>General Plan Category/FBC Transect Zone</i>	<i>Minimum percentage of total dwelling units proposed as affordable housing units</i>	<i>Density Bonus</i>
TOD-1 TOC-1	10%	Up to 10 dwelling units per acre
TOD-2 TOC-2	10%	Up to 5 dwelling units per acre
NXMU	10%	Up to 5 dwelling units per acre
Any other category (but excluding R, DR and RNP)	10%	Up to 3 dwelling units per acre

19.17.080 Height Bonus

A project seeking a height bonus under this Chapter is eligible for a bonus determined in accordance with Table 2 below, taking into account the applicable zoning district and the percentage of affordable housing units proposed. The height bonus allowable refers to the additional height to be allowed in excess of the height otherwise permitted by the General Plan or applicable zoning district.

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Table 2 – Height Bonus		
<i>General Plan Category/FBC Transect Zone</i>	<i>Minimum percentage of total dwelling units proposed as affordable housing units</i>	<i>Height Bonus</i>
TOD-1 TOD-2 TOC-1 TOC-2	10%	3 stories
NXMU	10%	2 stories
T4-N	10%	2 stories
T4-C	10%	3 stories
T4-MS	10%	3 stories
T5-M	10%	2 stories
T5-C	10%	3 stories
T5-MS	10%	3 stories
T6-UG T6-UG-L	10% 20% 30% 40%	1 story 2 stories 3 stories 4 stories
T6-UC	20% 30% 40% 50%	3 stories 4 stories 5 stories 6 stories

19.17.090 Fee Reductions

A project seeking financial incentives under this Chapter in the form of fee reductions is eligible for the fee reductions set forth in Table 3 below, subject to approval by the City Council after considering the recommendations of the Director of Community Development and the Director of Public Works. Fee types that might be subject to reduction include development-related fees under Title 19, building permit fees, and impact fees. Director recommendations and Council action shall take into account the type of project, the total number of dwelling units, the number of affordable housing units, and the applicable General Plan category and zoning district. The total amount of fee reductions for all qualified projects for any particular

fiscal year shall not exceed the limit for such fee reductions that has been established by the City Council for that fiscal year.

Table 3 – Fee Reductions

<i>General Plan Category/FBC Designation</i>	<i>Type of affordable housing project</i>	<i>Minimum percentage of total dwelling units proposed as affordable housing units</i>	<i>Fee reduction percentage of applicable fees</i>
FBC (other than transect zones below)	Very-Low Income	50%	100%
TOD-1 TOD-2 TOC-1 TOC-2 NXMU	Very-Low Income	25%	100%
Any other category	Very-Low Income	10%	100%

19.17.100 City Council Review and Action Regarding Fee Reductions.

A. At least once per fiscal year, and at a public meeting, the City Council shall determine a total amount and type or portion of permit fees and impact fees that may be reduced as described in Section 19.17.090. Action taken by the City Council pursuant to this Subsection (A) shall be in consultation with the City Manager and the Directors of Community Development and Public Works, and shall take into account any recommendations of the Building and Safety Enterprise Fund Advisory Committee.

B. In taking action pursuant to Subsection (A), the City Council shall:

1. Take into account the effect of the reduction of building permit fees on the economic viability of the City's General Fund and the economic viability of any affected enterprise fund; and
2. Make a determination that the reduction of building permit fees to be authorized under Section 19.17.090 for the applicable period will not impair adversely the ability of the City Council to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from such fees was pledged.

C. Action taken pursuant to this Section shall be subject to all applicable limitations and requirements of NRS 278.235.

SECTION 4: Section 19.18.020 is amended by adding, at the appropriate locations, the following terms and their corresponding definitions:

Affordable Housing. Except as the context otherwise requires, the spectrum of housing considered to be affordable for a household with a total gross monthly income that corresponds to certain percentages of the median monthly gross household income (AMI) for Clark County, Nevada. The term includes “Moderate-Income Affordable Housing,” “Low-Income Affordable Housing” and “Very Low-Income Affordable Housing.” For purposes of this definition, median gross household income must be determined based upon the most current estimates of the United States Department of Housing and Urban Development regarding Clark County, Nevada.

Moderate-Income Affordable Housing. Affordable housing for households that have a total monthly gross income that is equal to more than 80 percent but not more than 120 percent of the median gross household income. This term generally corresponds to “tier three affordable housing,” as defined by NRS 278.01904.

Low-Income Affordable Housing. Affordable housing for households that have a total gross income that is equal to more than 60 percent but not more than 80 percent of the median gross household income. This term generally corresponds to “tier two affordable housing,” as defined by NRS 278.01906.

Very Low-Income Affordable Housing. Affordable housing for households that have a total gross income that is not more than 60 percent of the median gross household income. This term generally corresponds to tier one affordable housing as defined by NRS 278.01902.

SECTION 5: As authorized by NRS 278.235 and Section 2.147 of the Las Vegas City Charter, the City Council hereby establishes a trust fund known as the “City of Las Vegas Affordable Housing Trust Fund.” In connection with the establishment and administration of the trust fund, and subject to any applicable statutory or regulatory limitations, the City Council authorizes:

(A) The trust fund to include revenue or transfers from any of the following sources to the extent allowable by law and other governing provisions or restrictions:

(1) Donations;

(2) Grants;

- (3) The City's General Fund;
- (4) Bond proceeds;
- (5) Special assessment proceeds;
- (6) Interest income;
- (7) Fees; or
- (8) Rebates.

(B) Expenditures from the trust fund to:

- (1) Finance the acquisition of land or buildings, construction, or rehabilitation of affordable housing, including engineering or architectural work, supplies, equipment, and training, as well as other incidental costs associated with the acquisition, construction or rehabilitation of affordable housing;
 - (2) Fund operations, marketing, supplies, or administrative costs related to the acquisition, construction or rehabilitation of affordable housing;
 - (3) Fund the costs of any bond issuance, interim warrant, or other financing mechanism;
- and
- (4) Accumulate interest earned on deposited funds or revenues.

SECTION 6: For purposes of Section 2.100(3) of the City Charter, Section 19.18.020 is deemed to be a subchapter rather than a section.

SECTION 7: The Department of Community Development is authorized and directed to incorporate into the Unified Development Code the amendments set forth in Sections 2 to 4, inclusive, of this Ordinance. This authorization and direction includes any formatting, technical or non-substantive adjustments that may be deemed necessary or appropriate.

SECTION 8: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase

1 thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs,
2 sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

3 SECTION 9: All ordinances or parts of ordinances or sections, subsections, phrases,
4 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983
5 Edition, in conflict herewith are hereby repealed.

6 PASSED, ADOPTED and APPROVED this ____ day of _____, 2023.

7 APPROVED:

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9 By _____
CAROLYN G. GOODMAN, Mayor

10 ATTEST:

11 _____
12 LUANN D. HOLMES, MMC
City Clerk

13 APPROVED AS TO FORM:

14 Val Steed 12-5-22
15 Val Steed, Date
Deputy City Attorney

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1 The above and foregoing ordinance was first proposed and read by title to the City Council on the ____ day
2 of _____, 2022, and referred to a committee for recommendation, the committee being
3 composed of the following members _____;
4 thereafter the said committee reported favorably on said ordinance on the ____ day of
5 _____, 2023, which was a _____ meeting of said Council; that at said
6 _____ meeting, the proposed ordinance was read by title to the City Council as first
7 introduced and adopted by the following vote:

8 VOTING "AYE": _____

9 VOTING "NAY": _____

10 ABSENT: _____

11 APPROVED:

12
13 By _____
CAROLYN G. GOODMAN, Mayor

14 ATTEST:

15 _____
16 LUANN D. HOLMES, MMC
City Clerk

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