

Council Member Balarin introduced the following:

ORDINANCE 4.21.22 (As Amended on 01/05/23)

AN ORDINANCE AMENDING CHAPTER 375 (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO INCREASING THE AFFORDABLE HOUSING REQUIREMENT IN NEW DEVELOPMENTS

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. Paragraph c (Affordable Housing Requirement) of Sub-Section 5 (Incentives and affordable housing requirements) of Section 375-401 (Dimensional Standards) of Article IV (Development Standards) of Chapter 375 is amended to read as follows:

- (c) Affordable housing requirement. Each new residential or mixed-use development or redevelopment containing ~~50~~ 20 or more new dwelling units shall be required to sell or rent at least 5% a portion of its new dwelling units at sales or prices affordable to persons earning no more than ~~400~~ 60% of the area median household income ~~for the City of Albany~~, as determined by affordability methods used by the United States Department of Housing and Urban Development for the Albany-Schenectady-Troy, New York Metropolitan Statistical Area. The minimum portion of affordable dwellings for each development or redevelopment shall be determined by the following standard:
- (i) 7% of new dwelling units shall be affordable for developments or redevelopments with 20 or more but no more than 49 new dwelling units.
 - (ii) 10% of new dwelling units shall be affordable for developments or redevelopments with 50 or more but no more than 60 new dwelling units.
 - (iii) 12% of new dwelling units shall be affordable for developments or redevelopments with more than 60 but no more than 75 new dwelling units.
 - (iv) 13% of new dwelling units shall be affordable for developments or redevelopments with 76 or more new dwelling units.

Section 2. This ordinance shall take effect immediately.

**APPROVED AS TO FORM THIS
3rd DAY OF JANUARY, 2023**

Corporation Counsel

To: Danielle Gillespie, City Clerk

From: John-Raphael Pichardo, Esq., Research Counsel
Brett Williams, Esq., Senior Assistant Corporation Counsel
Jake Eisland, Esq., Research Counsel

Re: Common Council Legislation
Supporting Memorandum

Date: January 27, 2022

Sponsor: Council Member Balarin

ORDINANCE 4.21.22 (*As Amended on 01/05/23*)

TITLE

AN ORDINANCE AMENDING CHAPTER 375 (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO INCREASING THE AFFORDABLE HOUSING REQUIREMENT IN NEW DEVELOPMENT

LEGISLATIVE INTENT

The Common Council Legislature finds that present and historical divestment along income and racial lines have left lasting impacts on the City of Albany. These impacts include a lack of affordable housing, a concentration of affordable housing in low-income neighborhoods, and a high level of residential segregation. Inclusionary housing zoning ordinances are increasingly recognized as an important part of a comprehensive plan to redress these unequal and unjust development patterns.

This ordinance proposed to amend the Code of the City of Albany by modifying the provision thereof commonly referred to as the Affordable Housing Ordinance (AHO). These proposed amendments address two important aspects (1) the level of affordability and (2) City of Albany history of redlining, other key features of the program, with the goal to bring these features in line with national averages and best practices.

The key features are (1) the level of affordability, (2) the minimum project size, and (3) the number of affordable units set-aside. Our proposal seeks to bring Albany in-line with national best practices, and if adopted as proposed would place Albany squarely within national averages for each of these features.

Affordability and Other Key Features

The key features of any AHO are (1) the level of affordability, (2) the minimum project size, and (3) the number of affordable units set-aside. Our proposal seeks to bring Albany in-line with national best practices, and if adopted as proposed would place Albany squarely within national averages for each of these features.

(1) Level of Affordability

Currently, our AHO contemplates affordability at 100% of area median income (AMI). By contrast, the vast majority of cities aim for a lower affordability rate. The proposed affordability standard would bring Albany in line with the most other municipalities and provide real value for hardworking Albany renters and owners who are feeling the squeeze of rising rents and ownership prices.¹

(2) Minimum Project Size

Currently, our AHO contemplates a minimum project size of 20 dwelling units. This is far in excess of national averages, which show that 70% of reporting AHO programs set a minimum project size of ten units or less, and a full 27% setting the threshold between 2 and 5 units.² Lowering the minimum project sizes provides for a more uniform playing field for developers, and the Furman Center notes in a 2015 white paper that uniform policies are “relatively simple for the city to enforce.”³ At 20 dwelling units the ordinance would both bring Albany in line with the overwhelming majority of inclusionary housing programs nationwide and create a uniform playing field for developers while leaving untouched small and owner-occupied developments.

(3) Minimum Set-Aside

Currently, our AHO contemplates a minimum set-aside of 5% of a development’s units. This is drastically out of line with the national average, where a full 84% of programs set aside more than 10% of units.⁴ “This study identifies a total of 1,019 inclusionary housing programs in 734 jurisdictions at the end of 2019.” (p. 5) Nationwide, the “average set-aside for affordable units is 16%” and of the 1k+ programs across the country (as of 2019), “29% of IH [Inclusionary Housing] programs require 20% or more” set-aside. (p.5)⁵

While mandatory inclusionary housing policies such as the AHO are only one of many policy tools that must be mobilized to satisfy the unmet demand for affordable housing, they are increasingly recognized as important policy tools to combat residential segregation.⁶

¹ See, e.g., Ruoniu Wang & Sowmya Balachandran, *Inclusionary Housing in the United States Prevalence, Practices, and Production in Local Jurisdictions as of 2019*, GROUNDED SOLUTIONS NETWORK (2021).

² Ruoniu Wang & Sowmya Balachandran, *Inclusionary Housing in the United States Prevalence, Practices, and Production in Local Jurisdictions as of 2019*, GROUNDED SOLUTIONS NETWORK (2021) at pg. 31.

³ Josiah Madar, *Inclusionary Housing Policy in New York City: Assessing New Opportunities, Constraints, and Trade-offs*, NYU Furman Center (March 26, 2015).

⁴ Stephanie Reyes & Ruoniu Wang, *Inclusionary Housing: Secrets to Success*, SHELTERFORCE (March, 2021), using data from Ruoniu Wang & Sowmya Balachandran, *Inclusionary Housing in the United States Prevalence, Practices, and Production in Local Jurisdictions as of 2019*, GROUNDED SOLUTIONS NETWORK (2021).

⁵ Stephanie Reyes & Ruoniu Wang, *Inclusionary Housing: Secrets to Success*, SHELTERFORCE (March, 2021), using data from Ruoniu Wang & Sowmya Balachandran, *Inclusionary Housing in the United States Prevalence, Practices, and Production in Local Jurisdictions as of 2019*, GROUNDED SOLUTIONS NETWORK (2021).

⁶ A study of two localities with inclusionary zoning (IZ) policies similar to the AHO (Montgomery County, MD and Suffolk County, NY) found that “tracts where IZ units were built became more racially integrated than neighborhoods without IZ units.” Kontokosta, Constantine E, *Mixed-Income Housing and Neighborhood Integration: Evidence from Inclusionary Zoning Programs*, *Journal of Urban Affairs* 36 (4): 716–41 (2014).

Address the City of Albany’s History with Redlining

Over the last few years, we have seen several media publications highlighting the negative history of the City of Albany and our redlined neighborhoods. The articles have publicly shown the history that we can all see as we walk about city. As this coverage has shown, the residential investment and demographic patterns we see today map almost perfectly onto the redlining pattern established nearly a century ago. A recent Times Union article explains how redlining worked: “Parts of the city were "redlined" beginning in 1938 as part of a post-Depression survey conducted by the federal Home Owners’ Loan Corp., an entity established to stem the tide of home foreclosures. Officials composed maps of hundreds of U.S. cities that categorized certain neighborhoods based on what local banks and realtors perceived to be the market for real estate investment. Those deemed too “hazardous” for investment were shown in red.”⁷ The impact of redlining was severe: areas shown in red on the HOLC maps were unable to secure loans from most banks, and lenders that did lend in redlined areas commonly did so on predatory terms.

Today when you look at a map of where we are currently building affordable housing compared to where we are building market rate housing, the lines still match up many of those invisible borders from 1938. On Central Ave towards Livingston Ave, you have affordable house being built, and on the other side of Central Ave from Washington Ave towards New Scotland Ave we have market rate housing being built. This bill will be a small step in correcting our past failures.

GENERAL PURPOSE OF LEGISLATION

This legislation lowers the threshold of dwelling units from 50 to 20, increases the minimum requirement of affordable units from 5% to between 7 and 13% and lowers the area median household income requirement from 100% to 50% of regional AMI.

FISCAL IMPACT(S)

None.

EXPLANATION OF AMENDMENTS

As it was originally introduced, this ordinance required that affordable housing units be offered at “sales or prices affordable to persons earning no more than ~~400~~ 50% of the area median household income for the City of Albany, as determined by affordability methods used by the United States Department of Housing and Urban Development.”

With the first amended version, “area median household income for the City of Albany” has been changed to “the regional median household income” as determined by HUD – a broader geographic designation which may encompass a wider range of incomes.

Additionally, the original version used a flat 18% minimum of affordable housing units. Under the second amended version, this standard has been diversified, allowing different requirements for developments of different sized. This version also removes the City of

⁷ Massarah Mikati & Eduardo Medina, *A City Divided: How New York's capital city was splintered along racial lines*, Times Union (June 6, 2021), available at: <https://www.timesunion.com/projects/2021/albany-divided/>

Albany from the description of Area Median Income, since the department of Housing and Urban Development calculates Area Median Income using Metropolitan Statistical Areas instead of municipal boundaries.