

**TOWN OF SUPERIOR  
ORDINANCE NO. 0-18  
SERIES 2020**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF  
SUPERIOR AMENDING CHAPTER 16 OF THE SUPERIOR MUNICIPAL  
CODE BY THE ADDITION OF A NEW ARTICLE XXXVII, TO ADOPT  
INCLUSIONARY HOUSING REQUIREMENTS**

**WHEREAS**, according to the Boulder County Community Foundation TRENDS Report 2019-2021 (the "TRENDS Report"), between 2007 and 2017, employment in Boulder County grew by 39,719 positions – a 17% increase;

**WHEREAS**, housing, however, has not kept pace, and for every 3.5 new jobs that came to Boulder County in that period, just one housing unit was added;

**WHEREAS**, this extreme imbalance in supply and demand of housing has forced tens of thousands of people and vehicles into Boulder County each day just to work and has contributed to a rise in homelessness and pushed up housing prices;

**WHEREAS**, according to the TRENDS Report, while the area median income in Boulder County is among the highest in Colorado and higher than the national median, 10% of residents are still below the poverty line, including 12% of children, and 25% of the population is unable to earn enough to cover their basic needs, with housing costs being the most significant factor contributing to these disparities as price escalation is pushing homes out of reach for low- and middle-income owners and renters;

**WHEREAS**, according to the TRENDS Report, the median cost of a single-family home more than doubled from 2003 to 2019 in the Town;

**WHEREAS**, according to the TRENDS Report, the rental market for housing units reflects similar issues, with 58% of renters in Boulder County spending more than a third of their income on housing costs according to Census data, compared to 46% of renters nationally;

**WHEREAS**, according to the TRENDS Report, Boulder County is in the bottom 4% for equality among the nation's metro areas (44 of 916) and counties (132 of 3,061);

**WHEREAS**, the Boulder County Regional Housing Partnership recommends a goal of ensuring 12% of the housing inventory will be

permanently affordable to low, moderate, and middle-income households by 2035;

**WHEREAS**, Policy 4.2.a of the Town's Comprehensive Plan makes it a long-term goal of the Town to "[p]rovide for a mix of attached and detached residential housing types at varied densities and price ranges to accommodate residents of all ages";

**WHEREAS**, Housing Policy HO 1.02 of the Boulder County Comprehensive Plan makes it a long-term goal of Boulder County to utilize cooperative effort housing programs, including with local governments to meet the housing needs of low-income families and senior citizens of the County;

**WHEREAS**, a housing shortage for persons of low income (80% of Area Median Income) is detrimental to the public health, safety and welfare, and the inability of such persons to reside within the Town negatively affects the community's jobs/housing balance and includes without limitation serious and detrimental transportation and environmental consequences; and

**WHEREAS**, based on the foregoing, and in furtherance of the health, safety, and welfare of the community the Board of Trustees desires to adopt inclusionary housing requirements.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:**

**Section 1.** Chapter 16 of the Superior Municipal Code is hereby amended by the addition of a new Article XXXVII, to read as follows:

**ARTICLE XXXVII – INCLUSIONARY HOUSING**

**Sec. 16-37-10. Purpose.**

The purpose of this Article is to implement the housing goals of the Boulder Valley Comprehensive Plan and the Town's Comprehensive Plan to provide for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes, by increasing the availability of affordable housing to address existing and anticipated future housing needs in the Town.

**Sec. 16-37-20. Definitions.**

For purposes of this Article, the following terms shall have the following meanings:

*Affordable housing development* means a residential development that focuses on or includes as a major portion of the development permanent measures to address the housing needs of lower- or middle-income households.

*AMI* means the area median income for Boulder County, Colorado, adjusted for household size, as set forth in the index published annually by the United States Department of Housing and Urban Development, or any successor index.

*Free market unit* means a residential unit not restricted by this Article.

*Principal place of residence* means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom, and in determining what is a principal place of residence, the Town shall consider the criteria set forth in C.R.S. § 31-10-201(3), as amended.

*Qualified household* means one qualified resident or a group of individuals that contains at least one qualified resident; a qualified household may have occupants that are not qualified residents as long as at least one occupant is a qualified resident.

*Qualified resident* means an individual who earns an annual income that does not exceed 80% of the AMI, and who occupies or will occupy a residential unit as their principal place of residence.

*Residential development* means the development of single-family detached residences, townhomes, duplexes, condominiums, apartments or multi-family dwellings as those terms are commonly understood or defined under this Chapter.

*Residential unit* means a dwelling unit of four hundred (400) square feet or more containing sleeping, kitchen and bathroom facilities, designed for and used or held ready for use as a permanent residence by one (1) family.

*Restricted unit* means a residential unit that is deed restricted as provided in this Article, and priced at initial sale and resale to be affordable to qualified residents in perpetuity.

**Sec. 16-37-30. Applicability.**

(a) The requirements of this Article apply to all new residential development in the Town regardless of whether units are to be sold individually or retained and otherwise leased or rented for residential use.

(b) Affordable housing developments may be exempt from all or part of the requirements of this Article by the Manager if the Manager determines that the

affordable housing development meets or exceeds the standards in this Article. In addition, residential housing developments constructed or operated by any local or regional housing authority or an entity that qualifies for a tax exemption under C.R.S. § 29-4-507 or C.R.S. § 29-4-227 are exempt from this Article.

**Sec. 16-37-40. Inclusionary housing requirements.**

(a) Number. New residential developments of ten (10) units or more shall include at least fifteen percent (15%) of the new residential units as restricted units, rounded up. By way of example, if a residential development contains one hundred sixty-two (162) residential units, twenty-five (25) restricted units shall be included.

(b) Deed restriction. Each restricted unit shall be subject to a perpetual deed restriction in a form approved by the Town as necessary to carry out the purpose of this Article, and no permits shall be issued for the residential development until the required deed restrictions have been executed.

(c) Fee in lieu.

(1) Applicants for residential developments of less than ten (10) residential units may pay to the Town a fee in lieu of providing the restricted units.

(2) The amount of the fee in lieu shall be established by the Board of Trustees by resolution, and shall be reviewed and updated as necessary every two (2) years.

(3) Payment of the fee in lieu shall be made to the Town prior to the issuance of any building permits for the residential development.

(4) Funds collected from fees in lieu shall be used by the Town for the purpose of planning for, subsidizing or developing affordable housing.

(e) No Credit. No credit shall be given for the construction of restricted units beyond the requirements of this Article, and the Town shall not maintain a mitigation bank for this purpose.

**Sec. 16-37-50. Standards for restricted units.**

(a) Design. Restricted units shall be comparable in design, size, and appearance to the free market units in the residential development, and shall comply with all size requirements and other design standards of this Chapter, including without limitation parking.

(b) Type. Residential developments that include more than one type of residential unit shall provide restricted units in rough proportion to the types and various designs of free market residential units constructed. For example, in developments with a mixture of two-bedroom and three-bedroom residential units,

the restricted units shall be comprised of the different residential unit types in the same proportion as the free market units.

(c) For sale or rent. Restricted units shall be for sale or for rent in the same proportion as the free market units. For example, if fifty percent (50%) of the units in the residential development are for sale, then at least fifty percent (50%) of the restricted units shall be for sale.

(d) Location. Restricted units shall be located on the site on which the residential development is proposed, and shall have access to amenities equal to that of the owners and renters of the free market units, including without limitation parks, outdoor play areas, pools, exercise facilities and similar onsite amenities.

(e) Timing. Restricted units shall be ready for occupancy no later than the date of the initial certificate of occupancy for any of the free market units in the project. If the free market units are to be constructed in phases, then the restricted units may be constructed in phases, in proportion to the phasing of the free market units.

**Sec. 16-37-60. Sale or lease of restricted units.**

(a) No person offering a restricted unit for rent or sale shall fail to disclose the deed restriction required by this Article.

(b) No person shall sell, rent, purchase, or lease a restricted unit except to a qualified resident.

(c) The maximum sales price for a restricted unit shall be set no higher than at a price affordable to households earning 80% of AMI. The Manager shall establish the maximum allowable sales price for restricted units on a quarterly basis based upon the unit type, total floor area, and number of bedrooms and bathrooms.

(d) The rental rate for a restricted unit shall be set no higher than at a price affordable to households earning 80% of AMI, as published by the United States Department of Housing.

(e) Restricted units shall not be rented for a period of less than thirty (30) consecutive days.

(f) Restricted units shall be continuously occupied by a qualified household and shall not remain vacant for more than ninety (90) consecutive days unless reasonable and documented efforts to occupy the restricted unit are unsuccessful.

(g) The owner of a restricted unit is solely responsible for verifying the eligibility of a tenant as a qualified resident, and may require the prospective tenant to provide the following information on an application to be provided by the owner of a restricted unit:

(1) Verification (e.g., wage stubs, tax return, W-2 or other appropriate documentation) of the tenant's AMI;

(2) A valid form of identification, such as a driver's license, state-issued identification, passport or military identification;

(3) Any other documentation which the owner deems necessary to make a determination of eligibility; and

(4) A signed statement certifying and acknowledging: that all information submitted in such application is true to applicant's best knowledge; that the applicant understands that they may not sublet the restricted unit; that the applicant authorizes the owner to verify any and all past or present employment, financial and residency information and all other information submitted by an applicant; and that applicant has read and understands the deed restriction.

**Sec. 16-37-70. Violation and penalty.**

(a) It is unlawful to operate a restricted unit in violation of this Article, and violations shall be punishable as set forth in Chapter 1, Article III of this Code. Each day of violation shall be deemed a separate offense.

(b) In addition to the remedies provided by this Code, the Town shall have any and all remedies provided by law and in equity for a violation of a deed restriction, including without limitation: (i) damages; (ii) specific performance; and (iii) injunctions, including without limitation an injunction requiring eviction of the occupant(s) and an injunction to prohibit the occupancy of the restricted unit in violation of the deed restriction.

**Section 2.** Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.

**Section 3.** Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 12<sup>th</sup> day of October, 2020.

Clint Folsom  
Clint Folsom, Mayor

ATTEST:

Phyllis L. Hardin  
Phyllis L. Hardin, Town Clerk-Treasurer

