



# CITY COUNCIL ACTION FORM

<b>DEPARTMENT</b> City Attorney	<b>PRESENTED BY</b> Nina P. Williams - City Attorney	<b>DATE</b> April 15, 2024
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## ITEM

### **Inclusionary Housing Deed Restrictions: legal synopsis and items needing policy direction**

## LEGAL SYNOPSIS

### **Introduction / Purpose of Inclusionary Housing Deed Restrictions**

- To accomplish the goals and directives of the City's Inclusionary Housing ordinance: Chapter 16, Article XIII, of Salida Municipal Code
- *SMC Section 16-13-10. Purposes and objectives*
  - (a) Promote the construction of housing that is affordable to the community's workforce;
  - (b) Retain opportunities for people that work in the City to also live in the City;
  - (c) Maintain a balanced community that provides housing for people of all income levels; and
  - (d) Ensure that housing options continue to be available for very low-income, low-income, moderate, and middle-income residents, for special needs populations and for a significant proportion of those who work or live in the City.
- *Section 16-13-20(d), General Inclusionary housing requirements*
  - In order to comply with the requirements of Salida's inclusionary housing ordinance, the applicant must execute a Deed Restriction, in a form provided and approved by the City Attorney, which must be recorded onto property with Chaffee County Clerk and Recorder.
- Deed restrictions are the mechanism that implement the City's important policy goal of ensuring a percentage of residential units in a development are set aside to be affordable to your workforce.
- It would be difficult to legally enforce your inclusionary housing ordinance and code requirements without the deed restriction in place.
- Deed restrictions ensure the execution of your inclusionary housing requirements now, and into the future.

### **What is a Deed Restriction?**

- An enforceable contract that runs with the land in perpetuity - which means it is binding upon future owners of the property and burdens the property with such restrictions
  - Makes clear that the specific property and residential units are subject to the restrictions within the contract, as it relates to affordability of the designated units (whether for-sale or rental residential units)
  - Sets forth additional regulations and specifications to accomplish that goal of maintaining the affordability of the unit for future renters, occupants and owners
- Because the deed restriction is recorded onto the property, it is readily accessible and viewable when anyone researches the property with the County Clerk and Recorder, and it comes up on title when someone is purchasing the property.
  - So, future owners are put on "notice" of the restriction on the property, and know about the requirement that the applicable units must remain affordable to renters or owners (and the other requirements to ensure that occurs)



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**Some important provisions in our Deed Restriction document**

- Applicable AMI Area Median Income - the percentage of AMI – 60% to 160% - that has been applied to the unit(s) in that particular development. And as a reminder, that is a percentage of Chaffee County’s AMI, and it changes from year to year, based upon the data within the region. And that is determined and published by HUD, and CHFA.
- Defines what exactly is a Qualified Occupant or Qualified Household, and how that is regulated and enforced
  - Restricted units can only be occupied, rented or owned by a “Qualified” Occupant/Household
  - Renters are required to comply with annual deed restriction monitoring by CHA
- Designates priority towards workers within City limits, and then within County limits and allows for a lottery system
- Prohibits the use of the property as short term rentals
- Prohibits ownership interest in other residential property
- Defines Maximum Rent and Maximum Resale Price for future owners/occupants
- Identifies the notice requirements in the case of a Default or Breach
  - Keeps City and CHA apprised and in the loop

**What are Housing Authority Community Guidelines?**

- (Still waiting to review Chaffee Housing Authority’s most recent draft)
- Chaffee Housing Authority is the administrative arm for managing deed restrictions and implementing (and amending, as needed) appropriate Community Guidelines
  - IGA establishing the Chaffee Multijurisdictional Housing Authority:
    - Duties of the Board include “*adopting annually an Administrative Plan, Strategic Plan, and/or Community Guidelines for deed restriction management.*”
    - Functions of the Housing Authority include “*provide homeownership and rental assistance programs; implement measures for privately held deed restricted properties, such as: qualifying buyers and renters for affordable units; marketing available properties; setting affordable prices for new and resale properties; setting up and implementing lottery process; answering inquiries about available affordable units; setting maximum initial and resale prices; and keeping a current list of available properties and who to contact.*”
- Deed Restriction references and operates hand in hand with Community Guidelines
- Guidelines can be amended and updated from time to time to adapt to current needs and practicalities
- Guidelines typically establish policies and procedures for CHA regarding the following:
  - Application procedures
  - Applicant eligibility criteria
  - Verification of:
    - Income
    - Employment
    - Rental history
    - Background check



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- Applicant selection process
- Annual recertification process
- CHA's lottery pool of eligible applicants; process for lotteries
- Prioritization and weighted point system (if applicable)
- Establishes Discrimination and Grievance Process
- These guidelines would apply to all deed restricted affordable housing units (rental or for-sale)

### ITEMS NEEDING POLICY DIRECTION

The City Attorney will lead a discussion to obtain direction from City Council on terms and topics within the inclusionary housing deed restriction that are within policy discretion, including:

- Confirmation of SMC sec.16-13-10, Purposes and Objectives, Inclusionary Housing
- Qualified Household / Qualified Occupant
- Net worth
- Occupant's interest in other residential properties
- Local employer or income source, including self-employment
- Local "workforce" over 60 years of age
- Maximum real estate broker commission
- Confirmation that these inclusionary housing deed restrictions should be in perpetuity, recorded on the property (versus temporary, for a few years and/or one family/occupant)
- Maximum re-sale price - Escalator related to AMI increase?