

4.59.020 Definitions.

For purposes of this Chapter, the following words or phrases shall have the following meanings:

"Affordable Housing Unit" means a Dwelling Unit subject to a lawful agreement regarding residential rental housing affordability, including but not limited to a Deed Restriction, to which the City of Santa Monica or the Santa Monica Rent Control Board, or any agent or subsidiary of either the City or the Rent Control Board, is a party.

Unless otherwise specified, the definitions set forth in Santa Monica Municipal Code Section 9.64.020 (definitions for the Affordable Housing Production Program) or any successor section, shall apply to this chapter.

"Deed Restriction" means a contract governing use and occupancy of residential Dwelling Units to which the City of Santa Monica or the Santa Monica Rent Control Board are a party, including but not limited to Agreements Imposing Restrictions on Real Property between the City and a Developer enacted pursuant to Chapter 9.64 (Affordable Housing Production Program) and recorded in the official records of Los Angeles County.

"Developer" means the owner or any other person entitled to receive rent for the use and occupancy of any units at any residential rental project subject to the provisions of this Chapter, and includes any assigns, transferees, or successors-in-interest thereto as well as any agents or representatives thereof, including but not limited to property managers. "Developer" includes all other individuals or entities, including but not limited to managers, members, executives, board members, and shareholders of all business entity owners or managers, who are primarily or substantially responsible for causing the violation of any obligation set forth herein. Primary or substantial responsibility includes causing, directing, ordering, authorizing, aiding, abetting, or permitting a violation, or

failing to prevent or cease a violation despite knowledge and ability to prevent or cease a violation.

"Dwelling Unit" means dwelling unit as defined in Santa Monica Municipal Code Section 9.52.020, or any successor thereto, and shall also include a unit in single-room occupancy housing, as defined in Santa Monica Municipal Code Section 9.51.020(B)(11), or any successor thereto.

"Maximum Allowable Rent" means the maximum rent permitted for an Affordable Housing Unit under the applicable Deed Restriction.

4.59.030 Notice to Applicants and Tenants of Affordable Housing Units

(a) A Developer shall notify all applicants for affordable housing units in writing that the unit for which they are applying is an affordable housing unit subject to deed restriction(s) and shall provide the applicant with a copy of the applicable deed restriction(s) or an opportunity to obtain copies of the applicable deed restriction(s) from the developer. If a developer has leased an affordable housing unit to a tenant without informing the tenant in writing that the unit is an affordable housing unit, the developer shall provide such notice in writing as soon as practicable. Developer shall make copies of all deed restriction(s) available to tenants of affordable housing units upon request throughout the tenancy.

(b) The notices described in this section shall include a mandatory acknowledgment of receipt to be signed by Developer and tenants. The acknowledgment of receipt shall be retained by Developer for the duration of the tenancy and for three years following the end of the tenancy.

(c) The notices described in this section shall conform to any requirements set forth

in the Administrative Guidelines for this chapter, which may specify language or require the use of a City form notice.

4.59.040 Screening of Affordable Housing Unit Applicants

(a) A developer shall exercise due diligence in verifying the income and assets of applicants to and occupants of affordable housing units under the following circumstances:

(1) prior to initial occupancy of a new tenant household, whether or not the household was referred from a City-developed list;

(2) at least once annually;

(3) prior to approving a new adult to reside with an existing tenant household occupying an affordable housing unit;

(4) when otherwise required by law or by the applicable deed restriction(s).

(b) Verification under this section shall conform with the process and standards set forth in the Administrative Guidelines for this chapter and Housing Division guidance, including the tenant income and asset certification packet sent to property owners as part of the annual reporting process. As set forth in the guidelines, verification may be waived or streamlined for holders of housing vouchers, including but not limited to Housing Choice Vouchers administered by the Santa Monica Housing Authority.

4.59.050 Application Requirements

Online and paper applications for rental of affordable housing units shall conform to the requirements established under the Administrative Guidelines for this chapter and to the requirements of the applicable deed restriction(s). Paper and online applications

shall clearly and conspicuously state that the unit is an income and rent-restricted affordable housing unit and shall include a clear and conspicuous statement of nondiscrimination, including that the developer does not discriminate on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, national origin, ancestry, marital status, familial status, pregnancy, parenthood, the actual or potential occupancy of minor children, disability, veteran or military status, genetic information, or any other class protected by Cal. Gov't Code Section 12955; or, any class protected by Section 4.28.030 of this Code. This statement shall also explicitly state that Developer does not discriminate on the basis of: "source of income", which includes rental assistance from any Federal, State, local or non-profit-administered benefit or subsidy program, including, but not limited to, the Section 8 voucher programs; or "housing status" which means currently or formerly experiencing homelessness, currently or formerly living in transitional, temporary, or shelter housing, or lacking a residential rental housing history.

§ 4.59.060. Lease Agreements and Affordable Housing Lease Addenda

A developer shall rent affordable housing units pursuant to the terms and conditions of a lease agreement approved by the City. The approval process and lease agreement requirements shall be those set forth in the Administrative Guidelines for this chapter and in the applicable deed restriction(s). In addition to any other terms required by the Administrative Guidelines, lease agreements for affordable housing units shall contain an affordable housing lease addendum requiring as material terms of the tenancy the tenant's continued qualification for the unit under the terms of applicable deed restrictions and the tenant's timely and accurate completion of annual income and asset

certifications.

4.59.070 Annual Reporting and Interim Reporting to the Housing Division.

(a) A developer shall issue a written report of compliance with the applicable deed restriction(s) to the City on an annual basis commencing one year from the date of issuance of the certificate of occupancy for the property and continuing thereafter throughout the term of the applicable deed restriction(s). Such report shall be in conformance with this chapter, the Administrative Guidelines adopted pursuant to this chapter, and Housing Division Guidance, including the annual tenant income and asset recertification packet sent to developers. Annual reports shall include the following for each affordable housing unit at the property: total income and assets of tenants, with supporting documentation; the rent level being charged; whether the household is assisted by a rental subsidy program; the number of occupants in the household; whether there have been a change of household or any changes in the composition of an existing household since the last annual report; whether any vacancies have occurred since the last annual report; and such other information as may be set forth in the Administrative Guidelines for this chapter and in Housing Division Guidance.

(b) A developer shall report to the Housing Division any new vacancy in an affordable housing unit following the process, standards, and timelines set forth in the Administrative Guidelines for this chapter. Unless otherwise specified in the Administrative Guidelines, such report shall be within five business days of the occurrence of a new vacancy.

(c) A developer shall report to the Housing Division any new tenancy following a vacancy in an affordable housing unit following the process, standards, and timelines set

forth in the Administrative Guidelines for this chapter. Unless otherwise specified in the Administrative Guidelines, such report shall be within five business days of the commencement of the new tenancy.

(d) A developer shall update the Housing Division of any change in ownership, property management, or developer's or management's contact information following the process, standards, and timelines set forth in the Administrative Guidelines for this chapter. Unless otherwise specified in the Administrative Guidelines, such update shall be provided within five business days of the change in ownership, management, or contact information. A developer shall provide phone and email contact information for the new owner or new management in their written notification to the Housing Division.

4.59.080 Preservation of Records

(a) Unless granted an accommodation based on disability, a developer shall maintain an active email account to communicate with City staff regarding affordable housing units and the requirements of this chapter.

(b) A developer shall maintain for at least five years the following records for all affordable housing units and provide copies within five business days of request to City staff:

1. A complete and accurate list of affordable housing units and the affordability level for each unit;
2. Digital copies of tenant rental application forms and supporting documentation for all tenant households whose applications are accepted and who lease an affordable housing unit for any period of time;
4. Digital copies of fully executed or operative leases and lease addenda;

- 5. Digital copies of complete and accurate rent ledgers for each unit, including rent charges and all other charges, payments, credits, and debits;
- 6. Digital copies of all documentation obtained during verification of tenant qualification as described in this chapter and the Administrative Guidelines for this chapter;
- 7. Digital copies of any written lease violation notices that have been served on tenants;
- 8. Digital copies of any unlawful detainer complaints that have been served on tenants; and
- 8. Other records as may be set forth in Administrative Guidelines for this chapter.

4.59.090 Maintenance of Affordable Housing Units

(a) A developer at its own expense must maintain the property and affordable housing units in good condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of the occupants. A developer may not commit or permit any waste on or to the property and shall prevent and/or rectify any physical deterioration of the property. A developer must maintain the property and the affordable housing units in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations, but the developer's maintenance obligations are not limited only to the standards contained in these laws.

(b) In the event that a developer fails to maintain the property or any affordable housing units in accordance with these standards, the City may pursue all available remedies to correct any condition in violation of these standards at the owner's expense.

4.59.120 Vacancies

(a) A developer must make reasonable efforts to rent vacant affordable housing units as soon as practicable. A vacancy exceeding sixty days shall be presumed to be a violation of this section.

(b) Developer shall lease the Affordable Units concurrently with all other units in the Project so as to avoid prolonged vacancy of the affordable housing units during lease-up of the project. A developer may not prioritize leasing of units or filling of vacancies based on whether rents are restricted or the level at which they are restricted and may not prioritize applicants based on the applicant's source of income.

4.59.130 Law Enforcement Access, Remedies, and Penalties

(a) Records and Interview Access; Cooperation with Investigations. To monitor and investigate compliance with the requirements of this Chapter, every developer shall cooperate with City-authorized investigators or auditors. That cooperation includes, but is not limited to: allowing access to records; and, allowing investigators to interview persons, including employees, during normal business hours.

(b) As authorized by Section 2.32.040 of this Code, the City Attorney may issue and serve administrative subpoenas as necessary to obtain specific information and records regarding the rental and occupancy of affordable housing units, including but not limited to tenant files, leases, ledgers, and income and asset certification documentation.

(c) Any developer violating any provision of this Chapter or any provision of the Administrative Guidelines under this Chapter may be subject to administrative citation pursuant to Chapter 1.09 of this Code. Any Housing Division staff person designated by the Housing Manager, including but not limited to Administrative Analysts, shall be an

enforcement officer, as defined in section 1.09.020, authorized to issue citations exclusively for violations of this chapter. Section 1.09.045 shall apply to citations issued under this section except that citations issued under this section shall be on a form approved by the City Attorney and approval by the City Manager shall not be required. Notwithstanding section 1.09.040, the amount of fines, including for repeat violations, shall be as set forth in the Administrative Guidelines for this Chapter, unless the Administrative Guidelines fail to specify fine amounts pursuant to this section, in which case section 1.09.040 shall apply to fine amounts for citations under this section.

4.59.140 Prohibition

No developer shall, with respect to any affordable housing unit, do any of the following on or after the effective date of this ordinance:

(a) Violate Sections 4.59.030 through 4.59.130 of this Chapter

(b) Charge more than the maximum allowable rent permitted under applicable deed restrictions and law;

(c) Rent any affordable housing unit to a tenant household who does not qualify for any reason, including but not limited to the following:

(1) Excessive income;

(2) Failure to meet minimum occupancy requirements based on bedroom size;

(3) Being a prohibited family member of the developer or employee of the developer, or other person prohibited under law or under the applicable deed restriction(s)

(4) Not having been referred from the City-developed list of potentially qualified applicants, where the deed restriction(s) required such referral;

(4) The named tenant household does not occupy the affordable housing unit as their primary residence;

(5) Unauthorized occupants are living in or subletting the affordable housing unit;

(d) Fail to promptly seek to terminate the tenancy, where permitted by applicable law, of unqualified tenants, tenants who fail to complete a required income and asset certification, and tenants who knowingly submit false information in connection with an income and asset certification, with notice as specified in the Administrative Guidelines for this chapter. All endeavors to evict shall comply with applicable just cause for eviction and tenant protection laws, including but not limited to Sections 1806 and 2304 of the City Charter and Sections 4.27.060, 4.28.030, 4.36.020, 4.56.020, and 4.57.020 of this Code;

(e) Fail to promptly seek to terminate the tenancy, where permitted by applicable law, of any tenant who engages in unauthorized subletting or short or medium-term rentals in violation of the applicable deed restriction, the applicable lease agreement, or Chapter 6.20 or 6.22 of this Code. All endeavors to evict shall comply with applicable just cause for eviction and tenant protection laws, including but not limited to Sections 1806 and 2304 of the City Charter, and Sections 4.27.060, 4.28.030, 4.36.020, 4.56.020, and 4.57.020 of this Code;

(f) Commit any other substantial and material violation of any clearly defined requirement set forth in this Chapter, Chapter 9.64, the Administrative Guidelines for either chapter, or the applicable deed restriction(s), as any of these may be amended from time to time.

(g) This section is not intended to impair or otherwise affect any legal, contractual, or other remedies available for violations of the proscribed conduct occurring prior to or

after the effective date of this ordinance, which, where applicable, shall apply cumulatively with those provided by this ordinance.

4.59.150 Enforcement and Penalties

(a) **Criminal Penalty.** Any Developer who is convicted of violating any provision of this Chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not greater than one thousand dollars or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment. This subsection, 4.59.140(a), shall only apply to violations occurring after the effective date of this ordinance and related to affordable housing units subject to deed restriction(s) executed after the effective date of this ordinance.

(b) **Civil Action.** The City may enforce the provisions of this Chapter by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence.

(c) **Injunction.** Any developer who commits an act, proposes to commit an act, or engages in any pattern and practice which violates Section 4.59.140 may be enjoined therefor by any court of competent jurisdiction. Any developer who commits an act, proposes to commit an act, or engages in any pattern and practice which violates Section 4.59.140, shall be subject to injunctive relief including but not limited to the relief described in subsections (d) through (h) of this section. An action for injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interest of the protected class.

(d) **Receivership, Replacement of Property Management.** If, after written notice providing a reasonable opportunity to cure, developer continues to violate any provision of Section 4.59.140, the City may seek all appropriate remedies, including but not limited

to appointment of a receiver and a court order for the replacement of the property manager with a property manager approved by the City.

(e) **Revocation of Certificate of Occupancy or Business License.** If, after written notice providing a reasonable opportunity to cure, developer continues to violate any provision of Section 4.59.140, such violation shall be grounds for revocation of the residential rental business license pursuant to Section 6.04.260 of this Code and/or of the Certificate of Occupancy for the Property. The City shall provide reasonable notice and an opportunity to cure before revoking the Certificate of Occupancy or business license.

(f) **Redesignation of Affordable Units.** If, after written notice providing a reasonable opportunity to cure, developer continues to violate section 4.59.140(c), the City may order that the unit occupied by the non-qualified occupant(s) no longer be designated as one of the affordable housing units required under the applicable deed restriction(s) and that a comparable non-restricted unit be designated and rented as the affordable housing unit instead of the original unit.

(h) **Extension of Deed Restriction Duration.** Upon proof by a preponderance of the evidence that any affordable housing unit at a property has been vacant due to a lack of due diligence in renting the unit, or has been provided or rented to an unqualified tenant, guest, or occupant, or rented for an amount that exceeds the maximum allowable rent under the applicable deed restrictions or law, or not maintained as required under Section 4.59.090, the City shall be entitled to an order requiring the developer to execute and record an agreement extending the duration of the applicable deed restrictions for an amount of time equal to the time during which the unit was vacant, not provided to a qualified tenant, rented for an excessive amount, or not properly maintained. A developer's failure to provide complete and accurate reporting demonstrating tenant

qualification when required by the applicable deed restrictions, law, or Administrative Guidelines, shall constitute prima facie evidence that the affordable housing unit has been vacant due to lack of due diligence or rented to an unqualified tenant for entire period for which there is no complete and accurate reporting.

(i) Civil Damages and Other Monetary Awards.

(1) Any developer who violates or aids or incites another person or entity to violate the provisions of this Chapter is liable to any aggrieved party, including the City, for each and every such offense for the actual damages suffered by an aggrieved party or for statutory damages in the sum of between one thousand dollars and twenty thousand dollars, whichever is greater, and shall be liable for such attorneys' fees and costs as may be determined by the court in addition thereto.

(2) In addition to subsection (1), any developer who violates Section 4.59.140(b) shall be liable to remit all rental revenue obtained in excess of the maximum allowable rents to the overcharged tenant, in a case brought by that tenant, or to the City, in a case brought by the City, so that the excess rent can be returned to the overcharged tenant or used to compensate any victim of a violation of this Chapter.

(3) In addition to subsection (1), any developer who violates Section 4.59.140(c) through (e) shall be liable to remit to the City all rental revenue obtained as a result of renting an affordable housing unit to an unqualified tenant, occupant, or guest, including a tenant who was not referred from the City-developed list; an over-income tenant; and, guests staying in the affordable housing unit as a vacation rental or medium-term rental in violation of Chapters 6.20 or 6.22 of this Code, with the remittance to be used to compensate victims of violations of this Chapter.

(k) Attorneys' Fees. A Developer who violates this Chapter shall be liable in a civil

action for reasonable attorneys' fees and costs determined by the court.

(l) Punitive Damages. In any case related to a deed restriction executed after the effective date of this ordinance, the court may also award punitive damages to any plaintiff, including the City, for a violation of this ordinance, consistent with the standard set forth in Civil Code Section 3294. The burden of proof for purposes of punitive damages shall be clear and convincing evidence.

(l) Nonexclusive Remedies and Penalties. The remedies provided in this Chapter are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

4.59.160 Requirements Cumulative of Deed Restrictions

The requirements of this Chapter and the Administrative Guidelines adopted pursuant to this Chapter shall constitute minimum requirements for affordable housing units, regardless of whether such requirements are enumerated in the applicable deed restriction(s) or in Chapter 9.64 or the Administrative Guidelines for Chapter 9.64. Deed restriction(s) may impose additional or more stringent requirements than those specified in this Chapter.

4.59.170 Administrative Guidelines

The City Manager or designee shall develop administrative guidelines, consistent with the legislative purpose, to implement the provisions of this Chapter. No person shall fail to comply with the requirements of such guidelines