

Subdivision XI. - Below Market Rate Housing Program Review**Sec. 82-321. - Effectiveness of program.**

The planning commission shall review the effectiveness of the below market rate housing program in terms of its stated goals and the level of present achievement and shall recommend such changes to chapter 102, article II, as in the judgment of the planning commission, would aid in the effectiveness of the achievement of the goals of such article.

(Ord. No. 85-26, § 1(III.H.9), 11-27-1985; Ord. No. 89-23, § 45, 8-15-1989)

Secs. 82-322—82-340. - Reserved.

Chapter 102 - HOUSING**ARTICLE I. - IN GENERAL**

Secs. 102-1—102-30. - Reserved.

ARTICLE II. - BELOW MARKET RATE HOUSING**DIVISION 1. - GENERALLY**

Sec. 102-31. - Purpose.

This article is designed to implement the housing element of the Sanibel Plan and the State Local Government Comprehensive Planning and Land Development Regulation Act, insofar as the such provisions relate to the city's obligation to attempt to make housing available for moderate and lower income residents.

(Ord. No. 85-26, § 1(IV.A.1), 11-27-1985; Ord. No. 89-23, § 49, 8-15-1989)

Sec. 102-32. - Housing foundation.

The city, after issuing public notice inviting proposals, may enter into an agreement, by ordinance, with one or more nonprofit private foundations and/or community land trusts created to acquire and hold land for the benefit of the community and provide secure affordable access to land and housing for City of Sanibel residents (a "housing foundation"), duly incorporated under the applicable state laws and approved by the Internal Revenue Service for tax deductibility status for contributions and donations received by it. The housing foundation may cause to be formed a nonprofit, private community land trust, that is an affiliate and/or subsidiary of the housing foundation and is comprised of a board of directors that is appointed by the housing foundation, for the purposes of assuming ownership or rights to land and structures in order to further the purposes of the housing foundation as the operator of the City of Sanibel's Below Market Rate Housing Program ("CLT"), and the housing foundation shall have the right to delegate any of its rights and responsibilities as provided for in this article to the CLT as deemed necessary by the board of directors of the housing foundation. Notwithstanding anything to the contrary as may be contained herein, the city council shall retain full rights, powers and privileges with respect to the implementation of the below market rate housing program provided for in this article.

(Ord. No. 85-26, § 1(IV.A.2), 11-27-1985; Ord. No. 09-013, § 1, 1-5-2010)

Sec. 102-33. - Responsibilities of housing foundation.

The housing foundation's responsibilities shall be:

- (1) To designate a housing foundation representative responsible for administrative liaison with the city.
- (2) To provide annual financial and activity report for the city council's review.
- (3) To serve as a clearinghouse for below market rate housing information as to funding sources, building sites, interested contractors, etc.
- (4) To assess to-be-determined fees for its services.
- (5) To have authority to buy, sell, receive, rent, develop or donate any land or real or personal or mixed properties in pursuit of its objectives of creating incentives and opportunities for below market rate housing in the city.
- (6) To have the authority to hold full or less than full fee titles and interests to properties.
- (7) To administer a below market rate housing program within the city, pursuant to the guidelines of this article, including the following:
 - a. To establish a procedure to screen all applicants for units that are designated to be below market rate housing units under this article.
 - b. To establish and update, at least annually, eligibility criteria for below market rate housing rental applicants, in terms of maximum income, taking into account family composition and total income of all family members, such criteria to be generally based upon the latest available data from the United States Department of Housing and Urban Development, using 120 percent of the median income for the county as a guide for families of three persons.
 - c. To establish and update, as needed, eligibility criteria for below market rate housing purchase applicants, in terms of maximum income and net worth, taking into account family composition and total income of all family members, such criteria to be generally developed as provided in subsection (7)b. of this section, but will also take into account the amount and type of assets owned by family members and the liquidity and availability of such assets for the purpose of securing affordable housing.
 - d. To maintain a list of eligible applicants for below market rate housing units who may be designated purchasers or renters as such units become available.
 - e. To establish a selection procedure for offering below market rate housing units to eligible applicants.
 - f. To determine the initial sale price and rental rate for each proposed below market rate housing unit and the current maximum sale and resale price and rental rate of each below market rate housing unit.
 - g. To prepare and update, at least annually, a schedule of rent ranges for below market rate housing units of different characteristics. Such rent ranges shall be based on a semi-annual survey of rents by unit characteristics in the city and the immediate vicinity, adjusted for consistency with income levels for qualified below market rate housing applicants, as identified in subsection (7)i. of this section.
 - h. To prepare and update, as needed, a schedule of maximum sales prices for owners of below market

rate housing units of different characteristics, consistent with income levels for qualified below market rate housing applicants as identified in subsection (7)i. of this section, based on sales price data from the annual survey of the characteristics of new housing published by the U.S. Bureau of the Census.

- i. To prepare and update, at least annually, a schedule of rents payable by below market rate housing tenants, based on U.S. Housing and Urban Development criteria for permissible shelter-to-income ratios. The ratios may be increased to one-third above the HUD maximum in the judgment of the housing foundation.
 - j. To prepare and update, as needed, information and guidelines for prospective investors, developers, purchasers and applicants for below market rate housing units.
 - k. To prepare and modify, as deemed necessary, guidelines for determining the suitability of below market rate housing rental applicants, in terms of their credit ratings, employment records, prior rental histories and other references.
 - l. To prepare and update, at least annually, guidelines for rating below market rate housing applicants in accordance with the criteria established in section 102-102.
 - m. To monitor compliance with all provisions of this article and to refer to the city manager, as appropriate, any persons violating any section of this article. Also, the housing foundation shall have full right and authority to seek enforcement of the provisions of this article by the remedies set forth in this article.
 - n. To accept into the below market rate housing program those units which meet the requirement of this article and the housing needs of eligible applicants as defined in this article.
 - o. To exercise an advisory role in reviewing and commenting on applications relating to below market rate housing units prior to planning commission and city council actions.
- (8) To seek and to develop additional ideas, methods and procedures to accomplish the goals of this article.
- (9) To monitor conformance of below market rate housing units, either existing or proposed, with the various applicable building, housing, sanitary, and related codes, ordinances, statutes and regulations.

(Ord. No. 85-26, § 1(IV.A.2(a)), 11-27-1985; Ord. No. 88-19, § 1, 6-21-1988; Ord. No. 01-17, § 1, 12-18-2001)

Sec. 102-34. - City's responsibilities.

The city's responsibilities shall be:

- (1) To designate a member of the city staff to assist and act as liaison to the housing foundation.
- (2) To provide, if deemed necessary in the discretion of the city council, a sum to be determined by the council as seed money for the housing foundation.
- (3) To provide, if deemed necessary and advisable in the discretion of the city council, all or part of the administrative overhead of the housing foundation on a continuing or temporary basis, including legal fees and costs and insurance premiums.
- (4) To provide, if deemed necessary and advisable in the discretion of the city council, loans or subsidies to the housing foundation.
- (5) To consider, in its legislative discretion, a relaxation of density limitations and other development regulations in individual cases where such relaxation would not contravene the purposes and principles of the Sanibel Plan and would promote the objectives of providing below market rate housing

opportunities.

- (6) To review, as required, the schedules and guidelines established by the housing foundation pursuant to subsections 102-33(7)b., c., g., h., i., k. and l., and to either approve or modify such schedules and guidelines.
- (7) To appoint an entity to temporarily assume the responsibilities of a housing foundation in the event such housing foundation dissolves, terminates, or otherwise becomes defunct or inactive, until such time as another housing foundation can assume the responsibilities of the former housing foundation under the terms of this article.

(Ord. No. 85-26, § 1(IV.A.2(b)), 11-27-1985; Ord. No. 01-17, § 1, 12-18-2001)

Sec. 102-35. - Below market rate housing units.

- (a) A below market rate housing unit is any dwelling unit which is made subject to the terms and conditions set forth in this article by the voluntary action of the owner thereof. Any private owners placing units in the below market rate housing program must record restrictive covenants in the public records of the county.
- (b) The restrictive covenants for below market rate housing units shall be negotiated between the housing foundation and the owner. Final approval of such restrictive covenants shall, however, reside with the housing foundation. Such restrictive covenants shall include an initial rent payable to the owner and the term of commitment.
- (c) When a development permit for a privately owned unit or nonresidential development specifies a requirement to provide units or other assistance to the below market rate housing program, no certificate of occupancy shall be issued by the city for such nonbelow market rate housing unit, or nonresidential development, until the requirement has been satisfied.
- (d) Term of commitment for units not owned by the housing foundation. The period of time for which the restrictive covenants shall be effective shall be specified in the restrictive covenants. Such period shall be determined as follows:
 - (1) For below market rate housing units which are not required as a condition of a development permit and are not part of an increased density below market rate housing conditional use, the period shall be not less than three years.
 - (2) For below market rate housing units which are required as a condition of a development permit, the period shall be ten years unless a longer period is specified in the development permit condition. All development permit conditions requiring below market rate housing units must have city council approval.
 - (3) For below market rate housing units which are part of an increased density below market rate housing conditional use, the period shall be not less than ten years nor more than 21 years. In approving the term of commitment for such units, the housing foundation shall give consideration to the initial rents payable to the owner which are established for such units, the total investment of the owner in such units, the potential profit to be derived by the owner from such units due to the city's relaxation of density limitations or other development regulations, and similar factors. The term of the below market rate housing commitment for such units should be established so that such potential profits are significantly offset by a sufficient period of reduced rental income in comparison to market rentals for similar dwelling units not under the below market rate housing limitations.
- (e) *Initial rents.* The initial rents established in the restrictive covenants for each below market rate housing

dwelling unit shall be the rent payable to the owner under leases to qualified below market rate housing applicants during the first year after the certificate of occupancy for the unit is issued. Such rents must be at or below the current schedule of maximum rents for units of the same type established by the housing foundation pursuant to subsection 102-33(7)g. Any rent proposed by the owner, at or below the established schedule, may be approved by the housing foundation, provided that, for below market rate housing units which are part of an increased density below market rate housing conditional use, the term of commitment to the below market rate housing program is long enough to accomplish the stated intent of the commitment. To accomplish this intent, the higher the initial rent is established, the longer shall be the term of commitment.

- (f) *Increases.* Following the first year after issuance of the certificate of occupancy for a below market rate housing unit, the rent for such unit may be increased in accordance with the following requirements:
- (1) Not more than once each year, the owner of a below market rate housing unit may submit to the housing foundation, with supporting documentation, a proposed increase in rent for such unit. The increase in rent shall be based upon actual increases in the owner's costs for taxes, insurance, utilities not paid by tenants, maintenance and repairs. In no event, however, shall a rent increase be approved by the housing foundation which exceeds the current rent by a percentage greater than the percentage increase in the residential rent component of the bureau of labor statistics consumer price index for all urban consumers over the period for which the current rent was in effect. Subject to such limitation, the housing foundation shall approve rent increases when sufficiently and accurately documented by the owner.
 - (2) When rent increases are approved by the housing foundation for a below market rate housing unit, such increased rent shall take effect upon the execution of the next lease or lease renewal for such unit.

(Ord. No. 85-26, § 1(IV.A.3), 11-27-1985; Ord. No. 01-17, § 1, 12-18-2001)

Sec. 102-36. - Appeals.

Whenever an appeal is authorized under the below market rate housing guidelines contained in this article, such appeal shall be filed, processed and decided as follows:

- (1) An appeal shall be initiated by the appellant's filing of a written notice of appeal with the housing foundation, 15 calendar days from the mailing of the decision to the appellant by the housing foundation.
- (2) The authorized appeal will be forwarded by the housing foundation to the city manager, who will respond in writing within ten business days of receipt of the appeal.
- (3) If the appellant is not in agreement with the housing foundation's and the city manager's determinations, the appellant may request placement of the issue on the schedule of the next regular city council meeting occurring more than five days after the mailing of the city manager's determination of the filing of the notice of appeal.
- (4) The city council shall consider the issue appealed, based on all information submitted by the appellant, the housing foundation, and the city manager; shall decide the issue as expeditiously as possible; and shall render its decision by resolution.
- (5) The decision of the city council shall be final and binding on the parties. If no decision is reached by the city council at the meeting for which the appeal is placed on the agenda, the original determination shall stand and be final and binding as made.

(Ord. No. 85-26, § 1(IV.B.7), 11-27-1985; Ord. No. 87-23, § 3, 7-21-1987; Ord. No. 01-17, § 1, 12-18-2001)

Sec. 102-37. - Enforcement.

The city shall have the full right and standing to enforce the provisions of this article and the housing foundation full right and standing to enforce the covenants hereunder, by applying for civil relief in a court of competent jurisdiction, either in law or equity as the case may be, for injunctive relief, declaration of rights, damages or such other relief as may be just and proper. Further, the city may intervene as a party defendant, without being subordinate and with full right to plead and test the propriety of the parties' pleadings, in any suit to contest the validity of the covenants provided for in this article.

(Ord. No. 85-26, § 1(IV.B.8), 11-27-1985)

Secs. 102-38—102-55. - Reserved.

DIVISION 2. - HOUSING FOUNDATION

Sec. 102-56. - Below market rate housing units acquired by the housing foundation and/or the CLT.

At any time land and dwelling units are committed to the city's below market rate housing program by being titled in the name of the housing foundation and/or the CLT, the city and the housing foundation and/or the CLT (if the CLT is the fee owner of the land and/or dwelling units) shall jointly execute and record restrictive covenants affecting such property which perpetually commit such land and dwelling units to rental or sale pursuant to the terms of the city's below market rate housing program, unless and until such units are released from the below market rate housing program by the city or through purchase at a mortgage foreclosure sale only if specifically provided for in this article.

(Ord. No. 85-26, § 1(IV.D.1), 11-27-1985; Ord. No. 87-15, § 1, 6-2-1987; Ord. No. 01-17, § 1, 12-18-2001; Ord. No. 09-013, § 2, 1-5-2010)

Sec. 102-57. - Financing of below market rate housing units and lands and structures acquired by the housing foundation.

Lands and structures acquired by the housing foundation and/or the CLT, which are subject to a below market rate housing commitment, may be used as security by the housing foundation and/or the CLT, and mortgages thereon may be given by the housing foundation and/or the CLT (as the case may be), only in accordance with the following terms and conditions:

- (1) The city council must, by resolution, approve the mortgage and loan terms.
- (2) No such mortgage shall secure future advances greater than 200 percent of the original loan amount or include a security interest in after-acquired property.
- (3) Any such mortgage must include provisions which:
 - a. Require written notice to the city of any default in the terms of the mortgage by the housing foundation and/or the CLT, within 30 days after the occurrence of such default;
 - b. Require written notice to the city of any foreclosure action, at least 90 days before such action is filed;
 - c. Provide authorization for the city to cure any default by the housing foundation and/or the CLT, and to reinstate the mortgage and note, any time prior to the entry of a final judgment of foreclosure, by paying to the mortgage holder, all sums then due and owing thereunder by the housing foundation and/or the CLT (as the case may be);

- d. Require the housing foundation and/or the CLT (as the case may be) to deed the mortgaged property to the city, upon demand, within 30 days after the city pays to the mortgage holder any amounts necessary to cure a default by the housing foundation and/or the CLT (as the case may be) and to reinstate the mortgage and note; and
 - e. Require agreement by the mortgage holder that the mortgage and loan shall be assumable by, and shall not become due and payable upon transfer to, the city or any successor housing foundation and/or CLT appointed by the city.
- (4) Should any mortgage approved and executed in accordance with this section be foreclosed and the mortgaged property sold at a foreclosure sale, the mortgage not having been reinstated by either the city, the CLT or the housing foundation, the purchaser at the foreclosure sale and his successors in interest shall own the property free and clear of any commitment to the below market rate housing program.
- (5) Below market rate housing purchase units may be used as security by purchaser(s) qualified under guidelines established by the housing foundation pursuant to section 102-33, as amended from time to time, and mortgages thereon may be given by such purchaser(s) only in accordance with the following terms and conditions and any other terms and conditions as may be established by the housing foundation:
- a. The housing foundation must approve the mortgage and loan terms, which approval may be withheld by the housing foundation based on loan guidelines established by the housing foundation.
 - b. Any such mortgage must include provisions which:
 - 1. Require written notice to the city, housing foundation and CLT of any default in the terms of the mortgage by such purchaser(s) within 30 days after the occurrence of such default;
 - 2. Require written notice to the city, housing foundation and CLT of any foreclosure action, at least 90 days before such action is filed;
 - 3. Provide authorization for the city, housing foundation and/or CLT to cure any default by such purchaser(s) and to reinstate the mortgage and note, any time prior to the entry of a final judgment of foreclosure, by paying to the mortgage holder, all sums then due and owing thereunder by such purchaser(s);
 - 4. Require the purchaser(s) to deed the mortgaged property to the city, housing foundation and/or CLT upon demand by the city, within 30 days after the city, housing foundation and/or CLT pays to the mortgage holder any amounts necessary to cure a default by such purchaser(s) and to reinstate the mortgage and note; and
 - 5. Require agreement by the mortgage holder that the mortgage and loan shall be assumable by, and shall not become due and payable upon transfer to, the city, housing foundation, and/or CLT as determined by the city.
 - c. Any such mortgage shall be subject to the restrictive covenants pursuant to section 102-56, affecting such mortgaged property, which restrictive covenants shall among other things: (i) survive foreclosure of the mortgage; (ii) allow the holder of the mortgage to foreclose the mortgaged property subject to the restrictive covenants; and (iii) allow any purchaser at foreclosure who does not meet the income qualifications of the city's below market rate housing program to own the

mortgaged property for the sole purpose of conveying the mortgaged property to income qualified purchaser(s) and not for purposes of using such mortgaged property for its own residential occupancy purposes.

(Ord. No. 85-26, § 1(IV.D.2), 11-27-1985; Ord. No. 87-15, § 1, 6-2-1987; Ord. No. 01-17, § 1, 12-18-2001; Ord. No. 09-013, § 3, 1-5-2010)

Secs. 102-58—102-75. - Reserved.

DIVISION 3. - BELOW MARKET RATE HOUSING RENTAL PROGRAM

Secs. 102-76—102-101. - Reserved.

Sec. 102-102. - Qualification and ranking of applicants.

- (a) *Applications.* All applications for below market rate housing unit rental shall be made to the housing foundation on forms to be supplied by the housing foundation. The housing foundation shall determine whether such applications are sufficiently complete and accurate to determine the qualifications of and to rate the applicants as provided for in this section.
- (b) *Qualification.* Applicants for below market rate housing rental units must meet the current maximum income and net worth schedules established by the housing foundation pursuant to subsections 102-33(7)b. and c. Rental applicants shall also be required to meet the suitability guidelines established pursuant to subsection 102-33(7)k. Determination of the qualification of applicants shall be made by the city manager, upon recommendation of the housing foundation.
- (c) *Rating.* All below market rate housing rental applicants who are qualified under subsection (b) of this section shall be rated by the city manager, upon recommendation of the housing foundation, under the following criteria and in accordance with the guidelines established pursuant to subsection 102-33(7)l.:

(1)	Financial need (those further below the maximum income and net worth limits receiving the higher score)	0—45 points
(2)	Length and type of employment in the city (higher scores being given for longer employment and for types of work more essential to public services and public health, welfare and safety functions)	0—45 points
(3)	Length of domicile in the city (longer residence receiving the higher score)	0—45 points
(4)	Household characteristics affecting need for housing	0—25 points

(5)	Volunteer community activities (used as a tie breaker)	0—10 points
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- (d) *Use of ratings.* The housing foundation shall use the ratings and references of applicants to, in general, contact applicants for the size and type of unit available in descending order of their ratings to determine their desire and ability to rent a particular unit and shall obtain the city manager's approval of all proposed tenants.
- (e) *Notice to applicants.* The housing foundation shall notify each applicant, in writing mailed to the address shown on the application, of the city manager's determination as to the qualification of the applicant under subsection (b) of this section.
- (f) *Appeal.* Within 15 days after notice is mailed to an applicant, the applicant may appeal a determination that such applicant is not qualified or the rating given to the applicant is not accurate, pursuant to section 102-36. The determination of the appeal shall be based upon whether the terms of this article and the schedules and guidelines adopted under this article have been properly interpreted and applied by the city manager.
- (g) *Qualification at time of occupancy.* All applicants for below market rate housing units must be qualified at the time a lease of a below market rate housing unit is executed. The housing foundation may request the city manager to review the qualification of an applicant prior to such execution and may require additional or updated information from the applicant to permit such review. Any determination by the city manager that an applicant is no longer qualified shall be subject to the notice and appeal provisions of subsections (e) and (f) of this section.
- (h) *Annual review.* The housing foundation shall annually review outstanding applications for and current tenants of below market rate housing units to determine continued qualification and rating, and may require additional or updated information from applicants and tenants to permit such review. Any change in qualification status or rating made by the housing foundation as a result of such review shall be subject to the notice and appeal provisions of subsections (e) and (f) of this section.

(Ord. No. 85-26, § 1(IV.B.3), 11-27-1985; Ord. No. 87-23, § 1, 7-21-1987; Ord. No. 93-01, § 1, 1-19-1993; Ord. No. 01-17, § 1, 12-18-2001)

Sec. 102-103. - Rental procedures.

Privately owned below market rate housing units shall be rented only in accordance with procedures established by the housing foundation in its agreement with the owner.

(Ord. No. 85-26, § 1(IV.B.4), 11-27-1985; Ord. No. 87-23, § 2, 7-21-1987; Ord. No. 01-17, § 1, 12-18-2001)

Sec. 102-104. - Leases.

All leases of below market rate housing units shall be approved by the housing foundation and shall be executed in accordance with the following requirements and limitations:

- (1) No such lease shall contain any waiver of tenant rights provided for in the landlord tenant statutes of the state.
- (2) All deposits required of tenants shall be reasonable in amount and shall be approved by the housing foundation.

- (3) All below market rate housing leases shall be for a term of 12 months.
- (4) The below market rate housing program shall include an opportunity for the tenant to be reevaluated for continued eligibility for the below market rate housing program, with results of the eligibility evaluation furnished to the tenant, in writing, at least 45 days prior to the end of the current lease.
- (5) Below market rate housing leases may not be terminated by the owner except for violation of the terms and conditions thereof or for good cause as specified in such leases.
- (6) At the time a below market rate housing lease, is executed, the amount of the rent shall be specified and payable monthly to the owner. Depending upon money available for rent subsidies and the housing foundation's current schedule for rents payable by below market rate housing tenants, a portion of the rent may be provided through a rent subsidy, with the balance paid by the tenant.
- (7) At the discretion of the housing foundation, some utility payments may be required to be paid monthly to the owner by the below market rate housing tenant.

(Ord. No. 85-26, § 1(IV.B.5), 11-27-1985; Ord. No. 01-07, § 1, 12-18-2001)

Sec. 102-105. - Reserved.

Editor's note— Ord. No. 01-17, § 1, adopted December 18, 2001, repealed § 102-105 in its entirety, which pertained to sale limitations and derived from Ord. No. 85-26, § 1(IV.B.6), adopted November 27, 1985, and Ord. No. 87-23, § 5, adopted July 21, 1987.

Secs. 102-106—102-120. - Reserved.

DIVISION 4. - RESERVED

Secs. 102-121—102-124. - Reserved.