

**CITY OF SANIBEL**

**ORDINANCE 09-013**

**AN ORDINANCE AMENDING THE SANIBEL CODE, PART H, SUBPART B. LAND DEVELOPMENT CODE, CHAPTER 102, PERTAINING TO THE BELOW MARKET RATE HOUSING PROGRAM; AMENDING SECTION 102-32, HOUSING FOUNDATION, SECTION 102-56, BELOW MARKET RATE HOUSING UNITS ACQUIRED BY THE HOUSING FOUNDATION, AND SECTION 102-57, MORTGAGING OF BELOW MARKET RATE HOUSING UNITS, PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the Below Market Rate Housing (BMRH) program began in 1985; and

**WHEREAS**, since its inception, the BMRH program has provided an essential service to the City of Sanibel by providing housing for moderate and lower income residents; and

**WHEREAS**, the Sanibel Planning Commission recognizes the need to update the Sanibel Land Development Code relating to the BMRH program to reflect the program as it currently exists and operates; and

**WHEREAS**, the revisions to Chapter 102 do not substantively change any permitted or prohibited use in said chapter; and

**WHEREAS**, the City Council deems it necessary to make such revisions to the Land Development Code, as contained in this ordinance; and

**WHEREAS**, all required public notices and public hearings for such amendment have been properly given and held.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council for the City of Sanibel, Florida:

**SECTION 1.** The Code of Ordinances of the City of Sanibel, Chapter 102 Housing, Article II Below Market Rate Housing, Section 102-32, Housing foundation, is hereby amended with underlining indicating additions and ~~striketroughs~~ indicating deletions, as follows:

**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, tThe 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.

**SECTION 2.** The Code of Ordinances of the City of Sanibel, Chapter 102 Housing, Article II Below Market Rate Housing, Section 102-56, Below market rate housing units

acquired by the housing foundation, is hereby amended with underlining indicating additions and ~~striketroughs~~ indicating deletions, as follows:

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 as provided for in this article.

**SECTION 3.** The Code of Ordinances of the City of Sanibel, Chapter 102 Housing, Article II Below Market Rate Housing, Section 102-57, Mortgaging of below market rate housing units, is hereby amended with underlining indicating additions and ~~striketroughs~~ indicating deletions, as follows:

Sec. 102-57. ~~Mortgaging~~ 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 ~~prior to its execution~~.

(2) No such mortgage shall secure future advances greater than two hundred percent (200%) 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.

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:

(1) 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.

(2) Any such mortgage must include provisions which:

a. 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;

b. Require written notice to the city, housing foundation and CLT of any foreclosure action, at least 90 days before such action is filed;

c. 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);

d. 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

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, housing foundation, and/or CLT as determined by the city.

(3) 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.

**SECTION 4. Codification.**

This ordinance shall be an amendment to Subpart B of Part II of the Code of Ordinances of the City of Sanibel. Section 102-32, Housing foundation in Chapter 102 Housing, Section 102-56, Below market rate housing units acquired by the housing foundation in Chapter 102 Housing, and Section 102-57, Mortgaging of below market rate housing units in Chapter 102 Housing, are hereby amended.

**SECTION 5. Conflict.**

All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed.

**SECTION 4. Severance.**

If any section, subsection, sentence, clause, phrase or portion of this ordinance or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

**SECTION 5. Effective date.**

This ordinance shall take effect immediately upon adoption.

**DULY PASSED AND ENACTED** by the Council of the City of Sanibel, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

AUTHENTICATION:

\_\_\_\_\_  
Mick Denham, Mayor

\_\_\_\_\_  
Pamela Smith, City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
Kenneth B. Cuyler, City Attorney    Date

Publication and Hearing Dates:

Date of First Public Hearing: \_\_\_\_\_, 2009

Ordinance Publication Date: \_\_\_\_\_, 2009

Date of Second Public Hearing: \_\_\_\_\_, 2009

Vote of Council Members:

Denham	_____
Ruane	_____
Harrity	_____
Jennings	_____
Pappas	_____

Date filed with the City Clerk: \_\_\_\_\_