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## **Chapter 20.34 – Inclusionary Housing**

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### **20.34.010 – Purpose**

The purpose of this Chapter is to:

- A. Provide a balanced residential community comprised of a variety of housing types and opportunities for all social and economic segments, including very low-, low-, and moderate-income households;
- B. Promote the City's goal to add affordable housing units to the City's housing stock in proportion to the overall increase in new housing units;
- C. Offset the demand on housing that is created by residential development and mitigate environmental and other impacts that accompany residential development by protecting the economic diversity of the City's housing stock, reducing traffic, transit and related air quality impacts, promoting jobs/housing balance and reducing the demands placed on transportation infrastructure in the region; and
- D. Ensure that the limited remaining developable land in the City's planning area is utilized in a manner consistent with the City's housing policies and needs.

### **20.34.020 – Applicability.**

Residential development projects that create a net increase in the total number of units shall comply with the requirements of this Chapter, unless granted an adjustment or waiver in compliance with Section 20.34.090 (Adjustments, Waivers).

### **20.34.030 – Regulations**

#### **A. Affordability requirement.**

- 1. All new residential development projects shall include the construction of the following percentage of the total number of dwelling units within the residential development project as restricted affordable units for rent/lease by very low- or low-income households:
  - a. 9 percent very low-income households; or

- b. 15 percent low-income households.
2. The affordability requirement shall only apply to newly created residential units. In the event that the residential development project includes the demolition or conversion of existing residential units, the affordability requirement shall only apply to the additional units created.

**B. Calculation.**

1. The number of affordable units required for a residential development project shall be determined prior to tentative or parcel map approval, or for developments not processing a tentative or parcel map, prior to issuance of a Building Permit.
2. In determining the precise number of affordable units required, any decimal fraction shall be rounded up to the next whole number.

**C. Eligibility.**

1. Affordable units required to be replaced under the provisions of Chapter 20.36 (Conversion or Demolition of Affordable Housing in the Coastal Zone) shall not be eligible for meeting the number of affordable units required under the provisions of this Chapter.
2. Affordable units provided under the provisions of Chapter 20.32 (Density Bonus) shall not be eligible for meeting the number of affordable units required under the provisions of this Chapter.

**D. Design and distribution of affordable units.**

1. Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole and shall be comparable in the facilities provided (e.g., laundry, recreation, etc.), construction quality and exterior design to the market-rate units.
2. Affordable units may be smaller and have different interior finishes and features than the market-rate units.
3. Affordable units shall be dispersed throughout the residential development, unless clustering is allowed by the review authority.

**E. Duration of affordability requirement.** Affordable units required by this Chapter shall be legally restricted to occupancy by households of the income levels for which the affordable units were designated for a minimum of 30 years, unless otherwise stated in the Chapter, or as provided in an approved Affordable Housing Implementation Plan (AHIP).

- F. Timing.** Affordable units shall be provided and offered for occupancy concurrently with or prior to the occupancy of the market-rate units. For projects that are phased over time, affordable units shall be provided in the same proportion as the number of market-rate units in each phase of the project.

#### **20.34.040 – In Lieu Fees**

**A. General requirements.**

1. For residential development projects of 50 or fewer dwelling units, the requirements of this Chapter may be satisfied by paying a fee in lieu of providing all or a portion of the affordable units, unless otherwise provided by an approved AHIP.
2. For residential development projects of 51 dwelling units or more, the applicant may not pay a fee in lieu of constructing the required affordable units, unless otherwise provided by an approved AHIP.

- B. Timing of payment.** Payment of the lieu fee shall be made prior to the issuance of a Building Permit.

- C. Amount of fee.** The amount of the in lieu fee shall be set by resolution of the Council.

#### **20.34.050 – Affordable Housing Implementation Plan (AHIP)**

**A. When required.**

1. Residential development projects of 51 dwelling units or more shall be required to submit an AHIP.
2. Residential development projects of 50 or fewer dwelling units shall have the option of submitting an AHIP or paying an in lieu fee.

**B. Contents.** The AHIP shall contain the following information:

1. A description of the residential development, including the number of market rate and affordable units proposed, and the basis for the calculation of the number of required affordable units;
2. The income level(s) of the affordable units;
3. The unit mix, location, structure type, and size of the market rate units and affordable units;
4. A plan of how the applicant proposes to implement and promote the rental of the affordable units to eligible households;
5. A phasing plan, if the applicant proposes a phased project, that provides for the timely development of the affordable units in compliance with Subsection 20.34.030.F (Timing);

6. Information necessary to establish compliance with criteria provided in Subsection 20.34.060.B (Land Dedication); and
7. Any additional information requested by the Department to assist in the evaluation of the AHIP.

**C. Review and approval.**

1. The applicable review authority for the project shall approve, conditionally approve, or deny the AHIP on the basis of the application, plans, materials, and testimony submitted.
2. If the AHIP proposes the dedication of land in compliance with Subsection 20.34.060.B (Land dedication) the Council shall be the final review authority. In these cases, the Commission shall first recommend and the Council shall approve, conditionally approve, or deny the AHIP.

**D. Appeal of review authority's decision.** The decision of the review authority may be appealed in compliance with Chapter 20.78 (Appeals).

**20.34.060 – Alternatives to On-Site Construction**

The following alternative means of compliance with this Chapter may be considered as part of an AHIP.

**A. Off-site construction projects.** An applicant may propose to construct some or all of the affordable units required by this Chapter at a location not physically within the residential development project.

**B. Land dedication.** An applicant may propose to dedicate land to the City or City-designated housing developer in lieu of constructing some or all of the affordable units required by this Chapter. The dedicated land shall meet the following requirements:

**1. Site suitability.**

- a. The dedicated land shall be useable for its intended purpose and have the appropriate General Plan and zoning designation for the development of affordable housing, be free of toxic substances and contaminated soils, and be fully improved with infrastructure and adjacent utilities necessary to serve the project.
- b. Title to the dedicated land, or lease hold useful for the life of the housing improvements, shall be conveyed to the City or City-designated housing developer before a Building Permit is issued for any portion of the residential development project.
- c. All property taxes and special taxes shall be current before the title is conveyed.
- d. The dedicated land shall be sufficient in size to construct the number of affordable units that the applicant would otherwise be required to construct.

2. **Land value.** The dedication shall have an equivalent or greater value than the in lieu fee that would be required to be paid under Section 20.34.040 (In Lieu Fees) if applied to the overall project. The process for determining the value of the land to be dedicated shall be as follows:
  - a. The value of the land dedication shall be appraised by a certified appraiser selected by the City;
  - b. The applicant shall deposit with the City the costs associated with the appraisal as determined by the Director; and
  - c. The Director shall provide the applicant with a copy of the appraisal.
3. **Findings and decision.** The review authority may approve or conditionally approve, an AHIP that proposes alternative means of compliance with the requirements of this Chapter after first finding all of the following:
  - a. The purpose of this Chapter would be served by the implementation of the proposed alternative;
  - b. The units provided are located within the City and are consistent with the requirements of this Chapter ; and
  - c. It would not be feasible or practical to construct the units on-site.

### **20.34.070 – Affordable Housing Agreement.**

An affordable housing agreement shall be executed in a recordable form prior to the issuance of a Building Permit for any portion of a residential development project subject to the requirements of this Chapter).

- A. Contents.** Affordable housing agreements shall include the following where applicable;
1. A description of the residential development project and how the affordable housing requirements will be met by the applicant;
  2. The number, size, and location of each affordable unit;
  3. Incentives provided by the City (if any) for density bonus;
  4. Procedures for tenant selection and the process for qualifying prospective households for income eligibility;
  5. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal for density bonus units, or restrictions for rental units;
  6. Provisions for monitoring the ongoing affordability of the units;
  7. Security provisions (e.g., a cash deposit, bond, or letter of credit) as required by the review authority; and

8. Provisions for the enforcement of the agreement.

- B. Recording of agreement.** Affordable housing agreements in a form acceptable to the City Attorney shall be recorded against the owner-occupied affordable units and the projects containing rental affordable units. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents shall also be recorded against owner-occupied affordable units. In cases where the requirements of this Chapter are satisfied through the development of off-site units the affordable housing agreement shall simultaneously be recorded against the property where the off-site units are located.

### 20.34.080 – Affordable Housing Trust Fund

- A. Trust fund.** The fund shall receive all in lieu fees contributed under Section 20.34.040 (In Lieu fees) and may also receive monies from other sources.
- B. Purpose and limitations.** Monies deposited in the fund, together with any interest earnings, shall be used or committed solely to increase affordable housing opportunities for very low-, low-, and moderate-income households. Reasonable administrative charges or related expenses associated with the administration of this Section may be charged against the fund. Expenses may include reasonable consultant and legal expenses related to the establishment and/or administration of the fund and reasonable expenses for administering the process of calculating, collecting, and accounting for fees,
- C. Expenditures.** Fund monies shall be used in compliance with the General Plan Housing Element to construct, rehabilitate, or subsidize affordable housing or assist other governmental entities, private organizations or individuals to provide affordable housing. The fund may be used for the benefit of both rental and owner-occupied housing. Allowed uses of fund monies include:
1. Assistance to housing development corporations;
  2. Equity participation loans;
  3. Grants;
  4. Pre-home ownership co-investment;
  5. Predevelopment loan funds;
  6. Participation leases;
  7. Other public-private partnership arrangements;
  8. The acquisition of property and property rights;
  9. Construction of affordable housing including costs associated with planning, administration, and design, as well as actual building or installation; and
  10. Other costs associated with the construction or financing of affordable housing.

**20.34.090 – Adjustments, Waivers**

The Council may waive, wholly or partially, the requirements of this Chapter and approve alternative methods of compliance with this Chapter if the applicant demonstrates, and the Council finds that either:

- A. Taking.** There is no reasonable relationship between the impact of a proposed development and the requirements of this Chapter and applying the requirements of this Chapter would take property in violation of the United States or California Constitutions; or
- B. Special circumstances.** There are special circumstances unique to the residential development that justify the granting of an adjustment or waiver; the residential development would not be feasible without the modifications; a specific and financial hardship would occur if the modification was not granted; and no alternative means of compliance are available that would be effective in attaining the purpose of this Chapter than the relief requested.

