ALAMEDA MUNICIPAL CODE SECTION 30-16

INCLUSIONARY HOUSING REQUIREMENTS FOR RESIDENTIAL PROJECTS

30-16.1 Purpose.

The purpose of this section is to (a) implement the goals and objectives of the Housing Element of the City of Alameda General Plan, (b) mitigate the impacts on housing affordability caused by new residential development, and (c) meet the need for housing affordable to persons of very low-, low- and moderate-income.

30-16.2 Findings.

a. California and the City of Alameda face a serious housing problem that threatens their economic security. Persons of very low-, low- and moderate-income are experiencing increasing difficulty in locating and maintaining adequate, safe and sanitary affordable housing. Lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of Alameda. Alameda will not be able to contribute to the attainment of State housing goals or to retain a healthy environment without additional affordable housing. As noted in the City's Housing Element, a regional shortage of affordable housing is contributing to overpayment for housing accommodations, sometimes leading to temporary or permanent homelessness.

b. A lack of new Inclusionary Units will have a substantial negative impact on the environment and economic climate because (i) housing will have to be built elsewhere, far from employment centers and therefore, commutes will increase, causing increased traffic and transit demand and consequent noise and air pollution, and (ii) City businesses will find it more difficult to attract and retain the workers they need. Inclusionary housing policies contribute to a healthy job and housing balance by providing more affordable housing close to employment centers.

c. Development of new market-rate housing encourages new residents to move to the City. These new residents will place demands on services provided by both public and private sectors. Some of the public and private sector employees needed to meet the needs of the new residents earn incomes only adequate to pay for affordable housing. Employees who are unable to find affordable housing in the City will be forced to commute long distances. This situation adversely impacts on their quality of life, consumes limited energy resources, increases traffic congestion and has a negative impact on air quality.

d. Increasing the production and availability of affordable housing is problematic. Prices and rents for affordable housing remain below the level needed to attract new construction. At the same time, escalating land costs and rapidly diminishing amounts of land available for development hinder the provision of affordable housing units solely through private action. Federal and state funds for the construction of new affordable housing are insufficient to fully address the problem of affordable housing within the City.

e. The City wishes to retain an economically balanced community, with housing available to very low-, low- and moderate-income households. The City's General Plan implements the established policy of the State of California that each community should foster an adequate supply of housing for persons at all economic levels.

f. It is appropriate to impose some of the cost of the increased burden of providing housing for very low-, low- and moderate-income persons directly on the developers, and indirectly upon the occupiers, whose developments necessitate the need for such housing. In addition to the demands on services from such developments, new development without affordable units contributes to the shortage of affordable housing.

Zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for persons at all economic levels.

30-16.3 Definitions.

As used in this section:

Affordable Rent shall mean monthly rent (including utility allowance) that does not exceed one-twelfth of thirty (30%) percent of the maximum annual income for a household of the applicable income level (Very Low-, Low- or Moderate-Income).

Affordable Housing Guidelines shall mean guidelines adopted by the City Council to specify location and design standards for Inclusionary Units.

Affordable Housing Plan shall mean a legally binding agreement between a Developer and the City to ensure that the requirements of this chapter are satisfied. The Affordable Housing Plan establishes the number and location of Affordable Units, production schedule and other standards.

Affordable Ownership Cost shall mean a sales price that results in a monthly housing cost (including mortgage, insurance, utilities, taxes, assessments and home owner association costs, if any) that does not exceed one-twelfth of thirty (30%) percent of the maximum annual income for a household of the applicable income (Very Low-, Low- or Moderate-Income).

Household shall mean one person living alone or two or more persons sharing residency whose income is considered for housing payments.

Inclusionary Unit shall mean a dwelling unit that must be offered at Affordable Rent or available at Affordable Housing Cost to Very Low-, Low- or Moderate-Income Households.

In-Lieu Fee shall mean the fee described in subsection 30-16.6a. that is paid to the City as an alternative to the production of inclusionary housing, which fee shall be used in accordance with subsection 30-16.11.

Low-Income Household shall mean a household whose annual income does not exceed the qualifying limits set for "lower income households" in Section 50079.5 of the California Health & Safety Code.

Market-Rate Unit shall mean a dwelling unit in a Residential Development that is not an Inclusionary Unit.

Moderate-Income Household shall mean a household whose annual income does not exceed the qualifying limits set for "persons and families of low-or moderate-income" in Section 50093 of the California Health & Safety Code.

Residential Development shall mean any planned development district, subdivision map, conditional use permit or other discretionary land use approval that authorizes the construction of residential dwelling units.

Very Low-Income Household shall mean a household whose annual income does not exceed the qualifying limits set for "very low income households" in Section 50105 of the California Health & Safety Code.

30-16.4 Inclusionary Unit Requirements.

a. *Unit Requirement.* For all Residential Developments of five (5) or more units, at least fifteen percent (15%) of the total units must be Inclusionary Units restricted for occupancy by Very Low-, Low- or Moderate-Income Households. The number of Inclusionary Units required for a particular project will be determined only once, at the time of project approval. If a change in the Residential Development design results in a change in the total number of units, the number of Inclusionary Units required will be recalculated to coincide with the final approved project.

b. *Calculation.* For purposes of calculating the number of affordable units required by this subsection, any additional units authorized as a density bonus under California Government Code Section 65915(b)(1) or (b)(2) will not be counted in determining the required number of Inclusionary Units. In determining the

number of whole Inclusionary Units required, any decimal fraction less than 0.5 shall be rounded down to the nearest whole number, and any decimal fraction of 0.5 or more shall be rounded up on the nearest whole number.

c. *Types of Inclusionary Units:* Four percent (4%) of the total units must be restricted to occupancy by Low-Income Households; four percent (4%) of the total units must be restricted to occupancy by Very Low-Income Households; and seven percent (7%) must be restricted to occupancy by Moderate-Income Households. For Residential Developments with sixty-nine (69) or fewer total units, Inclusionary Units shall be restricted for occupancy by very low-, low- or moderate-income households in the following proportions, which are based upon the above calculations:

Total Units	Inclusionary Units	Income levels
05 to 9	1	1 moderate
10 to 16	2	1 moderate, 1 low
17 to 23	3	1 moderate, 1 low, 1 very low
24 to 29	4	2 moderate, 1 low, 1 very low
30 to 36	5	3 moderate, 1 low, 1 very low
37 to 43	6	3 moderate, 2 low, 1 very low
44 to 49	7	3 moderate, 2 low, 2 very low
50 to 56	8	4 moderate, 2 low, 2 very low
57 to 63	9	4 moderate, 3 low, 2 very low
64 to 69	10	5 moderate, 3 low, 2 very low

d. *Affordable Housing Guidelines.* Inclusionary Units built under this section must conform to the Affordable Housing Guidelines adopted by the City Council.

30-16.5 Exemptions.

The requirements of this section do not apply to:

a. *Reconstruction.* The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction takes place within three (3) years of the date the structures were destroyed.

b. *Residential Developments of four (4) units or less.*

c. *Residential building additions, repairs or remodels.* Residential building additions, repairs or remodels; provided, that such work does not increase the number of existing dwelling units beyond four (4) units.

d. *Affordable housing projects.* Residential Developments that already have more dwelling units that qualify as affordable to Very Low-, Low- and Moderate-Income Households than this section requires.

e. *Residential Developments with approved maps.* Residential Developments for which a tentative map or vesting tentative map was approved, or for which a building permit was issued, prior to the effective date of the ordinance codified in this section and which continue to have unexpired permits.

30-16.6 Alternatives.

a. *In-Lieu Fees.* For Residential Developments of nine (9) or fewer units, including Inclusionary Units, the requirements of this section may be satisfied by paying an In-Lieu Fee. The fee will be set by the City Council by resolution and shall be sufficient to make up the gap between (i) the amount of development capital typically expected to be available based on the amount to be received by a developer or owner from Affordable Housing Cost or Affordable Rent, and (ii) the anticipated cost of constructing the Inclusionary Units. Fees shall be paid upon issuance of building permits for Market-Rate Units in a Residential

Development. If building permits are issued for only part of a Residential Development, the fee amount shall be based only on the number of units then permitted.

b. *Off-site construction.* Inclusionary Units may be constructed off-site if the Planning Board can make a finding that the purposes of this section would be better served by the construction of off- site units. In determining whether the purposes of this section would be better served by this alternative, consideration should be given as to whether the off-site units would be located in an area where, based on availability of affordable housing, the need for such units is greater than the need in the area of the proposed development.

30-16.7 Incentive.

The City may provide the following incentive to a developer who elects to satisfy the inclusionary housing requirements of this section by producing Inclusionary Units on the site of the Residential Development:

a. *Expedited Processing.* Eligibility for expedited processing of development and permit applications for the Residential Development.

30-16.8 Compliance Procedures.

a. Conditions to carry out the purposes of this section shall be imposed on the approval of any Residential Development to which this section pertains.

b. As part of the application for a Residential Development, the applicant shall submit an Affordable Housing Plan demonstrating compliance with this section. The Affordable Housing Plan must include: (i) a description of the number and size of each Market-Rate Unit and each Inclusionary Unit, including the income levels to which each Inclusionary Unit will be made affordable, (ii) a narrative describing how the plan adheres to the Affordable Housing Guidelines adopted by the City Council, and (iii) a site map, with the location of the Inclusionary Units clearly marked.

c. The Affordable Housing Plan shall be reviewed and approved by the decision-making entity concurrently with the Residential Development in accordance with the procedures in the Alameda Municipal Code. The Affordable Housing Plan shall be made a condition of approval of the Residential Development and shall be recorded by the applicant together with any implementing regulatory agreements, resale restrictions, deeds of trust and/or similar implementing documents as a restriction on the parcel or parcels on which the Affordable Units will be constructed.

d. The Planning Board shall review any applications requesting off-site construction within their Affordable Housing Plan. The Affordable Housing Plan shall include a site map of the off-site location, a description of the arrangements made for construction at that site and demonstration that the proposed off-site construction complies with Subsection 30-16.6b. Off-site construction may only be approved in accordance with Subsection 30-16.6b.

e. All Inclusionary Units shall be constructed and occupied as specified in the approved Affordable Housing Plan concurrently with or prior to the construction and occupancy of Market Rate Units unless certification is obtained from the Planning and Building Director that the applicant has met, or made arrangements satisfactory to the City to meet, an alternative procedure set forth in Subsection 30-16.6. In phased Residential Developments, Inclusionary Units shall be constructed and occupied in proportion to the number of units in each phase of the Residential Development. No final inspection for occupancy for any Market-Rate Unit shall be completed for the Residential Development or for any phase of the Residential Development until the applicant has constructed the Inclusionary Units required in the approved Affordable Housing Plan for the Residential Development or for any phase of the Residential Development by Subsection 30-16.4 or completed corresponding alternative performance under Subsection 30-16.6.

30-16.9 Requirements for Inclusionary Units.

a. *Eligibility Requirements.* No Household may occupy an Inclusionary Unit unless the City or its designee has approved the Household's eligibility in accordance with City-approved policies. Each Household that occupies a rental Inclusionary Unit or purchases an owner-occupied Inclusionary Unit must occupy that unit as that Household's principal residence.

b. *Initial Sales Price of Owner-Occupied Units.* The initial sales price of an owner-occupied Inclusionary Unit shall be set so that the eligible Household will pay an Affordable Ownership Cost. Resale and other restrictions on the Inclusionary Unit will be governed by the regulatory agreements, resale restrictions, deeds of trust or other recorded agreements recorded against the Inclusionary Unit as approved in the Affordable Housing Plan per Section 30-16.8.

c. *Rent of Rental Units.* Rental Inclusionary Units shall be offered to eligible households at an affordable rent.

30-16.10 Continued Affordability.

a. Regulatory agreements, resale restrictions, deeds of trust and/or other documents acceptable to the City Manager, all consistent with the requirements of this section, shall be recorded against Inclusionary Units and Residential Developments containing Inclusionary Units. These documents shall legally restrict occupancy of Inclusionary Units to households of the income levels for which the units were designed for a minimum of fifty-nine (59) years. The forms of regulatory agreements, resale restrictions, deeds of trust and other documents authorized by this subsection, and any change in the form of any such document which materially alters any policy in the document, shall be approved by the City Manager.

b. The resale restrictions required by Subsection a. of this section shall allow the City a right of first refusal to purchase any owner-occupied Inclusionary Unit at the maximum price which could be charged to a qualified purchaser household, at the time the owner proposes a sale.

30-16.11 Limited Uses of Fees.

a. *Use and Disbursement of Fees.* In-Lieu Fees collected under this section shall be used in accordance with and in support of affordable housing as determined by the City Manager. Expenditures of In-Lieu Fees shall be limited to direct expenditures for capital projects or incidental non-capital expenditures related to capital projects, including but not limited to pre-development expenses, land acquisition, construction, rehabilitation, subsidization, counseling or assistance to other governmental entities, private organizations or individuals to expand affordable housing opportunities to very low-, low- and moderate-income households. Authorized expenditures also include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, predevelopment loan funds, participation leases, loans or other public/private partnership arrangements to develop affordable housing or other public/private partnership arrangements. The In-Lieu Fees may be expended for the benefit of either rental or owner-occupied housing. The In-Lieu Fees may not be used to support operations, or on-going housing services not directly related to the construction, acquisition, rehabilitation or preservation of affordable housing units.

b. *Accounting of Fees.* All In-Lieu Fees shall be deposited into a segregated account and all expenditures of funds from the same shall be documented and included in an annual report that shall be made available for public inspection.

30-16.12 Adjustments, Waivers.

a. *Adjustment.* The requirements of this section may be waived, adjusted or reduced if an applicant shows that there is not a reasonable relationship between the impact of a proposed Residential Development on the demand for affordable housing in the City and the requirements of this section or that applying the

requirements of this section without the requested waiver, adjustment or reduction would constitute a taking in violation of the United States or California Constitutions or be otherwise illegal. Under current law, mere economic hardship or diminution in value does not constitute an unlawful taking of property. Such a request shall be made in writing and filed with the Planning and Building Department at the time of initial submittal an application for approval of a Residential Development and/or as part of any appeal from a decision regarding such an application. The request shall state completely and in detail: (i) the requested waiver, adjustment or reduction of the requirements, (ii) the factual basis for the request, and (iii) the legal basis of this request. If the Planning Board determines that the requirements of this section lack a reasonable relationship to the impact of a proposed Residential Development on demand for affordable housing in the City or that those requirements constitute a taking in violation of the United States or California Constitutions, the requirements of this section shall be modified, adjusted or waived to the extent necessary to avoid an unconstitutional result or illegal outcome.

b. *Appeal Procedure.* The applicant, a member of the public or a member of the City Council or Planning Board may appeal a determination under this ordinance within ten (10) days after the decision under Subsection 30-21.11. Appeals shall be heard pursuant to Section 30-25.

c. *Fee for Adjustment Request or Appeal.* The cost of the consideration of a request for adjustment or waiver of the requirements of this section and appeal shall be borne by the applicant in an amount set forth in the Master Fee Resolution of the City Council.

30-16.13 Community Improvement Project Areas.

This section shall not apply to residential developments in the City's Community Improvement Project Areas as long as the Community Improvement Commission adopts separate resolutions or policies pertaining to inclusionary housing requirements in such areas.

30-16.14 Enforcement.

a. *Misdemeanor Violation.* It shall be a misdemeanor to violate any provision of this section. Without limiting the generality of the foregoing, it shall be a misdemeanor for any person to sell or rent to another person an Inclusionary Unit under this section at a price or rent exceeding the maximum allowed under this section or to sell or rent an Inclusionary Unit to a household not qualified under this section. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which he or she is not eligible.

b. *Additional Enforcement Mechanisms.* In addition to the penalties provided in this subsection, any violation of this section may be redressed by any enforcement mechanism, including but not limited to a civil action, described in Section 1-5, Penalty Provisions; Enforcement, of this Code.