

CHAPTER XXX - DEVELOPMENT REGULATIONS
ARTICLE I. - ZONING DISTRICTS AND REGULATIONS
30-16 INCLUSIONARY HOUSING REQUIREMENTS FOR RESIDENTIAL PROJECTS

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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) promote provision of affordable housing to ensure continued economic diversity, and (c) meet the community need for affordable housing.

30-16.2 Findings.

- a. California and the City of Alameda face a serious housing problem that threatens their economic security. Persons of acutely low, extremely low, 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 living 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 below-market-rate units will have a substantial negative impact on the environment and economic climate because (i) housing will have to be built elsewhere, including 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 the public and private sectors. Some of the public and private sector employees needed to meet the needs of the new residents would earn incomes only adequate to pay for below-market-rate housing. Employees who are unable to find affordable housing in the City may be forced to commute long distances, live in overcrowded conditions, or be price burdened or at risk of homelessness. This situation may have adverse affects on their quality of life, consume limited energy resources, increase traffic congestion and have a negative impact on air quality.
- d. Increasing the production and availability of affordable housing is difficult to achieve without subsidy. Prices and rents for 100% below-market-rate housing are

insufficient to support private new construction due to the high cost of labor, materials, financing, and other development costs, and escalating land costs and rapidly diminishing amounts of land available for development. Federal and state funds for the construction of new affordable housing are insufficient to fully address the problem of affordable housing within the City, and those funding sources often require local financial participation.

- e. The City wishes to retain an economically balanced community, with housing available to all income categories. 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 and for those with a variety of special needs such as the disabled, seniors, large families and others.
- f. It is appropriate to impose some of the cost of providing affordable housing directly on the developers, and indirectly upon the occupiers, whose developments necessitate the need for such housing. In addition, it is local policy and mandated by State and regional agencies that the City do its fair share to address the affordable housing crisis in partnership with public and private parties.

30-16.3 Definitions.

As used in this section:

Acutely Low Income shall mean a household whose annual income does not exceed the qualifying limits set for "acutely low income households" in Section 50063.5 of the California Health & Safety Code, i.e 15 percent of Area Median Income.

Affordable Housing Guidelines shall mean guidelines adopted by the City Council to specify location, design standards, affordability, and monitoring requirements 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 Inclusionary 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 level (Very Low-, Low- or Moderate-Income).

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

Area Median Income shall mean the annually adjusted HUD Public Housing and Section 8 Income Limits published by the California HCD for Alameda County.

Extremely Low Income shall mean a household whose annual income does not exceed the qualifying limits set for "extremely low income households" in Section 50106 of the California Health & Safety Code, i.e 30 percent of Area Median 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 Ownership Cost to Acutely Low, Extremely Low, 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, i.e. 80% of Area Median Income.

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, i.e. 120% of Area Median Income.

Net Residential Floor Area shall mean the usable interior space of a residential dwelling, typically measured to the inside face of the exterior walls, and excludes areas that are not directly usable for living purposes such as garages and common areas such as corridors and amenity space in multi-unit buildings, as determined by the Building Official.

Residential Development shall mean the construction or creation of one or more new residential dwelling units, excluding accessory 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, i.e. 50% of Area Median Income.

30-16.4 Inclusionary Unit Requirements.

- a. *Unit Requirement.* Except as provided in Sections 30-16.5 and 30-16.6, below, all Residential Developments of five or more units shall provide a percentage of the total units (excluding density bonus units) as Inclusionary Units restricted for occupancy by Acutely Low, Extremely Low, Very Low, Low or Moderate Income Households. The number of Inclusionary Units required for a particular project will be determined at the time of project approval according to the tables below. If the total number of units in the Residential Development changes prior to completion, 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 Inclusionary 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 Inclusionary Units required, any decimal fraction less than 0.5 shall be rounded down to the nearest whole number and the fractional remainder shall be accounted for as a fee payment to the City that shall be deposited in the Housing Trust Fund. The fee shall be set by the City Council by resolution and the project-specific fee shall be determined at the time of entering into the Affordable Housing Plan.
- c. *Types of Inclusionary Units:* Inclusionary Units shall be provided at the following ratios, as chosen by the developer and approved in the Affordable Housing Plan. An economically equivalent ratio of affordable units in one or more affordability categories may be approved as part of the project entitlement based on a cost / subsidy model demonstrating rough equivalence to the basic requirement. Any such adjustment shall be approved by the Planning Board and may be appealed to the City Council pursuant to Chapter 30-25.

RENTAL	Very Low Income	Low Income	Moderate Income	TOTAL
Option 1	4%	4%	7%	15%
Option 2	--	15%	--	15%
Option 3	5%	5%	--	10%
Option 4	8%	--	--	8%

OWNERSHIP	Very Low Income	Low Income	Moderate Income	TOTAL
Option 1	4%	4%	7%	15%

Option 2	--	--	15%	15%
Option 3	--	6%	6%	12%
Option 4	--	10%	--	10%

- d. *Affordable Housing Guidelines.* Inclusionary Units provided 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 housing units that have been substantially damaged or destroyed by fire, flood, earthquake or other calamity provided that the reconstruction takes place within three (3) years of the date the structures were destroyed.
- b. *Residential Developments of four units or less.* The total number of units shall exclude accessory dwelling units.
- 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.
- d. *Affordable housing projects.* Residential Developments operated by public or non-profit entities that provide housing for Acutely Low-, Extremely Low-, Very Low-, Low- and/or Moderate-Income Households sufficient to satisfy this ordinance.
- e. *Residential Developments with approved entitlements.* Residential Developments which have received entitlements but have not yet been issued building permits may opt to comply with the ordinance in effect at the time of the original entitlement approval or the requirements of this ordinance, so long as any executed affordable housing agreement is amended to conform.

30-16.6 Alternatives.

- a. *In-Lieu Fees.* For Residential Developments of between five and nine units may provide one Low Income Inclusionary Unit or may pay an In-Lieu Fee set by the City Council by resolution. Fees shall be used as set forth in Section 30-16.11.
- b. *Clustered Development.* Inclusionary Units may be constructed off-site or in a clustered building on-site or through the dedication of suitable land and adequate funding subject to Planning Board approval, or City Council approval if the project includes a Development Plan, Development Agreement or other entitlement

requiring City Council action, and finding that the purposes of this section would be served by this alternative based upon the following considerations:

1. Support the equitable distribution of affordable housing because the units will be located where there is a shortage of affordable housing and lower household incomes compared to the project area.
2. Located in transit-rich, high-opportunity neighborhoods that provide integrated access to jobs, transit, schools, and services to advance geographic equity.
3. Provide comparable unit sizes and amenities and/or meet another special housing need such as family housing, housing for the disabled, senior housing, or other recognized housing need.
4. Housing and Human Services and Alameda Housing Authority has provided input and supports the affordable housing plan.
5. Likely competitiveness of the project to secure State and federal funding, including the pipeline of proposed affordable housing projects in the City that are currently planning to pursue these funding sources.
6. Combined value of donated land and funding equivalence in value to what would otherwise be required.
7. Potential for an equal or greater number of affordable units.

30-16.7 Incentive.

The City may provide the following incentives to a developer:

- a. *Expedited Processing.* Eligibility for expedited processing of development and permit applications for the Residential Development.
- b. *Technical Assistance.* Eligibility for no-cost consultation with the Building Official for up to two (2) hours prior to submittal of construction plans for building permit plan review.
- c. *Permit Concierge.* Eligibility to request a designated permit technician to guide the development project through the permitting process and coordinate with City departments to streamline approvals.

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.

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- c. If providing on-site units, 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. The Affordable Housing Plan shall conform to the Affordable Housing Guidelines adopted by the City Council.
 - d. The Affordable Housing Plan shall be reviewed and approved by the decision-making entity concurrently with the Residential Development in accordance with the applicable development review procedures. The Affordable Housing Plan shall be made a condition of approval of the Residential Development and shall be recorded by the developer 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 or the fee paid.
 - e. If providing a fee, the Affordable Housing Plan shall demonstrate the net residential floor area as shown in plans and calculations, and the factors used to calculate the total amount and any anticipated phasing of the Certificate of Occupancy and associated fee.
 - f. If providing off-site or on-site clustered units, the Planning Board shall review and approve the application, including an Affordable Housing Plan that shall include a site map of the project location, a description of the arrangements made for construction, 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.
 - g. 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.

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- 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 ninety-nine (99) 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 does not apply to projects in the area governed by the Renewed Hope Housing Advocates and Arc Ecology settlement agreement of 2001.

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.