

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

File #: 21-758 Meeting Date: 9/20/2021

Report Prepared by: Scott McBride, Director of Development Services, Development Services Department.

SUBJECT: Provide Staff Direction on the Implementation and/or Accountability Elements Related to the Prior Pro-Housing Policy Discussion

REPORT IN BRIEF

Report pursuant to City Council direction regarding implementation and/or Accountability elements related to the prior pro-housing policy discussion.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting the report on the implementation and/or accountability elements related to the prior Pro -housing Policy discussion; or
- B. Provide direction to staff on the implementation and/or accountability elements related to the prior Pro-Housing Policy discussion.

ALTERNATIVES

- 1. Approve, as recommended by Staff; or,
- 2. Approve, subject to conditions other than recommended by Staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
- 3. Deny; or,
- Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Merced City Charter, Section 200.

CITY COUNCIL PRIORITIES

Fiscal Year 2021/22 Adopted Goals & Priorities, 4. Housing & Homelessness, ii. Policy Direction.

DISCUSSION

Background

The City Council was previously provided with three presentations related to Affordable Housing Resources, Affordable Housing Tools, and Pro-Housing Policies and Tools.

The first two topics were addressed at the April 5th and April 19th City Council meetings. During those meetings Staff was provided with the following direction:

Housing Resources, April 5, 2021

- Funding swap of HUD 108 Loan Guarantee funds to Community Development Block Grant Program Income Funds (CDBG PI) for the Childs and B Project
- Direction to proceed with utilizing Housing Successor Agency Funds for the Gateway Terrace II project

Affordable Housing Tools, April 19, 2021

Provide additional options to consider in support of housing production and affordable housing that explored elemental pieces of Inclusionary Zoning, but not directly implementing this concept.

Additionally, at the April 19, 2021 Council Meeting by a majority vote of 4-3 specific direction was provided to not pursue formation of an Inclusionary Zoning Ordinance. Further direction was provided, vote of 6-1, to have Staff explore and identify other elemental policy options to support housing and affordable housing production. The Council asked that the information be brought forward in September.

On September 7, 2021 the City Council was provided a report on potential pro-housing policies, programs, and actions in support of housing production and affordable housing. After much discussion and community input the City Council accepted Staff's recommendation to proceed forward with many pro-housing policy items but also provided direction to return with additional information related to the enforcement of the production of affordable housing. Since the City Council by majority vote already provided policy direction to not pursue an Inclusionary Zoning Ordinance Staff provided options that were similar, but not directly that specific policy approach.

The administrative reports for the April 19, 2021 City Council Meeting and the September 7, 2021 City Council Meeting are attached to this Administrative Report for reference.

City Authority to Prescribe Development Types

The City's ability or authority, influence, or prescribe specific development types within the city limits is derived from police powers which are implemented through the City's Zoning Ordinance. The Zoning Ordinance provides standards, requirements, procedures which address the scale, scope, and land use of the development. Although the City has the broad ability to exercise rights through these policies they are derived from the State and are crafted and subject to state legislation as well as both state and federal court decisions.

It is important to understand the relationship, roles, and responsibilities that the City has in terms of processing housing, both market and affordable. As was noted on September 7th some of primary roles the City has related to a housing project are the area of entitlements and permitting which are police powers established by the Zoning Ordinance. Other areas which affect housing include the Map or Subdivision Codes. Aside from these roles the City may also be involved in providing direct financial assistance to a project. This type of direct involvement is outside of the regulatory land use

framework and are essentially negotiated transactions to encourage a specific development outcome.

After conducting research on options related to affordable housing enforcement, they generally fall into the areas of implementation or provisioning of the units, on-going performance requirements including monitoring, and defining the administrative and developer responsibilities. The specific tools or options are very specific to the type of development project.

The following is intended to highlight some specific development types and to recognize the roles and responsibilities the City has as well as tools to support affordable housing production.

Example Roles in Support of Affordable Housing Projects

Affordable Housing Projects may come in a variety of configurations or types. For example, they may be multi-family or apartments which create rental units. They could also be single-family units which may be available for rental or ownership. The type of project as well as the specific form of support the City uses dictates what specific implementation tools are necessary.

The following two examples are of development projects which previously assisted by the City. They were selected to highlight some forms of assistance and the tools utilized. In both examples the units were provided because of direct financial assistance. In one case the assistance was focused on the costs to develop the units and the other the assistance was targeted to the buyer to make the otherwise market rate unit affordable. The financial assistance itself was the tool to create the affordable unit not a specific obligation or requirement that it be produced.

Childs and B

This is a 100% affordable multi-family rental project. In addition to project entitlements authorizing the development the City Council approved a project specific financial support package. The support included the following:

- Disposition and Development Agreement (DDA) this tool addressed the sale or transfer of the property and also outlined binding financial commitments
- Housing Successor Agency (HSA) Loan provided direct financial assistance of affordable units
- Community Development Block Grant Program (CDBG) Loan direct financial assistance for community service facilities
- Housing Investment Partnership Program (HOME) Loan direct financial assistance for construction of affordable units
- Enterprise Funds Grant for off-site improvements
- The City and Developer also prepared and jointly submitted an Affordable Housing Sustainable Community Application (AHSC) to the State Department of Housing and Community Development (HCD)

Because of the specific financial tools and their requirements specific implementation tools were necessary. They include items such as Affordability Covenants which set the term of affordability, prescribe the income levels, and limit resale and conversation to market rate. In addition to this there are other executed documents including Deeds of Trusts providing security to the City Loans,

Promissory Notes, Loan Agreements including loan repayment terms, and other related items.

In general, the support to enable this project to be affordable was focused on financial support to develop the units. The project was intended to provide units to those in the low and very low-income categories. Because of the income groups being serviced and the fact that permanent supportive services will be necessary for those experiencing homelessness there will be on going financial commitments necessary for operations which are outside of the City's support. Those are in the form of project-based vouchers and also other contracted support services by specific providers.

These same types of tools may not apply to a housing project which is structured in a different manner. An example is single-family subdivision with a mix of market rate and affordable units.

Silverleaf - Bellevue Ranch

In this specific development the City assisted in securing Begin Funding provided by HCD. That funding was used to fill the gap for a homebuyer so that the units built became affordable to the buyer. The City utilized its normal permit and entitlement responsibilities for processing the Tentative Map - Final Map, reviewing and issuing building permit applications, and other associated actions but aside from the Begin Funding did not have any other specific loans or commitments to the project. The Begin program funding included normal requirements for finance underwriting as well as verification the buyer met income eligibility requirements. The City did assist in this specific capacity.

Under this example the buyer of the unit was the focus with the financial support going to fill the gap to make the otherwise market rate unit affordable to the buyer. These two examples are good to contrast how the development type and overall level of involvement or support requested by the City reflect the specific tools and approval actions necessary to provide the affordable units. In both cases the use of some form of financial incentive provided by or assisted by the City was the primary reason why the affordable units were produced.

Implementation of Affordable Housing without Inclusionary Zoning Requirements

Pursuant to the City Council Direction, identifying other tools to help enforce the production of affordable housing units will need to rely on the areas of project entitlement control where the City has discretionary approval and also in the instances where modifications to development standards maybe needed or in cases where direct financial support by the City are necessary. Utilizing this approach is more of a structured agreement than a set policy that would otherwise be implemented through Inclusionary Zoning.

As presented on September 7th, Staff suggested the inclusion of a Policy within the City's Housing Element which becomes incorporated into the General Plan to encourage development to assist in implementing units towards the City's Regional Housing Needs Assessment (RHNA) Goals. This is based upon a similar policy contained in the Merced County Housing Element.

Policy 2.10

The County shall require that community plans for new communities and specific plans within new communities include a housing strategy that commits to accommodating a proportionate share of the county's regional affordable housing need.

The implementation of a policy of this nature would most likely be through the use of Development Agreements. This was the suggestion from Staff shared with the Council on September 7, 2021. It should be noted that even in communities with established Inclusionary Zoning Policies they also provide assistance in several various forms to assist the development. Those may be in the form of deviation from standards or greater flexibility, density bonus, and other financial considerations to assist in the creation of the affordable units. Any of the Pro Housing Policies which the City Council provided support to pursue on September 7th are similar to these.

Staff has previously conducted research on other communities which do have Inclusionary Zoning Ordinances. That information was provided to the Council and Public at the April 19, 2021 meeting. It should be noted that the implementation of Inclusionary Zoning requirements relies on the use of Development Agreements. A summary of the specific tools used to both implement the production of affordable housing - implementation action and also to ensure accountability are summarized as follows:

Agency	Implementation Action	Accountability Method
Davis		Misdemeanor, Infraction, civil penalty, potential requirement to resale a home - unit
Hercules	agents, successors, and	Misdemeanor, excessive rents may result in legal action to recover
Morgan Hill		Regulatory Agreements, promissory notes, deeds of trust, and other requirements - may withhold other approvals and inspections until requirements are satisfied
Patterson	resale restrictions, deeds of	Misdemeanor and Civil Action by the City Attorney's Office
Ripon	-	May revoke permits and approvals upon finding of a violation, may withhold use approval and building permits if not in compliance, City Attorney is authorized to enforce and may recover costs

Of the sample communities nearly, all included the requirement of a plan by the developer which addresses requirements outlined by the City's code. Those addressed targeted income level goals for owner occupied units and rental units, specific locations in the project area, term of affordability, and phasing. In addition, to the onsite development or provision of affordable units many also provide consideration of the ability to rehabilitate existing units off the project location. Some specific examples include rehabilitation of existing units and recording of an affordability covenant, acquiring or purchasing affordability covenants of existing units, acquisition of land for donation in support of affordable housing, and construction of units off site. Other examples include the ability to pay an inlieu fee which exempts the project from producing units. There are also typically project types which are excluded from the overall requirements.

Implementation often refers to Plan which is to be prepared by the developer which needs to identify City requested assistance that the applicant - developer is seeking. As previously mentioned, those were often in the form of deviation form development standards, alternative use types, density bonus, fee deferrals, and other assistance forms. The developer plan and agreement are required at the earliest time possible in the entitlement process. Most agencies have language which limits actions that the City will provide until an agreement is executed. The agreements are binding on the developer, successors, and run with the land. They also include enforceability options by the City.

In addition to these implementation requirements there are additional requirements which address issues such as annual reporting, requests for releases when an affordable unit is sold or transferred. ability by the City to purchase a unit if converting to market rate - first right of refusal, and other provisions to address similar transactions or circumstances. In some cases, the City has to approve ownership or tenancy changes to ensure that new buyers or tenants meet income levels.

City of Merced Use of Development Agreements

The City's Zoning Ordinance includes Chapter 20.86 - Development Agreements. This Chapter establishes the purpose, applicability, process, and implementation necessary for the agreement.

Section 20.86.010 outlines the Purpose of the DA

A development agreement is a contract between the city and an applicant for a development project, in compliance with Government Code Section 65864 et seq. The purpose of a development agreement is to:

- A. Facilitate development projects for which there is significant applicant contribution toward infrastructure, public facilities, open space or other amenities, or other programs of benefit to the city and its residents.
- B. Assure the applicant that upon approval of the subject project, the project may proceed in accordance with existing city policies, rules, and regulations in place at the time of development agreement approval.
- C. Encourage private participation in comprehensive planning and provision of public facilities, including, but not limited to, streets, sewage, transportation, potable water, schools and utilities.

D. Provide a net benefit to the city and its residents not otherwise obtainable through other processes.

A Development Agreement is a Legislative Action which is adopted by Ordinance and is subject to a Public Hearing by the Planning Commission which makes a recommendation to the City Council. The City Council must also hold public hearings before adopting the Ordinance.

Section 20.86.150 Specifically addresses Pre-Annexation Development Agreements (PADA)

A. Pre-Annexation Development Agreement Required. Prior to annexation into the City of Merced, the owner of any property located in unincorporated Merced County shall enter into a pre-annexation development agreement with the city in a manner consistent with the requirements of this chapter and city council Resolution No. 2005-101, adopted on September 6, 2005.

B. Operative Date. A pre-annexation development agreement established prior to annexation shall not become operative unless annexation proceedings are completed by the Local Agency Formation Commission (LAFCO) within the period of time specified by the agreement. If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement is null and void.

Aside from this specific section related to Annexation there are currently no other specific development entitlement approvals which require the use of a DA. They may be used when requested or warranted but are not specifically required. There are many other entitlements which are also subject to Legislative Action or enacted by Ordinance which are similar to a DA. These could potentially be amended to also require execution of a DA, currently they require a Legislative Action Agreement which is also subject to Council approval. Those include:

- Annexation Pre-Zoning
- Zoning Ordinance Amendment
- Planned Development Creation and Site Utilization Plan as well as revisions

The City as a Charter City does not process General Plan Amendments by Ordinance. They are processed by use of a City Council Resolution but also require a Legislative Action Agreement.

These are the specific tools the City may consider when potentially applying any affordable housing requirements specific to a housing development project.

What may be covered and what may not

The City currently has a considerable number of approved Tentative Map Lots (approximately 3,400) and approved Multi-Family units (approximately 2,700) which may have vested rights. These rights would potentially exclude them from being subject to provisions of an Inclusionary Zoning Ordinance. This is similar to the situation which existed in the City of Patterson. Their Inclusionary Ordinance was in effect for some time but had little actual unit production due to vested developer rights. However, a DA is a contract between the developer and the City and may not be entirely be affected by vested rights. In the event that a project entitlement is necessary which may trigger a specific

action the Council believes warrants a DA they may be subject to requirements specified by the City through the agreement.

As the Council is aware there is currently a tremendous level of development interest which will require the use of Annexations to bring the area into the City. This discretionary approval already has the built-in requirement to use a Pre-Annexation Development Agreement (PADA) form Section 20.86.150 of the Zoning Ordinance. This could potentially provide the ability to include the production of affordable housing as part of the project. The specific approach terms of income levels, unit types, number or percentage of units, location, phasing, and similar decisions could be addressed in the PADA. The Council could also consider adopting a Resolution which sets forth some target goals to assist as a guiding tool.

Legal Review, Public Input, and Policy Implementation Tools

Although Staff has identified a specific potential tool, use of a DA, that may assist in the production of Affordable Housing which is not based on an Inclusionary Zoning Ordinance approach the Council should still consider options after legal review and, additional public input. Given the short time between the meeting on September 7th and the return to the Council on September 20th Staff has not had the opportunity outline all the necessary policy changes or areas which are likely to be needed for policy implementation. Additionally, given the time constraints a detailed legal analysis has not been completed. Consistent with the City's past practice and policies, the process to formally draft policy language would include a detailed legal analysis, stakeholder input as well as public input for transparency purposes. Of particular need for assessment is the legal implications. Inclusionary Zoning Ordinances have had various legal challenges which resulted in legal decisions - Palmer, and state legislation - AB 1505. Inclusionary Zoning has also been affected by the Costa-Hawkins Act which is federal legislation. In general, these cases and laws set a framework which set a maximum of 15% of a development project being required to produce affordable units except that higher amounts may be allowed provided that a Nexus Study is completed and is approved by HCD. Rulings have also been made that a contractual agreement, such as a Development Agreement, may be outside these limits and offer higher flexibility. Given all of these aspects any implementing action will require greater legal review and further public input.

The City Council does have a potential implementation tool that can assist. As noted at the September 7th Council Meeting evaluation of Inclusionary Zoning was an identified activity under the City's Local Early Action Planning (LEAP) Grant awarded by HCD. The LEAP award does allow flexibility and this activity could be modified in a manner to reflect the Council's policy direction to seek ways to implement affordable housing production which are not based on Inclusionary Zoning. Housing Policy is a very specialized area similar to other specialties. The LEAP Grant provides the City the opportunity to contract for these services to help implement this potential approach.

Recommendation and Next Steps

The City Council provided direction at the September 7, 2021 City Council Meeting to initiate a variety of General Plan - Housing Element, CEQA processing, Zoning Ordinance, Subdivision - Map, and Financial Tools updates to help streamline and provide for housing choices and increased affordability. These do not specifically require affordable housing production, but their implementation

may help encourage more affordable housing by increasing the availability of housing supply, providing for more housing choices, and affordability by design. Those will begin to be implemented through the current grant sources the City has available. Some activities will be implemented through the use of regional planning grants managed by MCAG. Those include the direction to establish a Regional Housing Trust, completion of the Regional Housing Needs Assessment (RHNA), and potentially a combined Housing Element.

Specific to affordable housing production, staff is seeking City Council direction on the potential inclusion of a Housing Element Policy for market rate development to assist in meeting RHNA production goals and use of a PADA, DA or other agreement as the potential implantation tool. With the specific approach subject to legal review, additional public input, as part of the LEAP grant implementation process.

IMPACT ON CITY RESOURCES

None.

ATTACHMENTS

- 1. Administrative Report and Presentation from April 19, 2021
- 2. Administrative Report and Presentation from September 7, 2021
- 3. Presentation



CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.2. Meeting Date: 4/19/2021

Report Prepared by: Scott McBride, Director of Development Services, Development Services Department.

SUBJECT: Report on Affordable Housing Tools Including Possible Direction on an Inclusionary Zoning Ordinance and Other Potential Options

REPORT IN BRIEF

Report on Affordable Housing Tools including possible direction on an Inclusionary Zoning Ordinance and other potential options.

RECOMMENDATION

City Council - Adopt a motion:

- A. Receiving the report on Affordable Housing Tools; and,
- B. Providing direction on pursing an Inclusionary Zoning Ordinance or other potential Housing supportive options options.

ALTERNATIVES

- 1. Approve, as recommended by Staff; or,
- 2. Approve, subject to conditions other than recommended by Staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
- 3. Deny; or,
- 4. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

Continued focus on Affordable Housing Production.

DISCUSSION

During the Housing and Urban Development (HUD) Consolidated Plan and First Year Annual Action Plan process held this past summer the City Council provided direction to engage stakeholders and the community on the topic of Inclusionary Zoning. A very general definition of Inclusionary Zoning is a policy that requires affordable housing units to be provided as part of a market rate development project. The City Council additionally asked that staff return to the City Council in April 2021 to allow for policy direction on the concept of Inclusionary Zoning.

Since receiving direction City Staff has engaged in the following activities with community members and stakeholders:

- March 24, 2021 Stakeholder Meeting with the Building Industry Association (BIA), Merced County Board of Realtors, and Leadership Council
- March 30, 2021 Annual Action Plan Community Input Meeting
- April 8, 2021 Community Meeting on Affordable Housing Tools including Inclusionary Zoning

Based on suggestions and information received during the outreach meetings Staff conducted additional research and participated in additional communications to establish a stronger understanding of Inclusionary Zoning. Those activities include;

- Collection of over a dozen Inclusionary Zoning Ordinance samples
- Collection of administrative reports and public documents used by other agencies that have **Inclusionary Zoning Programs**
- Review of impact fees for Commercial Linkage Fees
- Communication with City Staff members in agencies that operate Inclusionary Zoning
- Communications with Builders that conduct work in agencies with Inclusionary Zoning **Programs**

Background

The topic or concept of Inclusionary Zoning has been discussed in some capacity over several years within the community of Merced. It has specifically been included as a potential program to evaluate or consider in prior Consolidated Plan documents. These documents are a requirement of the U.S. Department of Housing and Urban Development. The City recently approved the five-year document which covers 2020-2024.

In 2005 - 2006 a team comprised of representatives from Merced County, all Cities, and Merced County Association of Governments participated in a series of meetings known as the Merced County Workforce Housing Task Force. The Task Force reviewed "below market rate" and inclusionary zoning ordinances. The work concluded with some draft or template ordinances however none were adopted by the agencies comprising the task force. There are currently no Cities within Merced County which implement Inclusionary Zoning programs. The County also does not have a program in place.

In 2008 a report was provided to the City Council outlining work and conclusions from the Task Force. The report also included information on activities that were performed by City Staff in 2007. In conclusion the report stated that an Inclusionary Ordinance was not appropriate for the city at that time. A copy is attached.

Stakeholder Feedback

The meeting was held with the intent to provide an opportunity for a broad discussion of tools and options to assist in the production of affordable housing. Inclusionary Zoning was a specific topic of

discussion, but it was not the only concept discussed.

One of the suggestions provided by the BIA was a coordinated "affordable by design" approach. The concept would include different sized lots, different sized homes, integration of duplex units, and potentially a requirement for accessory dwelling units that would be constructed. By having these requirements, it would provide a variety of housing options that would potentially be available at several income levels for either purchase or as a rental.

The other introduced concept was that of "subsidy." The general concept is the subsidy being provided is what creates an offset the costs making housing units affordable. This approach would also likely need to be augmented with some form of down payment or gap financing targeted to home buyers. It was noted that the subsidy may be on the cost to produce the unit or to the buyer, or both. This area may warrant additional input and research to determine what options may be available.

There were other concerns brought up in the meeting relative to the overall supply of housing in the community. Although the discussion focused on affordable housing it was conveyed that there still needs to be an emphasis on housing production of all types to attempt to keep up with market demand. A concern was expressed that there is a dwindling stock of existing homes and new increasing competition to acquire new construction both of which will contribute to increasing the housing prices.

Comments were also provided that the City needs to take more proactive steps to affirm affordable housing. The incorporation of an Inclusionary Zoning Policy should be included with all other tools. There were also concerns related to progress towards meeting the goals of the Regional Housing Needs Assessment (RHNA). Although it was recognized that the City is meeting it's requirement by having areas zoned and designated in the Housing Element to accommodate development.

Community Feedback

During the community meeting held on April 8th additional comments were provided noting that there is a need to focus on affordable housing production but also all housing production is important. Concerns were expressed that current housing conditions may lead to even less affordable housing and focus should be on proactive policy. Tools to assist in providing for affordable housing included Inclusionary Zoning but also other ideas such as flexible design opportunity and subsidies to either the production of the unit or the buyer, or both. There were also other social concerns related to housing policy which were expressed by several community members.

Inclusionary Zoning Examples and Policy Considerations

Based upon review of other sample Inclusionary Zoning Ordinances there some specific policy considerations which should considered as part of any potential ordinance. The ordinances reviewed have some similarities, but they are tailored to their specific community. A summary of sample of ordinances focusing on a few policy issues is attached to this administrative report. The main policy questions which are typically incorporated into the ordinance include the following;

- When do the requirements to provide for affordable units under the Inclusionary Zoning Ordinance apply?
 - Most programs apply once the ordinance effective date is reached with some listed

- exceptions
- o They can require construction of the affordable units in development projects which are currently being built
- Some set specific dates and are therefore prospective
- Exemptions to the requirements
 - Small projects often 5 units or less
 - Rehabilitation of existing dwelling units
 - Units produced using Density Bonus
 - When a vesting map is in place and only specific ministerial actions remain
 - When units are destroyed by natural disaster
 - When a Development Agreement is in effect which expressly preclude compliance
- What percentage of units is required to be provided?
 - Varies from jurisdiction to jurisdiction
 - 10%, 15% are common, some require higher
- What income levels are required?
 - Many have specific percentages for each income category
 - o The income categories usually include Very Low, Low, and Moderate does not include Extremely Low
- Rent or ownership?
 - o The development project type, rental vs. ownership, often has specific requirements which tie back to the percentage of units which must meet affordable income categories
- Are in lieu or off-site development options allowed, or equivalency?
 - Most programs provide options to meet the intent of providing affordable housing though some variation of an in-lieu fee, off site, and land donation process
- Design and timing performance?
 - o Often there are requirements for comparable design, appearance, materials, size including bedrooms
 - Dispersed within the project area
 - o Concurrent or prior to construction of market rate units
- Unit provision
 - Setting of resale restrictions on ownership units
 - Covenants on rental units length of time the units must be affordable
- Does the city provide for a commercial linkage fee or affordable housing impact fee?
 - This additional method of raising funds for affordable housing is found in some

locations that have Inclusionary Zoning ordinances

- The commercial linkage fee is an impact fee charged on non-residential development
- The affordable housing impact fee is charged on market rate housing with the funds collected being used for affordable housing purposes

In conducting research on Inclusionary zoning there are many examples where City's considering implementing an Inclusionary Zoning Ordinance perform a housing market analysis prior to enacting the ordinance. They look at the potential impacts the ordinance may have on the production of housing and the overall costs to a homebuyer.

Other Potential Options and Alternatives for Affordable Housing

Based on feedback received during the stakeholder and community meetings there are some additional options or alternatives which may assist in the provision of additional affordable housing;

Commercial Linkage Fee

Commercial Linkage Fees are impact fees on non-residential development to be used for affordable housing purposes. Impact fees fall under the AB 1600 Development Impact Fee provisions found within the State of California Government Code. The City's equivalent is known as the Public Facility Finance Fee Program (PFFP). This fee approach would require a nexus analysis.

Market Rate Affordable Housing Fee

This is similar to the commercial linkage fee but is instead an impact fee placed on market rate housing. It would also require a nexus study. This would create a sustainable funding source for funding that can be used to provide assistance such as gap or down payment assistance for home ownership, housing rehabilitation, acquisition, and production. The nexus would need to outline the funding uses.

Identify additional Subsidies

One of the feedback comments received in the outreach meetings was finding additional subsidies to assist in affordable housing production. Many Inclusionary Zoning programs also provide specific subsidies to assist in making the unit affordable. Those may be impact fee programs focused on infill or creating new affordable housing categories. There are likely other options as well.

Diversify Housing Partners - Housing RFQ

City Staff has prepared and issued an RFQ to identify additional housing partners that may have interest in developing additional housing units. In addition to new development it may also provide for rehabilitation options. An overview of Affordable Housing Assets was provided to the Council in April 2020. Those resources in addition to other programs could leverage additional affordable housing production opportunities.

Affordable by Design Requirements

This was suggested by the BIA. The City may want to consider adding specific requirements to provide for more diverse housing types. Several examples were already provided including

accessory dwelling units (ADU's), duet or duplex units in single family areas, smaller lot with appropriate subdivision standards, and other similar approaches. It should be noted that the City has an SB2 Grant and pending LEAP grant that may provide for work on the City's Zoning Code. Subdivision Code, and other activities that can help implement this type of approach.

Countywide Consortium

This concept would potentially consolidate the various housing plans that are required and take a larger look at housing on a county - regional basis. When enacted it can help leverage funding sources for non-entitlement communities which may use funding for affordable housing purposes. Examples include Stanislaus County and Fresno County.

Staff recognizes that the above list of possible policy direction may not encompass all practical examples through California. Staff stands ready to conduct additional research and due diligence at the direction of the City Council.

IMPACT ON CITY RESOURCES

None.

ATTACHMENTS

- 1. 2008 Inclusionary Zoning Memo
- 2. Ordinance Comparison Table
- 3. City of Patterson Inclusionary Ordinance
- 4. City of Ripon Inclusionary Municipal Code
- 5. City of Davis Inclusionary Municipal Code- 18.04
- 6. City of Davis Inclusionary Municipal Code 18.05
- 7. City of Morgan Hill Inclusionary Ordinance
- 8. City of Petaluma Inclusionary Municipal Code
- 9 Presentation

City of Merced

MEMORANDUM

DATE:

January 4, 2008

TO:

James G. Marshall, City Manager

Honorable Mayor and City Council

FROM:

Jack Lesch, Director of Development Services

SUBJECT:

Inclusionary Zoning

The General Plan's 2003 Housing Element calls for a number of programs to be undertaken in support of the Element's goals to increase access to affordable housing by low- and moderate-income households. Most of these programs, such as maintaining a Housing Division and facilitating low-interest loans, are in-place and ongoing. One concept discussed by the Housing Element that does not currently exist is what is known as Inclusionary Zoning. Inclusionary Zoning is employed by many cities in the State as a means of requiring market-rate home builders to also build new homes for low- and moderate-income families. This type of code requires a specified percentage of units in new subdivisions to be targeted to eligible households.

The Housing Element describes creating a Citizens' Advisory Committee to generate parameters for a future Inclusiona.ry Zoning Ordinance. However, in 2006, a county-wide task force was convened for this express purpose, with members representing the cities (including Merced) as well as unincorporated communities. Merced County Workforce Housing Task Force members visited other communities in the San Joaquin Valley where Inclusionary Zoning was either in-place or proposed. During this process the cities of Los Banos and Livingston drafted Inclusionary Zoning ordinances, with thresholds that would require new subdivisions to also provide a percentage of low-income houses.

The City of Merced's contract planner conducted a survey of the six cities in Merced County, and the County of Merced, to ascertain what progress had been made toward adoption of Inclusionary Zoning after the conclusion of the Task Force's research. Los Banos and Livingston decision-makers had indefinitely tabled their draft ordinances, and none of the remaining jurisdictions had taken steps toward such an ordinance.

Planning staff met with representatives of the Building Industry Association (BIA) in May, June, August and September 2007 and found that while in concept the development community supported access to affordable housing, creating an ordinance requiring builders to include below-market houses in their projects would not be supported. The BIA has sued the City of Patterson (Stanislaus County) in relation to that city's new Inclusionary Zoning ordinance. For all but a very few builders, there are strong reservations to constructing lower-income housing when that product is essentially not what their business has tooled-up to construct. Opposition increases further in the

building community at the suggestion that all builders be mandated to provide a percentage units for lower-income. Additionally, at this time in the economic and housing cycle, the developers do not believe an Inclusionary ordinance makes sense, as there is presently a very large inventory of vacant new and used housing available in the City and at lower prices.

Staff met with an affordable housing builder based in Merced, Greg Bradford of Envision Homes, in order to determine how he effectively builds and sells homes to lower-income families. It appears that Envision has perfected a niche that not all builders can successfully survive in. Nonetheless, these units also are not selling at the rate they were one year ago.

The League of California Cities recently published an article (11/26/07) on an initiative to be placed on the State ballot in June 2008 that would prohibit new inclusionary zoning ordinances and nullify many of the provisions of existing ones.

Given the amount of staff research and the importance of affordable housing, we felt it is appropriate at this time to share our efforts and conclusions with the City Council. Based on the factors listed above, staff does not believe an Inclusionary Zoning ordinance is appropriate for Merced at this time. However, Staff continues to work on other implementing measures as called for in the Housing Element.

Inclusionary Zoning Summary

	Patterson	Ripon	Davis	Morgan Hill	Petaluma
Policy Issue					
When do requirements apply	New and existing - SF, MF	New and existing - SF	New and existing - SF	New and existing - SF, MF	New and existing - SF, MF
Exemptions to requirements	10 or fewer units, rehab, Vesting Map, DA, Replacement, Aff HSg	Replacement, Modification, ADU, Rentals MF, Aff Hsg	Less than 5 Units, core area, waiver agreement	By written agreement	Less than 5 Units
Percentage of units	15%	10%	25% to 10% - lot size for SF	15% - certain areas at 10%	Rental - 7.5% Vlow, 7.5% Low
Income Levels	Very low, low, and moderate	Low and Moderate	Very low, low, and moderate	Very low, low, and moderate	Ownership 7.5% Low, 7.5% Mod
Rent - Ownership	Separate requiremetns for each type	Ownership	Separate requiremetns for each type	Ownhership - Mod Level, Rental Low & VLow	
Inlieu, Off Site, Land Donation, Alternatives	Yes	Yes	Yes	Yes	No offsite - other options by Agreement
Design, Timing, Performance	Comparable, dispersed, prior or concurrent	Prior or concurrent, comparable design and finish - Duets	Comparable, dispersed, prior or concurrent	Dispersed, comparable design and finish	Dispersed, comparabel design, and finish
Unit Provision	30 Year for rental, limits on resale	Not specific	Permanent	45 Years/55 Years	45 Years
Commercial Linkage	No	No	No	No	Yes - \$3 to \$5/sf

ORDINANCE NO. 675

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF PATTERSON ADOPTING A NEGATIVE DECLARATION AND APPROVING
REVISIONS TO TITLE 3 CHAPTER 3.6 AFFORDABLE HOUSING IN LIEU FEE, AND
ADDING TITLE 18.74 OF THE PATTERSON MUNICIPAL CODE (ZONING)
INCLUSIONARY REQUIREMENTS FOR AFFORDABLE HOUSING AND ADDING
TITLE 18.82 AMENDING THE PROVISIONS FOR THE GRANTING OF DENSITY
BONUSES

WHEREAS, the City of Patterson declares that the citizens of the City who earn moderate, low, and very low incomes are experiencing a housing shortage.

WHEREAS, the goal of the City is to achieve a balanced community with housing available for households of all incomes, there exists a shortage of housing that is affordable to many citizens of the City. Federal and state housing subsidies are not sufficient by themselves to satisfy the housing needs of these households. The City finds that the housing shortage for persons of moderate, low, and very low incomes is detrimental to the public health, safety, and welfare.

WHEREAS, the City has experienced rapidly increasing median rents and median housing prices. These increases will continue to perpetuate and exacerbate the shortage of affordable housing. Further, the amount of land in the City's planning area available for residential development is limited by the high cost of infrastructure, the planning principles embodied in state law pertaining to general plans, and by mandates in federal law. Scarce remaining opportunities for affordable housing would be lost by the consumption of land for market rate residential development without providing housing affordable to persons of all incomes.

WHEREAS, to implement the General Plan, to carry out the mandates of state housing element law, including meeting the regional fair share housing requirements, and to ensure the benefits of economic diversity to the residents of the City, it is essential that new residential development contain housing opportunities for all income levels, and that the City provide a regulatory and incentive framework that ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the community.

WHEREAS, The City's General Plan denotes the limits of urban development and acts as an agricultural buffer, leads to a limited supply of available land for development;

WHEREAS, new market-rate housing absorbs the remaining supply of land available for development within the General Plan area;

WHEREAS, by absorbing available land, new market-rate housing limits the supply of affordable housing and also inflates land prices;

WHEREAS, new market-rate housing further aggravates the affordable housing crisis by increasing demands for new commercial goods and services, thereby creating new local employment at low wage levels for workers who then cannot afford housing within the city;

WHEREAS, market rate dwellings (dwellings that sell for the median price of \$343,610 in 2005) sell for over twice the amount identified by the State of California that can be afforded by households with low- or very-low incomes (\$80,000 and \$128,000, respectively).

WHEREAS, to strengthen and complement the policies and programs of the Housing Element, and to bring the City's regulations into conformance with State law, the City desires to add Chapter 18.74 relating to inclusionary requirements for affordable housing, and Chapter 18.82 relating to the granting of density bonuses, respectively;

WHEREAS, these requirements will help address the need for affordable housing in Patterson by providing incentives for the production of such housing and by requiring such housing to be included in the development of market rate housing;

WHEREAS, the Planning Commission of the City of Patterson held a public hearing on April 27, and August 3rd, 2006 to consider the amendments and has unanimously recommended their adoption;;

WHEREAS, the City Council of the City of Patterson conducted a duly noticed public hearing on September 19th, 2006 to consider the recommended amendments;

WHEREAS, a Negative Declaration of environmental impact was prepared for the project and circulated for 20 days in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) and related CEQA Guidelines (Title 14 California Code of Regulations, Section 15000 et seq.).

WHEREAS, the City Council has reviewed and considered the Negative Declaration and proposed mitigation measures and all comments received regarding the negative declaration; and

WHEREAS, based on its independent review and analysis, the staff analysis, oral and written testimony, and the Negative Declaration, the City Council, after due study; deliberation and public hearing find that the following circumstances exist:

- 1. The proposed amendments are consistent with the goals, policies and standards of the Patterson General Plan, and all other applicable standards and ordinances of the City of Patterson.
- 2 Adverse impacts are mitigated to the maximum extent feasible.

- 3. The amendments will not be detrimental to the health, safety, comfort, convenience, and general welfare.
- 4. The Negative Declaration was prepared in compliance with CEQA and the CEQA Guidelines.

The City Council of the City of Patterson does ordain as follows:

1. The negative declaration (Exhibit B) is hereby adopted.

ATTEST:

City Clerk of the City of Patterson

2. The amendments to Title 3 and Title 18 of the Patterson Municipal Code are hereby adopted as shown in Exhibit A.

This Ordinance shall be published by one insertion in The Patterson Irrigator, a newspaper of general circulation, printed and published in the City of Patterson, within fifteen (15) days after its final passage, and shall take effect and be in force thirty (30) days after its final passage.

Introduced at a regular meeting of the City Council of the City of Patterson, held on the 19th day of September, 2006, and given its first reading at said meeting. Said Ordinance

was given a second reading at a meeting of the Ci October, 2006, and after such reading, Councilmen	5
adoption, seconded by Councilmemberthereupon adopted by the following vote:	and said ordinance was
AYES: Councilmembers NOES: ABSENT:	
	APPROVED
	Mayor of the City of Patterson

EXHIBIT #A"

Patterson Municipal Code Chapter 3.6 "Affordable Housing In lieu Fee" is Hereby deleted and superseded by Chapter 18.74 of Title 18, Zoning as follows:

Chapter 18.74 Inclusionary Housing

18.74.010 Purpose and Applicability

This chapter is intended to assist in the provision of affordable housing for persons of moderate, low and very-low income. Public housing programs and housing subsidy programs can meet only a small portion of the need for low and moderate income housing. The majority of housing units has been, and will continue to be, produced by the private housing industry. Private industry has the capability to assist in providing affordable housing given supportive government policies and programs, including incentives and public investment, as appropriate. This program is designed to promote a full range of housing choices, to require construction and continued existence of affordable dwelling units, to provide for a program of incentives and local public subsidy, and to implement the Housing Element of the City's General Plan.

18.74.020 Definitions

Unless the context clearly requires otherwise, the definitions in this section shall govern the provision of this article.

<u>"Affordable"</u> means rented at an affordable rent or sold at an affordable housing price.

"Affordable rent" for a unit whose occupancy is restricted to a very low-income household means that the monthly rent, including utilities and all fees for housing services, shall not exceed 30% of income for households earning fifty percent (50%) or less of the median income, or for a unit whose occupancy is restricted to a low income household means that the monthly rent, including utilities and all fees for housing services, shall not exceed 30 percent for households earning fifty one percent (51%) to eighty percent (80%) of the median income as defined herein. Affordable rent shall be based on presumed occupancy levels of one person in a sh1dio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter.

"Affordable sales price" means the maximum purchase price that will be affordable to low and moderate-income households as defined herein. In setting the affordable sales price, realistic assumptions regarding down payment, mortgage interest rate and term will be required and those assumptions must demonstrate that targeted income families can reasonably qualify. If evidence is presented which shows to the satisfaction of the City that targeted income buyers can qualify for financing even though the

percentage of their income allocated to housing is higher than thirty percent, then a corresponding increase may be approved in the affordable sales price. Affordable sales price shall be based upon presumed occupancy levels of one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter.

<u>"Affordable units"</u> means and is limited to those dwelling units which are required to be rented at affordable rents or purchased at an affordable sales price to specified households as described in this article.

<u>"Annual household income"</u> means the combined gross income for all adult persons living in a dwelling unit as calculated for the purpose of the Section 8 program prescribed by the United States Housing Act of 1937, as amended, or its successor.

<u>"Building permit"</u> means a permit issued pursuant to Chapter 15 of the Patterson City Code.

<u>"Construction costs".</u> Construction costs shall mean the estimated cost per foot of construction, as established by the building department of the City of Patterson for use in the setting of regulatory fees and building permits, multiplied by the total square footage to be constructed for each dwelling unit, minus square footage for garage area.

"Council" means the City Council of the City of Patterson.

<u>"Developer"</u> shall mean every person, firm, or corporation constructing, placing, or creating new non-residential or residential development directly or through the services of any employee, agent, independent contractor or otherwise.

"Discretionary permit" shall include use permits issued pursuant to Chapter 18 of the Patterson Municipal Code, and the approval of tentative, final or parcel maps pursuant to Chapter 16 of the Patterson Municipal Code.

"Dwelling unit" shall have the meaning set forth in Section 18.08 of the Patterson Municipal Code.

<u>"Low income households"</u> are those households with incomes of up to eighty percent (80%) of median income, or as set out in Health & Safety Code Section 50093.

"Market rate units" means dwelling units in a residential project, which are not "affordable units" as defined herein.

"Median income" means the median income, adjusted for family size, applicable to Stanislaus County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the United States Department of Housing and Urban Development.

"Moderate income households" are those households with incomes of up to one hundred twenty percent (120%) of median income, or as set out in Health & Safety Code Section 50093.

"Monthly owner-occupied housing payment" shall be that sum equal to the principal, interest, property taxes, utilities, homeowner's insurance and homeowner's association dues paid on an annual basis divided by twelve.

"Planning commission" shall mean the Patterson City Planning Commission.

<u>"Planning director"</u> means the director of the Patterson City planning department or the designee of said director.

"RDA" shall mean the City's Redevelopment Agency.

<u>"Residential project"</u> means a proposed residential development or subdivision of land, including condominium and timeshare projects, or the construction of any dwelling unit for which a building permit or discretionary permit is issued by the City.

<u>"Section"</u> unless otherwise indicated, means a section of the Patterson Municipal Code.

<u>"Substantial rehabilitation"</u> means rehabilitation of existing dwelling units to insure that they will remain available at affordable housing cost to persons of moderate, low and very low income for the longest feasible time, but for not less than 30 years.

<u>"Targeted income families"</u> means those households that meet the classification as moderate, low and very low-income households as defined in this ordinance.

<u>"Very low-income households"</u> are those households with incomes of up to fifty percent (50%) of median income, or as set out in Health & Safety Code Section 50093.

18.74.030 Inclusionary unit requirement

At least fifteen per cent (15%) of all newly constructed dwelling units in a residential project shall be developed, offered to, and sold or rented to very low, low, and moderate- income households, at an affordable housing cost, as follows:

A. Requirements for owner-occupied developments. Sixty percent (60%) of the affordable units, which are required to be constructed in connection with the construction of market rate units intended for owner-occupancy, shall be available at affordable sales prices to moderate-income households. The remaining forty percent (40%) of the required affordable units shall be available at affordable sales prices to low-income households.

B. Requirements for renter-occupied units developments. Forty percent (40%) of the affordable units, which are required to be constructed in connection with construction of rental market rate units, shall be available at affordable rents to very low-income households. The remaining sixty percent (60%) of the required affordable units shall be available at affordable rents to low-income households.

C. The affordable units shall be constructed on-site not later than the related market rate units, unless one of the alternative actions set forth in Section 18.74.060 is performed. Such dwelling units shall include a covenant that each dwelling unit shall be affordable for 30 years. For fractions of affordable units, the owner of the property must either construct the next higher whole number of affordable units, or perform an alternative action as specified in Section 18.74.060.

D. On-site inclusionary units shall have access to common amenities in development projects.

18.74.040 Design and building requirements

All inclusionary units shall be comparable with the market rate units in terms of the size, base design, appearance, materials, and finished quality; and shall be proportional in number, size, and location. Affordable units shall be comparable in number of bedrooms, exterior appearance, and overall quality of construction to first-class quality affordable housing found elsewhere in the City. Subject to the approval of the Planning Director, square footage of affordable units and interior features in affordable units need not be the same as, or equivalent to, those in market rate units in the same residential project, so long as they are of good quality and are consistent with contemporary standards for new housing.

Affordable units shall be dispersed throughout the residential project, or, subject to the approval of the Planning Director, may be clustered within the residential project when this furthers affordable housing opportunities.

All affordable units in a residential development shall be constructed concurrently with or prior to the construction of the market rate units. In the event that the City approves a phased project, the inclusionary units required by this ordinance shall be proportionately provided within each phase of the residential development.

18.74.050 Alternative Equivalent Proposal

In lieu of including the affordable housing units on-site, the requirements of this ordinance may be satisfied through the alternatives discussed below. If the Planning Director finds that on-site units are infeasible, the developer shall submit an equivalency proposal to the planning commission for approval. Such proposals shall show why compliance with this ordinance is not financially or otherwise feasible and how the alternative proposed will further affordable housing opportunities in the City to an equal or greater extent than compliance with the express requirements set forth under

Section 18.74.030. A proposal for an alternative equivalent action may include, but is not limited to, the construction of affordable units on another site, dedication of land, the acquisition or rehabilitation of existing sub-standard dwelling units and the enforcement of required rental/sales price restrictions, and/or an in-lieu fee.

Applicants proposing to construct rental affordable units in lieu of owner-occupied affordable units as permitted by Section 65589.8 of the Government Code (or its successor provision) shall submit an equivalency proposal pursuant to this section.

A. Alternative Equivalency Proposals.

- 1. Off-site housing: In the event that on-site inclusionary housing is infeasible, upon application of the developer and at the discretion of the planning commission, the developer may satisfy the requirements of providing inclusionary units as part of the residential development, in whole or in part, by constructing or substantially rehabilitating units equal to or greater than the required inclusionary units at a site different than the site of the residential development.
- 2. <u>Dedication of land for housing:</u> In the event that on-site or off-site inclusionary housing is infeasible, upon application of the developer and at the discretion of the planning commission, the developer may satisfy the requirement of providing inclusionary units as part of the residential development, in whole or in part, by a conveyance of land to the City for the construction of the required inclusionary units.
- 3. Payment of an in-lieu fee: In exceptional cases where the developer finds on-site inclusionary housing, off-site inclusionary housing, or the dedication of land is infeasible, upon application of the developer, and at the discretion of the Planning Commission, a fee in lieu of all or some of the inclusionary units may be paid by the developer.

The housing in-lieu fee shall be charged on a percentage basis of the projected construction costs of market rate dwelling units. The amounts and calculation of the housing in-lieu fee shall be established by resolution of the city council. Construction costs of market rate dwelling units is determined in accordance with the definition in Section 18.74.020 which states "Construction costs shall mean the estimated cost per foot of construction, as established by the building department of the City of Patterson for use in the setting of regulatory fees and building permits, multiplied by the total square footage to be constructed for each dwelling unit, minus square footage for garage area." For attached single-family residential and rental residential development projects, construction costs shall be separately calculated for each dwelling unit and the appropriate fee paid for each unit within the residential project. The housing inlieu fee required by this section may be satisfied either by cash payment or upon the recommendation of the plaiming director and approval of the city council, by an alternative which will provide city with a value equal to or greater than the amount of the required in lieu fee.

- B. Further Specifications for Alternative Equivalency Proposals
- 1. <u>Standard for Approval.</u> The planning commission may approve an equivalency proposal only if it is not financially or otherwise feasible to construct the w1its within the development and the alternative provides a more cost-efficient solution to the inclusionary housing component than the standard approach set forth in this document, or if the location of off-site development would be superior to on-site development from the perspective of access to transportation, services, public facilities or other applicable residential planning criteria in the General Plan.
- 2 <u>Affordable Units Off-Site.</u> An applicant may propose to meet its obligation under the ordinance through new construction, substantial rehabilitation of dwelling units, or adaptive reuse of an existing structure(s) at a location off-site from the proposed residential development.
- 3. Number of Inclusionary Units Credited to the Dedication of Land. The number of inclusionary units credited to the dedication of land will be determined based on the total development cost to provide the inclusionary dwelling units including the land and construction costs so that the appraised value of the land that is dedicated to the City is equivalent to the total development costs of the inclusionary requirement. If the appraised value of the dedicated land is less than the total development costs, the developer will be credited for inclusionary units to the extent that the appraised value covers any portion of the development costs of the inclusionary requirement. Any fractions of a unit will be rounded down to the nearest whole unit.

With respect to dedicated land, the City, upon acceptance of an offer of dedication, shall publish a request for proposal for development of the site(s) which will result in at least the number of units credited to the site(s).

- 4. <u>Site Suitability.</u> The land proposed for dedication must be suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria.
- 5. <u>Site Identification and Regulatory Status.</u> The developer must identify the proposed dedicated site and the number of proposed units to be credited thereby as part of the equivalency proposal required in this document. At the same time or before the development project receives its legislative entitlements, the dedicated land shall have received all the legislative entitlements necessary for development of the inclusionary units on such land. Unless the phasing plan requires otherwise, at the same time or before a residential project records a final map, or is issued a building permit, whichever is earlier, the dedicated land shall have received all the necessary project-level approvals necessary for development of the inclusionary units on such land, and prior to the issuance of any certificate of occupancy for a residential project, the dedicated land shall be fully served with the infrastructure necessary for residential development.

- 6. <u>Planning Commission Review</u>. If the equivalency proposal is accepted or accepted as modified by the planning commission, the relevant elements of the equivalency proposal shall be included in the applicable legislative approvals for both the residential development generating the requirement for the inclusionary housing component and, if applicable, the dedicated site, off-site development, or rehabilitation project where all or part of that requirement is proposed to be met. If the equivalency proposal is rejected, the inclusionary housing component shall be provided as set forth in this document within the development project.
- 7. Implementation. As early as possible in the regulatory process, the owner of the residential project must: (1) in the case of land dedication, provide an irrevocable offer of dedication for the dedicated site at no cost to the City or to a developer of affordable housing approved by the City; and (2) in the case of off-site development, demonstrate to the planning commission that the off-site location is, and will remain committed to, the timely development of the inclusionary units; and (3) in the case of new construction or substantial rehabilitation of rental units, assure that the units will be rent restricted for 30 years with respect to each affordable unit. The commitment of off-site land may be demonstrated through ownership of the off-site location, or through adequate control of the use of the off-site location through joint-ownership, joint venture or other contractual means. If necessary to ensure that inclusionary housing units are developed or rehabilitated contemporaneously with the market rate units, the City may require the offer of dedication, evidence of off-site control, or commencement of rehabilitation as early as the recording of a final map or issuance of a building, whichever occurs first.

With respect to an off-site location, the Planning Commission may also condition development or occupancy of the residential project on development or occupancy of the off-site inclusionary units, and the inclusionary housing agreement must apply to and be recorded against both the residential project and the off-site development. With respect to dedicated land, the City, upon acceptance of the offer of dedication, shall publish a request for proposal for development of the site(s) which will result in the production of at least the number of inclusionary units credited to the site(s).

8. <u>Appeals.</u> An applicant or any aggrieved person may appeal decisions of the Planning Director and the Planning Commission as provided the Patterson City Zoning Ordinance.

18.74.060 Affordable Housing Concessions and Incentives

The developer may request that the City provide inclusionary incentives as set forth in this Section. The goal of these inclusionary incentives is to apply available incentives to qualifying projects in a manner that, to the extent feasible, offsets the cost of providing the inclusionary housing component. The Planning Director shall respond to that request and make a recommendation to the appropriate review authority (Planning Commission or City Council) regarding a determination as to a package of inclusionary incentives.

A. Fee Waivers or Deferrals.

Upon application as provided herein, the City shall make available a program of waiver, reduction, or deferral of development fees, administrative fees, and financing fees for affordable units. Such a program may include a fifty percent (50%) waiver of development-related application and processing fees for affordable units constructed in connection with such residential project. In addition, the Planning Commission may consider, on a case-by-case basis, the provision of additional incentives as provided by law or in the Housing Element of the Patterson City General Plan.

B. Modification of Planning and Public Works Development Standards.

Upon application as provided herein, the City may modify for affordable units, to the extent feasible, in light of the uses, design, and infrastructure needs of the development, standards relating to road widths, curbs, and gutters, parking, lot coverage, and minimum lot sizes.

C. Interior Finish Reductions.

Upon application as provided herein, the City may, to the maximum extent appropriate in light of project design elements, allow builders to finish the interior of affordable units with less expensive finishes and appliances, subject to approval by the Planning Director.

D. Streamlining and Priority Processing.

The Planning Director shall review and modify, as appropriate, procedures for streamlining and priority processing which relieve affordable units of permit processing requirements to the maximum extent feasible consistent with the public health, safety, and welfare.

E. Density Bonus.

The City shall make available to the developer a density bonus as provided in State density bonus law (Government Code Section 65915), however, the affordability requirements to qualify for a density bonus shall be those stated in Section 18.78.030 and the other provisions of this article. Units produced as part of such a density bonus do not give rise to an inclusionary housing requirement.

F. Local Public Funding.

The developer may apply to the RDA for local public funding to assist in the financing and development of the inclusionary housing component. Local public funding may serve to facilitate state allocation of tax credits, mortgage revenue bonds, or other state or federal assistance. However, the provision of local subsidies requires that the developer also diligently pursue other external State and federal subsidies.

The RDA director shall make a recommendation regarding the proposed local public funding assistance package to the Planning Director. In making the recommendation, the RDA director shall consider: (1) the number, percentage, and tenure of the affordable units; (2) the financial structure and financing needs of the affordable component; (3) the cost-efficiency of the solution to the affordable component; (4) the developer's initiatives in applying for grants and other funds; (5) the availability of funds given the funding priorities of the RDA and other funding agencies at the time; and (6) other factors necessary to the evaluation.

G. The city council may consider, on a case by case basis, at its sole discretion, the provision of additional concessions or incentives consistent with state law and the Housing Element of the City of Patterson General Plan for residential development projects which provide at least 15% of the total dwelling units as affordable units.

18.74.070 Time Performance Required

No temporary or permanent certificate of occupancy for any new dwelling unit in a residential project shall be issued until the permittee has met the on-site construction inclusionary requirement of the residential development or has satisfactorily performed one of the alternative actions set forth in this document.

18.74.080 Collection and Use of In-lieu Fees

Any monies contributed to the City pursuant to the provisions of this Chapter shall be payable to the City of Patterson for the purpose of providing affordable housing. Payment of the fee shall be made in full prior to the issuance of building permits or recordation of final maps.

Any fees collected and interest accrued pursuant to this chapter shall be committed within five years after the payment of such fees.

18.74.090 Exempted Residential Development

The following development projects are exempt from this Chapter and generate no obligation to provide an inclusionary housing component:

- A. Residential projects proposed to contain *ten* (10) or fewer residential dwellings at one location, or any-development-site-smaller-than-4-acres;
- B. Rehabilitation of existing residential dwellings;
- C. Units produced as a density bonus;
- D. Any residential project for development of single family residential units or subdivision lots created pursuant to a final map recorded on or before September, 2006], subdivision lots created pursuant to a final map recorded on or before September, 2006, where the only remaining discretionary entitlements required to develop the project are one or more of the following nonlegislative entitlements: variance, plan review or design review.

- E. Replacement of dwelling units destroyed by natural disaster or accidental loss.
- F. The construction of a single dwelling unit which is the whole of a residential development project and which is built, owned, and after completion, occupied for two years by a moderate income household verified by the planning director and meets the requirements established by this chapter. For purposes of this exemption, a dwelling unit shall be deemed "built" by its owner if it is built by or for a permit holder who intends to reside in the dwelling unit subject to this chapter.
- G. Projects that are the subject of development agreements currently in effect with the city and approved prior to the effective date of this chapter where such agreements expressly preclude the city from requiring compliance with this type of a housing fee program.
- H. A residential development project to the extent it has received a vested right to proceed without payment of housing impact fees pursuant to state law.
- I. Building permits for residential development projects if compliance with this section for such project has already been satisfied including, but not limited to, building permits on newly created lots where the subdivider has built affordable units or otherwise satisfied this section.

18.74.100 Administration of Affordability Control

Prior to the issuance of certificates of occupancy for affordable units, regulatory agreements and, if the affordable units are owner-occupied, resale restrictions, deeds of trust and/or other documents, all of which must be acceptable to the Planning Director and consistent with the requirements of this Chapter, shall be recorded against parcels having such affordable units and shall be effective for at least the period of time required by Health and Safety Code Section 33413 with respect to each affordable unit.

The maximum sales price permitted on resale of an affordable unit intended for owner-occupancy shall not exceed the seller's purchase price, adjusted for the percentage increase in median income since the seller's purchase, plus the value of substantial structural or permanent fixed improvements to the property as determined by the County Assessor. Median income shall be calculated based on the presumed occupancy levels used to determine affordable sales price.

The resale restrictions shall provide that in the event of the sale of an affordable unit intended for owner occupancy, the City shall have the right to purchase such affordable unit at the maximum price, which could be charged by the household.

No household shall be permitted to occupy an affordable unit, or purchase an affordable unit for owner-occupancy, unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by a regulatory agreement or resale restrictions. Households selected to occupy affordable units shall be selected from the list of eligible households maintained by the RDA to the extent provided in the regulatory agreement or resale restrictions.

18.74.110 Enforcement

It shall be a misdemeanor for any person to sell or rent an affordable unit as specified in this ordinance at a price or rent exceeding the maximum allowed or to a household not qualified, unless authorized by the regulatory agreement for such unit.

The Patterson City Attorney, as appropriate, shall be authorized to enforce the provisions of this document and all regulatory agreements and resale controls placed on affordable units by civil action and any other proceeding or method permitted by law.

Failure of any official to fulfill the requirements of a provision of this document shall not excuse any applicant from fulfilling the remaining requirements of the ordinance.

18.74.120 Adjustments

A developer of any project subject to the requirements in this chapter may appeal to the city council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirement.

A developer subject to the requirements of this chapter who has received an approved tentative subdivision or parcel map, use permit or similar discretionary approval and who submits a new or revised tentative subdivision or parcel map, use permit or similar discretionary approval for the same property may appeal for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously approved.

Any such appeal shall be made in writing and filed with the city clerk not later than ten (10) days before the first public hearing on any discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, then the appeal shall be filed within ten (10) days after payment of the fees objected to. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The city council shall consider the appeal at the public hearing on the permit application or at a separate hearing within sixty (60) days after the filing of the appeal, whichever is later. The appellant shall bear the burden of presenting substantial evidence to support the appeal including comparable technical information to support appellant' s position. No waiver shall be approved by the city council for a new tentative subdivision or parcel map, user permit or similar discretionary approval on property with an approved tentative subdivision or parcel map, use permit or similar discretionary permit unless the council finds that the new tentative subdivision or parcel map, user permit or similar discretionary approval is superior to the approved project both in its design and its mitigation of environmental impacts. The decision of the council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement.

Density Bonus

Chapters 18.16.160, 18.20.160, 18.28.160, and 18.32.160 are amended as follows:

In accordance with State law, a density bonus shall be allowed in accordance with Chapter 18.78. of 25%-shall-be-allmved-for-residential-projects-of-five-or-more-units w=hich-reserve-at-least-20%-of-the-project's-units-for-very-lwN-and-lmv-income households,-includir.:g-elderly-persons-and-families-'Nho-meet-the-criteria-for-very-low and-lmv-income-households-as-defined-by-the-State-Department-of-Housing-and Community-Development.

Chapter 18.82 is added as follows:

Chapter 18.82 - Density Bonus and Affordable Housing Incentives

Sec. 18.82.010. Purpose and intent.

In accordance with Sections 65915, 65915.5, and 65917 of the California Government Code, this article is intended to provide incentives for the production of housing for very low, low income, and senior households and for the production of housing for moderate income households residing in condominium and planned development projects. In enacting this Article, it is also the intent of the City of Patterson to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the city's housing element.

Sec. 18.82.020. Definitions.

Whenever the following terms are used in this article, they shall have the meaning established by this section:

Affordable ownership cost means monthly housing payments during the first calendar year of a household's occupancy, including interest, principat mortgage insurance, property taxes, homeowners insurance, property maintenance and repairs, a reasonable allowance for utilities, and homeowners association dues, if any, not exceeding the following:

(1) Moderate income units: One hundred ten percent of the area median income, adjusted for assumed household size based on unit size, multiplied by thirty-five percent and divided by twelve.

The assumed household size shall be one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom.

Affordable rent means monthly housing expenses, including all fees for housing services and a reasonable allowance for utilities, not exceeding the following:

- (1) Very low income units: Fifty percent of the area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve.
- (2) Low income units: Sixty percent of the area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve.

The assumed household size shall be 0.75 person in a single room occupancy unit, one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom.

Area median income means area median income for Stanislaus County as published pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

Child care facility means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.

Condominium project means a housing development as defined in subdivision (f) of Section 1351 of the Civil Code, not including the conversion of existing rental apartments to condominiums.

Density bonus means a density increase over the otherwise allowable maximum residential density, as described in section 18.82.030.

Density bonus housing agreement means a recorded agreement between a developer and the city as described in section 18.82.100 of this article to ensure that the requirements of this article are satisfied. The agreement, among other things, shall establish the number of target units, their size, location, terms and conditions of affordability, and production schedule.

Density bonus units means those residential units granted pursuant to the provisions of this article which exceed the otherwise allowable maximum residential density for the development site.

Development standard means any site or construction condition that applies to a residential development pursuant to any ordinance, general plan element, specific plan, or other local condition, law, policy, resolution, or regulation. "Site and construction conditions" means standards that specify the physical development of a site and buildings on the site in a housing development.

Housing development means construction projects consisting of five or more residential units, including single family and multifamily units, for sale or for rent. For the purposes of this article, "housing development" also includes a subdivision, planned unit development, or condominium project consisting of five or more residential units or unimproved residential lots, the substantial rehabilitation and conversion of an existing commercial building to residential use, and the substantial rehabilitation of an existing multifamily dwelling, where the rehabilitation or conversion would create a net increase of at least five residential units.

Incentives or concessions means such regulatory concessions as listed in Section 18.82.080.

Low income household means households whose income does not exceed the low income limits applicable to Stanislaus County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

Maximum residential density means the maximum number of residential units permitted by the city's zoning ordinance on the date the application is deemed complete.

Moderate income household means households whose income does not exceed the moderate income limits applicable to Stanislaus County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

Non-restricted unit means all units within a housing development excluding the target units.

Qualifying resident means senior citizens or other persons eligible to reside in a senior citizen housing development.

Planned unit development means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

- (1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.
- (2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1 of the California Civil Code.

Senior citizen housing development means a housing development as defined in California Civil Code Section 51.3.

Target unit means a dwelling unit within a housing development which will be reserved for sale or rent to, and is made available at an affordable rent or affordable ownership cost to, very low, low, or moderate-income households, or is a unit in a senior citizen housing development.

Very low income household means households whose income does not exceed the very low income limits applicable *to* Stanislaus County, as published and periodically updated by the State Department of Housing and Community Development pursuant *to* Section 50105 of the California Health and Safety Code.

Sec. 18.82.030. Calculation of Density Bonus and Number of Incentives and Concessions.

- (a) Subject *to* the findings included in section 18.82.090(c.), the city shall grant a density bonus *to* a developer of a housing development who seeks a density bonus and agrees *to* construct at least one of the following:
 - (1) 10 percent of the total units of the housing development as target units affordable *to* low income households; or
 - (2) 5 percent of the total units of the housing development as target units affordable *to* very low income households; or
 - (3) A senior citizen housing development; or
 - (4) 10 percent of the total units of a newly constructed condominium project or planned development as target units affordable *to* moderate income households.
- (b) In determining the number of density bonus units to be granted pursuant to subsection (a) of this section, the maximum residential density for the site shall be multiplied by 0.20 for subsections (1), (2), and (3) and 0.05 for subsection (4), unless a lesser number is selected by the developer.
 - (1) For each one percent increase above 10 percent in the percentage of units affordable to low income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent.
 - (2) For each one percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent.
 - (3) For each one percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by one percent up to a maximum of 35 percent.

When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.

C) The density bonus units shall not be included when determining the number of target units required to qualify for a density bonus. When calculating the required

- number of target units, any calculations resulting in fractional units shall be rounded to the next larger integer.
- (d) The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection (a) above. Regardless of the number of target units, no housing development may be entitled to a density bonus of more than 35 percent.
- (e) Subject to the findings included in section 18.82.090(c.), when a developer seeks a density bonus, the city shall grant incentives or concessions listed in section 18.82.080 as follows:
 - (1) One incentive or concession for projects that include at least 10 percent of the total units for low income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or pla1med development.
 - (2) Two incentives or concessions for projects that include at least 20 percent of the total units for low income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.
 - (3) Three incentives or concessions for projects that include at least 30 percent of the total units for low income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development.
- (f) Each housing development is entitled to only one density bonus, which may be selected based on the percentage of either very low income target units, low income target units, or moderate income target units, or the project's status as a senior citizen housing development. Density bonuses from more than one category may not be combined.
- (g) In accordance with state law, neither the granting of a concession or incentive nor the granting of a density bonus shall be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.
- (h) The following tables summarize this information:

Density Bonus Summary Table

Target Group	Minimum% Target Units	Bonus Granted	Additional Bonus for Each 1% Increase in Target Units	% Target Units Required for Maximum 35% Bonus
Very Lowlncome	5%	20%	2.5%	11%

Low Income	10%	20%	1.5%	20%
Moderate Income (Condo or PD only)	10%	5%	1%	40%
Senior Citizen Housing	100%	20%		
Development				

Incentives/Concessions Summary Table

Target Group	Target Units		
Very Low Income	5%	10%	15%
Low Income	10%	20%	30%
Moderate Income (Condo or PD only)	10%	20%	30%
Maximum Incentive(s)/Concession(s)	1	2	3

Note: A concession or incentive may be requested only if an application is also made for a density bonus, except for child care facilities pursuant to section 18.82.4.

Sec. 18.82.040. Land Donation.

- (a) When a developer of a housing development donates land to the city as provided for in this section, the developer shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this section, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density allowed by Section 18.82.030(b.), up to a maximum combined density bonus of 35 percent if a developer seeks both the increase required pursuant to this section and Section 18.82.030. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.
- (b) A housing development shall be eligible for the density bonus described in this section if the city makes all of the following findings:
 - (1) The developer will donate and transfer the land no later than the date of approval of the final subdivision map, parcel map, or development application for the housing development.
 - (2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction *of* units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development, or will permit construction of a greater percentage of units if proposed by the developer.

- (3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as very low income housing, and is now or at the time of construction will be served by adequate public facilities and infrastructure. The land also has the appropriate zoning and development standards to make the development of the very low income units feasible. No later than the date of approval of the final subdivision map, parcel map, or development application for the housing development, the transferred land will have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land.
- (4) The transferred land and the very low income units constructed on the land will be subject to a deed restriction ensuring continued affordability of the units consistent with this article, which restriction will be recorded on the property at the time of dedication.
- (5) The land will be transferred to the city, redevelopment agency, or to a housing developer approved by the city. The city reserves the right to require the developer to identify a developer of the very low income units and to require that the land be transferred to that developer.
- (6) The transferred land is within the boundary of the proposed housing development. The transferred land may be located within one-quarter mile of the boundary of the proposed housing development provided that the city makes all of the findings included in section 18.82.040.

Sec. 18.82.050. Child Care Facilities.

- (a) When a developer proposes to construct a housing development that includes target units as specified in section 18.82.030 and includes a child care facility that will be located on the premises *of*, as part of, or adjacent to the housing development, the city shall grant either *of* the following if requested by the developer:
 - (1) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
 - (2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (b) A housing development shall be eligible for the density bonus or concession described in this section if the city makes all of the following findings:
 - (1) The child care facility will remain in operation for a period of time that is as long as or longer than the period of time during which the target units are required to remain affordable pursuant to Section 18.82.070 of this Article.

- (2) Of the children who attend the child care facility, the percentage of children of very low income households, low income households, or moderate income households shall be equal to or greater than the percentage of dwelling units that are proposed to be affordable to very low income households, low income households, or moderate income households.
- (c) Notwithstanding any requirement of this section, the city shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community already has adequate child care facilities.

Sec. 18.82.060. Condominium Conversions.

- (a) The city shall grant either a density bonus or other incentives of equivalent financial value if the applicant for a conversion of existing rental apartments to condominiums agrees to provide 33 percent of the total units of the proposed condominium project as target units affordable to low or moderate income households, or to provide 15 percent of the total units in the condominium conversion project as target units affordable to low income households. All such target units shall remain affordable for the period specified in section 18.82.070.
- (b) For purposes of this section, a "density bonus" means an increase in units of 25 percent over the number of apartments to be provided within the existing structure or structures proposed for conversion.
- c) No condominium conversion shall be eligible for a density bonus if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were previously provided pursuant to this article or Government Code section 65915.

Sec. 18.82.070. Affordability and Development Standards.

- (a) Target units shall be constructed concurrently with non-restricted units or pursuant to a schedule included in the density bonus housing agreement.
- (b) Target units offered for rent to for low income and very low income households shall be made available for rent at an affordable rent and shall remain restricted and affordable to the designated income group for a minimum period of 30 years. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the housing development. Target rental units will not meet the requirements for rental inclusionary units contained in 18.74.030 unless they remain restricted and affordable for 99 years pursuant to section 18.74.100.
- c) Target units offered for sale to very low, low, or moderate income households in condominiums and planned developments shall be sold at an affordable ownership

cost. The maximum resale price shall be the lower of: (1) fair market value or (2) the seller's initial purchase price, increased by the lesser of (A) the rate of increase of area median income during the seller's ownership or (B) the rate at which the consumer price index increased during the seller's ownership. The seller of the unit shall retain the market value at the time of sale of any capital improvements made by the seller, the down payment, and the seller's proportionate share of appreciation. Because this subsection limits the seller's appreciation, the seller's proportionate share of appreciation is 100 percent.

- (d) Target units shall be built on site, unless off-site construction is approved in the city's discretion generally pursuant to Section 18.74.0S0(At and shall be dispersed within the housing development. The number of bedrooms of the target units shall be equivalent to the bedroom mix of the non-target units of the housing development, except that the developer may include a higher proportion of target units with more bedrooms. The design and appearance of the target units shall be compatible with the design of the total housing development. Housing developments shall comply with all applicable development standards, except those which may be modified as provided by this article.
- (e) Upon the request of the developer, the city shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of section 18.82.030 that exceeds the following ratios:
 - (A) Zero to one bedrooms: one onsite parking space.
 - (B) Two to three bedrooms: two onsite parking spaces.
 - (C) Four and more bedrooms: two and one-half parking spaces.
 - (2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through on-street parking.

Sec. 18.82.080. Development Standards Modified as Incentive or Concession.

- (a) Incentives or concessions that may be requested pursuant to section 18.82.030 may include the following:
 - (1) A reduction of site development standards or a modification of zoning code requirements or architechual design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code and which result in identifiable, financially sufficient, and actual cost reductions, including, but not limited to:
 - (A) Reduced minimum lot sizes and/or dimensions.
 - (B) Reduced minimum lot setbacks.

- (C) Reduced minimum outdoor and/or private outdoor living area.
- (D) Increased maximum lot coverage.
- (E) Increased maximum building height and/or stories.
- (F) Reduced minimum building separation requirements.
- (G) Reduced street standards, such as reduced minimum street widths.
- (2) Approval of mixed use zoning in conjunction with the housing development if non-residential land uses will reduce the cost of the housing development and if the city finds that the proposed non-residential uses are compatible with the housing development and with existing or planned development in the area where the proposed housing development will be located.
- (3) Incentives for inclusionary units listed in section 18.74.060.
- (4) Modifications of those development standards included in section 18.82.0S0(a)(l).
- (5) Off-site construction of target units, provided that the city makes all of the findings included in section 18.74.0S0(A) (Off-Site Construction of Inclusionary Units).
- (6) Deferred development impact fees (e.g., capital facilities, parkland in-lieu, park facilities, fire, or traffic impact fees).
- (7) Other regulatory incentives or concessions proposed by the developer or the city which result in identifiable, financially sufficient, and actual cost reductions.
- (b) Developers may seek a waiver or modification of development standards that will have the effect of precluding the construction of a housing development meeting the criteria of section 18.82.030 at the densities or with the concessions or incentives permitted by this Article. The developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

Sec. 18.82.090. Application requirements and review.

- (a) An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this article shall be submitted with the first application for approval of a housing development and processed concurrently with all other applications required for the housing development. The application shall be submitted on a form prescribed by the city and shall include at least the following information:
 - (1) Site plan showing total number of units, number and location of target units, and number and location of proposed density bonus units.
 - (2) Level of affordability of target units and proposals for ensuring affordability.

- (3) Description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards. For all incentives and concessions except mixed use development, the application shall include evidence that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions. For waivers or modifications of development standards, the application shall show that the waiver or modification is necessary to make the housing units economically feasible and that the development standards will have the effect of precluding the construction of a housing development meeting the criteria of section 18.82.030 at the densities or with the concessions or incentives permitted by this Article.
- (4) If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in section 18.82.040(b) can be made.
- (5) If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facilities and provide evidence that each of the findings included in section 18.82.0S0(b) can be made.
- (b) An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this Article shall be considered by and acted upon by the approval body with authority to approve the housing development. Any decision regarding a density bonus, incentive, concession, waiver, modification, or revised parking standard may be appealed to the planning commission and from the planning commission to the city council. In accordance with state law, neither the granting of a concession, incentive, waiver, or modification nor the granting of a density bonus shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.
- C) Before approving an application for a density bonus, incentive, concession, waiver, or modification, the approval body shall make the following findings:
 - (1) If the density bonus is based all or in part on donation of land, the findings included in section 18.82.040(b).
 - (2) If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, the findings included in section 18.82.0S0(b).
 - (3) If the incentive or concession includes mixed use development, the finding included in section 18.82.080(a)(2), the developer has shown that the waiver or modification is necessary to make the housing units economically feasible.
- (d) If a request for a concession or incentive is otherwise consistent with this Article, the approval body may deny a concession or incentive if it makes a written finding, based upon substantial evidence, of either of the following:

- (1) The concession or incentive is not required to provide for affordable rents or affordable ownership costs.
- (2) The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.
- (e) If a request for a waiver or modification is otherwise consistent with this article, the approval body may deny a concession or incentive only if it makes a written finding, based upon substantial evidence, of either of the following:
 - (1) The waiver or modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.
 - (2) The waiver or modification would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
- (f) If a density bonus or concession is based on the provision of child care facilities, the approval body may deny the bonus or concession if it finds, based on substantial evidence, that the city already has adequate child care facilities.

Sec. 18.82.100. Density bonus housing agreement.

- (a) Developers requesting a density bonus shall agree to enter into a density bonus housing agreement with the city. A density bonus housing agreement shall be made a condition of the discretionary plairning permits for all housing developments pursuant to this article and shall be recorded as a restriction on any parcels on which the target units or density bonus units will be constructed.
- (b) The density bonus housing agreement shall be recorded prior to final or parcel map approval, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The

density bonus housing agreement shall run with the land and bind on all future owners and successors in interest.

- (c) The density bonus housing agreement shall include but not be limited to the following:
 - (1) The total number of units approved for the housing development, the number, location, and level of affordability of target units, and the number of density bonus units.
 - (2) Standards for determining affordable rent or affordable ownership cost for the target units.
 - (3) The location, unit size in square feet, and number of bedrooms of target units.
 - (4) Provisions to ensure affordability in accordance with sections 18.82.6(b) and (c) of this article.
 - (5) A schedule for completion and occupancy of target units in relation to construction of non-restricted units.
 - (6) A description of any incentives, concessions, waivers, or reductions being provided by the city.
 - (7) A description of remedies for breach of the agreement by either party. The city may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
 - (8) Procedures for qualifying tenants and prospective purchasers of target units.
 - (9) Other provisions to ensure implementation and compliance with this Article.
- (d) In the case of for-sale housing developments, the density bonus housing agreement shall include the following conditions governing the sale and use of target units during the applicable use restriction period:
 - (1) Target units shall be owner-occupied by eligible very low, low, or moderate income households, or by qualified residents in the case of senior citizen housing developments.
 - (2) The purchaser of each target unit shall execute an instrument approved by the city and to be recorded against the parcel including such provisions as the city may require to ensure continued compliance with this article.

- (e) In the case of rental housing developments, the density bonus housing agreement shall provide for the following:
 - (1) Procedures for establishing affordable rent, filling vacancies, and maintaining target units for eligible tenants;
 - (2) Provisions requiring verification of household incomes.
 - (3) Provisions requiring maintenance of records to demonstrate compliance with this sub-section.
- (f) Density bonus housing agreements for child care facilities and land dedication shall ensure continued compliance with all conditions included in section 18.82.040 and 18.82.050, respectively.

Chapter 16.194

AFFORDABLE HOUSING

Sections:

Sections.				
16.194.010	Title and Purpose of			
	Provisions.			
16.194.020	Definitions.			
16.194.030	Findings.			
16.194.040	General Requirements.			
16.194.050	BMR Plus Affordable Units			
	with Down Payment			
	Assistance			
16.194.060	BMR Affordable Units			
16.194.070	Negotiated Affordable Units			
16.194.080	Affordable Housing In-Lieu			
	Fee			
16.194.090	Other Implementation			
	Procedures			
16.194.100	Enforcement.			
16.194.110	Appeal.			
16.194.120	Severability.			

16.194.010 Title and Purpose of Provisions.

A. <u>Title</u>. The provisions of this Chapter shall be known as the "Affordable Housing Program".

- B. <u>Purpose</u>. The purpose of this Affordable Housing Program is to:
- 1. Enhance the public welfare and assure that further housing development contributes to the attainment of the City's housing goals as described in the Housing Element of the General Plan, by creating, preserving, maintaining, and protecting housing affordable for households of lowand moderate-income;
- 2. Assure that the remaining developable land in the City's planning area is utilized in a manner consistent with the City's housing policies and needs.
- 3. Provide an opportunity for home ownership for more Ripon residents,

recognizing that new development is responsible for alleviating some, but not all, of the problems associated with affordable housing. (Ord. 843, 2016, Ord. 869, 2017)

16.194.020 Definitions.

As used in this Chapter, each of the following terms shall be defined as follows:

"Affordable Housing Agreement" is an agreement executed by the City Administrator or his/her designee on behalf of the City, and by an authorized representative of the owner of a residential project, specifying how the residential project will comply with this Chapter. A development agreement pursuant to California Government Code Sections 65864 et seg, which states that it is an affordable housing agreement under this Chapter may serve as an affordable housing agreement.

"Affordable Housing Committee" is an ad hoc committee which shall meet on an asneeded basis for the purpose of negotiating the terms and conditions of an Affordable Housing Agreement for a development project under this Chapter. The Affordable Housing Committee shall consist of two members of the City Council, one member of the Planning Commission, the City Administrator and the Planning Director.

"Affordable Housing Cost for BMR Units". housing monthly payments, Average including mortgage loan principle and interest, property taxes, home owners insurance, a \$200 utility allowance, mortgage insurance if applicable and Home Owners Association Dues if applicable. The maximum household income affordable BMR unit shall be based on presumed household sizes appropriate to the unit as defined in California Health & Safety Code Section 50052.5 or, if Section 50052.5

462

no longer provides for such household sizes, the presumed household size defined in any successor statutory provision which applies under the Law. Pursuant to an affordable housing agreement, the maximum affordable housing cost allowed by this Section may be modified to conform to changes in California Health & Safety Sections 50052.5 or 50053 or the terms of any other housing program which affects a residential project.

"Affordable Housing Fee" means an affordable housing fee paid to the City of Ripon by the owner/developer of a BMR Plus Affordable Unit. The affordable housing fee shall be an amount equal to 3.5% of the upper FHA lending limit for San Joaquin County, along with a 10% administration fee based on the affordable housing fee amount.

"BMR Affordable unit" means an ownership dwelling unit, including senior housing, which are required under this Chapter to be available at an affordable housing cost to specified households, that meet the affordable housing costs for BMR units and are marketed to low and moderate income households as defined in this chapter.

"BMR Plus Affordable Unit" means an ownership dwelling unit, including senior housing, which are required under this Chapter to be available at an affordable housing cost to specified households. BMR Plus affordable unit sales prices shall not exceed the applicable FHA lending limits for San Joaquin County plus 3.5% down payment.

"City Subsidy" means an equity amount equal to the difference between fair market value of the owner-occupied affordable unit at the time it was sold to the owner and the actual purchase price of the owner-occupied affordable unit that was paid by the owner.

"Custom home development" means any residential development being subdivided by one party and sold as individual lots or parcels to separate owners for construction and development of custom dwelling units.

"Down Payment Assistance" is a program that allows qualified applicants the ability to borrow up to 3.5% of the upper FHA lending limit for BMR Plus homes. The down payment assistance is considered a second mortgage and carries an interest rate based on the most current Federal Funds rate. The down payment assistance shall be a 15 year note with no payments required for the first five years. Interest will begin accruing from inception of the loan and there shall be no prepayment penalties.

"Dwelling unit" means a dwelling designed and intended for occupancy by one household.

"Eligible Household" means a household whose income does not exceed the maximum specified in this Section for a given affordable unit.

"Household Income" the combined gross income for all adult persons living in a dwelling unit as calculated for the purpose of the Section 8 program under the U.S. Housing Act of 1937, as amended, or its successor.

"Housing Director" shall be the Planning Director or such other person as may be designated by the City Administrator.

"In-lieu fee" means a fee paid to the City by an applicant/developer in lieu of providing the required affordable units or for partial units required pursuant to this Chapter.

463

"Lower Income Household" means a household whose income does not exceed eighty percent (80%) of the area median income for San Joaquin County, as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

"Low Income Maximum Affordable Housing Cost". The maximum affordable housing cost for low income households shall be thirty percent (30%) of seventy percent (70%) of area median income.

"Market rate unit" is defined as a residential unit in Ripon sold at the market rate, i.e., at the highest price on the date of valuation that would be agreed to by a seller and a buyer, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

"Moderate Income Household" means a household whose income does not exceed one-hundred and twenty percent (120%) of the area median income for San Joaquin County, as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

"Moderate Income Maximum Affordable Housing Cost". The maximum affordable housing cost for moderate income households shall be thirty five percent (35%) of one-hundred ten percent (110%) of area median income.

"Refinance and resale limitation agreement" means an agreement between the City and an individual homebuyer of an ownership affordable unit documenting resale controls and/or subsidy repayment obligations.

"Resale controls" means legal restrictions by which affordable units shall be restricted to ensure that the unit remains affordable. Resale controls for owner occupied units shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the subject property.

"Residential development" means includes, without limitation, for-sale singlefamily dwellings, multiple family dwellings, groups of dwellings, condominium or developments, townhouse condominium conversions, cooperative developments, mixed use developments that include housing units, manufactured housing, mobile homes, and residential land subdivisions intended to be sold to the general public. Residential specifically development excludes development for multifamily rental housing. (Ord. 843, 2016)

"Silent Loan" means a second or third loan (City Subsidy) on an affordable unit which as long as the family and/or individual remains in compliance with the affordable housing program is a deferred loan. The loan balance is only due and payable if the home sells, transfers title or there is a default of the program requirements. (Ord. 869, 2017)

16.194.030 Findings.

In enacting this Chapter, the City Council of the City of Ripon finds as follows:

- A. Housing costs in Ripon have steadily increased;
- B. Substantial need exists for affordable housing to meet the City's regional needs as determined by the State;
- C. Requiring new development to pay its fair share of the costs associated with the provision of affordable units is consistent with the City's Housing Element goals of fostering an adequate supply of housing for people at all economic levels and maintaining both economic diversity and geographically dispersed affordable housing;

464 (8/18) ATTACHMENT 4

- D. Rising land prices have contributed to the lack of new affordable housing.
- E. Through careful planning adherence to high quality development standards, including generous street and sidewalk widths, lot setbacks, densities, provision of high quality parks and recreation amenities, maintaining high public safety staffing ratios, working cooperatively with the Ripon Consolidated Fire District and Ripon Unified School District to ensure that public safety and school facilities are appropriately funded, and by managing and limiting residential growth, the City of Ripon has maintained a quality of life that benefits Ripon residents and their property values.
- F. The existing relatively high property values in Ripon translate into a "premium" on each and every residential unit in Ripon, including new single family residential units, and results in Ripon being a highly desirable community for residential home builders. At the same time, Ripon's high property values naturally make home ownership in Ripon less affordable.
- G. New development has, and will continue to exacerbate the affordable housing shortage in the City of Ripon, as developers of single family residential projects will continue to sell "market rate" homes and will continue to benefit from the "premium" described herein.
- H. The City Council recognizes that government, acting alone, cannot solve the regional problem of affordable housing, but new residential single family development projects can and should participate in meaningful solutions to prevent the affordable housing problem from becoming worse. In addition to the measures described in this Chapter and applicable to new single family residential development, the City Council has designated numerous parcels which are zoned for multi-family development. Development of these sites at higher densities is expected to provide

housing opportunities for low and very low income residents. Further, the City Council has approved other programs designed to promote home ownership for lower income residents, including but not limited to, a First Time Homebuyer Down Payment Assistance Program, low interest housing rehabilitation loans, Below Market Rate Inclusionary Housing Program, Pre-Owned BMR Housing and Pre-owned market rate homes sold under the BMR Program and similar programs. Accordingly, the City Council finds that new single family residential developments are not burdened disproportionately by the requirements of this Chapter. (Ord. 843, 2016, Ord. 869, 2017)

16.194.040 General Requirements.

A. Applicability. This Chapter shall apply to all new residential developments with dwelling units designed and intended for residential occupancy in the City's planning area. No residential development, other than that exempted in subsection E of this Section, shall be undertaken, and no building permits shall be accepted for processing or issued, unless the development has been approved in accordance with this Chapter. requirements of this Chapter shall be applied prior to the application of a density bonus and no more than once to an approved residential development, regardless of changes in its character or ownership, provided that the total number of dwelling units does not change.

B. Concurrent Construction. In cases where the construction of affordable units is required under this Chapter, all affordable units in a residential development or phase of a residential development shall be constructed prior to or concurrently with market rate units, as set forth, and in the location specified, in a schedule of construction approved by the City and set forth in the Affordable Housing Agreement or Development Agreement. The building

permits for the last ten percent of the nonrestricted dwelling units shall not be issued until the last affordable unit has been issued a building permit and construction of the last affordable unit has begun.

- C. Design and Distribution Affordable Units. All affordable units within residential development shall comparable to the market rate units in interior and exterior design, quality, materials, architectural elements and overal1 construction quality, as well as number and proportion of bedroom types. Affordable units shall be comparable to the "standard" landscaping and size. In addition, all affordable units shall include the same or similar interior amenities offered for market rate units within a residential development. Affordable units dispersed shall be throughout the residential development so as to prevent the concentration of affordable units, unless the Planning Commission has approved an alternative distribution pattern, or approval of an off-site location has been granted.
- D. Length of Affordability. It is the intent of this Affordable Housing Program that affordable ownership units should remain affordable for as long as is practicable, taking into account the City's funding and staffing limitations and the difficulties associated with monitoring eligibility. Accordingly, the owner of an affordable ownership unit shall submit such information as may be required by the Housing Director, whether annually or at such frequency deemed necessary and appropriate by the Housing Director, to document the owner's continued occupancy of the affordable ownership unit, and the owner's continued compliance with the applicable terms and conditions of this Chapter. Upon the sale of any affordable ownership unit, the Owner shall comply with the provisions of Section 16.194.090 C of this Chapter. (Ord. 843, 2016).

- E. <u>Exemptions</u>. The following are exempt from the provisions of this Chapter:
- 1. Replacement housing due to natural disaster on a one for one basis (i.e., one dwelling unit replaced for each legally existing dwelling unit);
- 2. Modifications to existing properties or structures that do not increase the number of dwelling units;
- 3. Residential care facilities with dwelling units that are non self-sufficient units; that is, they do not include kitchen facilities (if a project includes both self-sufficient and non self-sufficient units, only the latter are exempt);
- 4. A residential second unit (as defined by state law) on an existing residential lot, subject to compliance with the zoning ordinance.
- 5. Rental housing units (apartments, duplexes, triplexes).

F. Affordability

Requirement/Alternatives for Compliance.

Developers of single family residential developments with dwelling units designed and intended for residential occupancy have several options for achieving compliance with this Ordinance, each option is described in subsections 16.194.050, 16.194.060 and 16.194.070. (Ord. 869, 2017)

16.194.050 BMR Plus Affordable Units with Down Payment Assistance

A. Any developer shall ensure that 10% of the total units within a residential development project will meet FHA lending limits for San Joaquin County and shall pay to the City of Ripon an Affordable Housing Fee prior to receiving a final on the affordable unit as defined herein. Any fraction of an affordable unit required under this Section shall be resolved through payment of an In-Lieu Fee as defined in section 16.194.080 A. Additionally, the seller/builder shall be required to cover one half of the title, escrow

466 (8/18) ATTACHMENT 4 and recording fees per San Joaquin regulations for the BMR Plus unit. If the fair market value (as established by either an appraisal or an agreed upon value by the Planning Director and the Developer) of the house exceeds the sales price (FHA upper lending limit for San Joaquin County plus 3.5% down payment), the BMR Plus Buyer shall enter into an equity recapture agreement with the City of Ripon. Such equity recapture agreement shall require the BMR Plus Buyer to repay one hundred percent (100%) of the difference between the actual sales price of the unit at time of purchase and the fair market value of the unit at time of purchase ("City Subsidy"). The City Subsidy shall be considered a "silent loan" on the home and shall not accrue any interest for the duration of the loan. The entire amount of the City Subsidy shall be paid back to the City of Ripon upon sale or transfer of the home or if there is a default of any of the program requirements. Any repayment of those funds shall be used for future affordable housing programs within the City of Ripon.

- B. All BMR Plus Affordable Units shall meet the following development requirements.
- 1. All BMR Plus units shall be comparable in exterior elevations, interior and exterior material and amenities with all other market rate units within the development project.
- 2. BMR Plus units shall be consistent in number of bedrooms and bathrooms with all other units within the development. At a minimum BMR Plus units shall be 3 bedroom/2 bath units, except that senior housing projects may be granted an exemption from this requirement.
- 3. BMR Plus units may be developed as duet homes (zero lot line, attached homes)

on corner lots. Homes built as duets shall be constructed as a Planned Unit Development for that lot.

- C. BMR Plus Affordable Unit Sales Requirements
- 1. The sales price for eligible BMR Plus residential units under this Chapter shall not exceed the applicable upper FHA lending limit for San Joaquin County, as revised from time to time, plus a 3.5% down payment.
- 2. The BMR Plus unit must be sold to income-qualified individuals who do not currently own a home/property at time of close of escrow.
- 3. Selection of an income qualified buyer shall be done by the developer using a lottery based system, overseen by the City of Ripon.
- D.BMR Plus Affordable Unit Buyer Requirements and Options
- 1. BMR Plus buyers shall qualify for purchase of a BMR Plus unit based upon income limits, credit score and other requirements adopted by the City Council by resolution and amended from time to time.
- 2. Down payment assistance is available to any qualified buyer pursuant to this Chapter from the City of Ripon. All down payment loans shall take the form of a second lien on the property with the following requirements:
- i. Qualified applicants may receive Down Payment Assistance funds for the purchase of a BMR Plus qualified home from the City of Ripon. The entire Down Payment Assistance can be borrowed from the City of Ripon's Affordable Housing Program with the following stipulations:
 - a. The City of Ripon will provide Down Payment Assistance funds up to 3.5% of the upper FHA lending limit for a qualified applicant. The down payment assistance shall be a 15 year note with a fixed interest

rate based on the current Federal Funds rate at time of closing. No payments shall be required for the first five years and repayment of the loan shall commence beginning the sixth year. Interest will begin accruing from inception of the loan and there shall be no prepayment penalties.

- b. Upon sale or transfer of title of the unit, the full balance of the down payment assistance loan plus any accrued interest shall be due and payable upon close of escrow.
- c. Any down payment assistance funds received or repaid shall be used for future affordable housing programs.
- 3. BMR Plus buyers shall occupy the house as their primary residence. The City Council may adopt a resolution establishing a monitoring program to ensure the BMR Plus buyer is still living in the unit as their primary residence.
- 4. Variable rate mortgage loans are not allowed under this program.
- 5. The processing of loan papers upon refinancing or sale of unit will be subject to processing fees set by resolution of the City Council to help offset City expenses.
- 6. Refinancing of a BMR Plus affordable unit is permitted under the following circumstances:
- i. If homeowner is refinancing and not taking any cash out, the City will agree to subordinate the second loan (down payment assistance) and the City Subsidy, if applicable, so long as the terms of the refinancing are improving the homeowner's position, i.e. lower interest rate, etc. The second and City Subsidy loans will remain unchanged.

ii. If homeowner is refinancing and taking cash out, the entire second loan (down payment assistance) shall be due and payable in full. The City of Ripon will agree to subordinate the City Subsidy, if applicable, so long as the total amount of all debt secured against the unit does not exceed 80% of the Fair Market Value. (Ord. 877, 2018)

16.194.060 BMR Affordable Units

- A. Any developer shall ensure that 5% of the total units within a residential development project will meet BMR Affordable Unit requirements for sale to low and moderate income households (as defined in the California Health and Safety Code) and as defined in this ordinance. Number of units for each income category shall be based upon seventy-five percent (75%) of the units meeting moderate BMR requirements and twenty-five percent (25%) of the units meeting low BMR requirements. Any fraction of an affordable unit required under this Section shall be resolved through payment of the In-Lieu Fee.
- B. All BMR Affordable Units shall meet the following development requirements.
- 1. All BMR units shall be comparable in exterior elevations, interior and exterior material and amenities with all other market rate units within the development project.
- 2. BMR units shall be consistent in number of bedrooms and bathrooms with all other units within the development. At a minimum BMR units shall be 3 bedroom/2 bath units, except that senior housing projects may be granted an exemption from this requirement.
- 3. BMR units may be developed as duet homes on corner lots. Homes built as duets shall be constructed as a Planned Unit Development for that lot.

468 (8/18) ATTACHMENT 4

- C. BMR Affordable Unit Sales Requirements
- 1. The BMR sales price for eligible BMR residential units under this Chapter shall be based upon following parameters based on income categories:
- i. For Low income units the sales price shall be based upon a maximum affordable housing cost for that category. The maximum affordable housing cost shall be thirty percent (30%) of seventy percent (70%) of area median income as adopted by resolution on a yearly basis. The sales price is therefore established by assuming a 3.5% down payment and the maximum allowable housing cost for the income category.
- ii. For Moderate income units the sales price shall be based upon a maximum affordable housing cost for that category. The maximum affordable housing cost shall be thirty-five percent (35%) of one hundred ten percent (110%) of area median income as adopted by resolution on a yearly basis. The sales price is therefore established by assuming a 3.5% down payment and the maximum allowable housing cost for the income category.
- 2. The BMR Buyer shall enter into an equity recapture agreement with the City of Ripon upon purchase of the home. Such equity recapture agreement shall require the BMR Buyer to repay one hundred percent (100%) of the difference between the actual sales price of the unit at time of purchase and the fair market value of the unit at time of purchase ("City Subsidy"). The City Subsidy shall be considered a "silent loan" on the home and shall not accrue any interest for the duration of the loan. The entire amount of the City Subsidy shall be paid back to the City of Ripon upon sale or transfer of the home or if there is a default of any of the program requirements. Any repayment of those funds

- shall be used for future affordable housing programs within the City of Ripon.
- 3. The BMR unit must be sold to income-qualified individuals who do not currently own a home/property and have not owned a home/property within the previous 12 months.
- 4. Selection of an income qualified buyer shall be done by the developer using a lottery based system, overseen by the City of Ripon.
- D. BMR Affordable Unit Buyer Requirements and Options
- 1. BMR buyers shall qualify for purchase of a BMR unit based upon income limits, credit score and other requirements adopted by the City Council by resolution and amended from time to time.
- 2. BMR buyers shall occupy the house as their primary residence. The City Council may adopt a resolution establishing a monitoring program to ensure the BMR buyer is still living in the unit as their primary residence.
- 3. Variable rate mortgage loans are not allowed under this program.
- 4. The processing of loan papers upon refinancing or sale of unit will be subject to processing fees set by resolution of the City Council to help offset City expenses.
- 5. Refinancing of a BMR affordable unit is permitted under the following circumstances:
- i. If homeowner is refinancing and not taking any cash out, the City will agree to subordinate the second loan (City Subsidy) and the second loan remains unchanged.
- ii. If homeowner is refinancing and intends to take cash out, the City of Ripon will agree to subordinate the second (City Subsidy) so long as the total amount of all debt secured against the Unit does not exceed 80% of the Fair Market Value. (Ord. 869, 2017)

469 (8/18) ATTACHMENT 4

745

16.194.070 Negotiated Affordable Units

developer may negotiate Alternative Equivalent Proposal with the Affordable Housing Committee, subject to approval by the City Council, which specifies an alternate means of satisfying this Chapter. An Alternative Equivalent Proposal may include, but is not limited to, payment of an in-lieu fee, dedication of vacant developable land, construction of affordable units on another site, and conversion of existing market rate for-sale or for-rent dwelling units within the City to affordable units through acquisition and enforcement of required affordability restrictions consistent with this Chapter. All alternative equivalent proposals must be submitted in writing, demonstrate that the alternative equivalent will further affordable housing in the City to an equal or greater extent than the construction of required on-site affordable units required under this Chapter and satisfy the following minimum conditions: (1) be consistent with the City's Housing Element; (2) provide the same number or greater of affordable units; (3) have equivalent or lesser impact on the City's administrative obligations, including maintenance and management duties, than the on-site requirement; and (4) must result in the actual construction of affordable ownership units. (Ord. 869, 2017)

16.194.080 Affordable Housing In-Lieu Fee

The In-Lieu fee for BMR Plus Affordable Units with down payment assistance and BMR Affordable Units shall be calculated using the following formulas:

A. <u>BMR Plus In-Lieu Fee</u>. The difference between the median home price in Ripon and the applicable FHA lending limit, plus the down payment for a BMR Plus unit, divided by 10 units. By way of example:

1. Example with a median home sales price in Ripon of \$400,000 and an upper FHA lending limit of \$333,500.00.

 $(400,000 - 333,500) + (333,500 \times .035) = $7,817.25$ per unit

- B. <u>BMR In-Lieu Fee.</u> The difference between the median home price in Ripon and the applicable Moderate BMR sales price times the required moderate units for a subdivision plus the difference between the median home price in Ripon and the applicable Low BMR sales price times the required low units for a subdivision divided by number of units in the subdivision. By way of example:
- 1. Example with a median home sales price in Ripon of \$400,000, a Moderate BMR Sales Price of \$250,000 and a Low BMR Sales Price of \$110,000 for a 100 lot subdivision.

$$\frac{(400,000-250,000) \times 3.8 + (400,000-110,000) \times 1.3}{100} = \$9,470.00$$
 per unit

- C. Payment of In-Lieu Fee to satisfy fractional requirements of affordable units. If a developer is required to pay an in-lieu fee to meet fractional affordable housing requirements, the fractional requirement shall be met by multiplying the fractional requirement by the appropriate per unit inlieu fee for the affordable housing category required. For example a 10.8 affordable BMR Plus unit requirement, would require 10 units to be built meeting the BMR Plus affordable requirements and payment of the per unit BMR Plus affordable in-lieu fee multiplied by 0.8.
- D. A Developer may opt to buy out of the affordable requirements for a project by paying an in-lieu fee. In order to buy out of their affordable requirements a developer shall take the appropriate per unit in-lieu fee and multiply the per unit fee by the number

469-1 (8/18) ATTACHMENT 4 of market rate units in the subdivision. (Ord. 869, 2017)

16.194.090 Other Implementation Procedures.

- A. <u>Satisfaction of Affordable Housing Requirement</u>. Each proposal for satisfying the City's affordable housing requirement, together with any proposed Affordable Housing Agreement shall be reviewed by the Planning Director or designee, considered for recommendation by the Affordable Housing Committee, and forwarded to the City Council for approval.
- B. Agreements. Prior to the approval of Tentative Map for any residential development to which this Chapter applies, the City and the residential developer shall enter into a Development Agreement or Affordable Housing Agreement in a form approved by the City Attorney. ownership affordable units, the City and the individual homebuyer may, at the discretion of the Planning Director, enter into a recorded Refinance and Resale Limitation Agreement in a form approved by the City Attorney. The City Administrator or designee is authorized to execute Affordable Housing Agreements. resale controls and/or rent restrictions and any other documents necessary to effectuate the implementation of this Chapter, provided agreements and documents consistent with the requirements of this Chapter.
- C. City's Right of Option to Purchase Affordable Ownership Units. The resale restrictions as set forth in the Refinance and Resale Limitation Agreement for BMR Plus or BMR units shall provide that in the event the owner of a BMR Plus or BMR wishes to sell their unit, the owner shall first give written notice of such circumstances, and an option to purchase, to the City of Ripon. In the event the City Response Notice notifies the Owner that the City does not wish to exercise its right to purchase the affordable

- unit, then the Owner may proceed to sell the Unit in compliance with the following requirements:
- 1. <u>Selling the Unit for Fair Market</u>. If the Owner receives a bona fide offer from a "Market Purchaser" to purchase the Unit and the Owner accepts the Market Purchaser's offer, upon sale of the Unit, the Owner shall pay to the City the entire amount due under the City Note(s) and/or agreements upon close of escrow.
- 2. Selling the Unit to another BMR Plus Purchaser or Below Market Rate Purchaser. If the Owner chooses to sell the Unit at an affordable price to an affordable household, the "BMR Plus Purchaser" or "Below Market Purchaser", under the same income category the unit originally sold, the City Subsidy including any accrued interest will be waived. The affordable purchase price shall be determined by the City, under its BMR Plus or Below Market Rate Housing Program and the new buyer must meet all the requirements of the BMR Plus or Below Market Rate program and execute program documents prior to close of escrow. A new City Subsidy will be established with the new BMR Plus Purchaser or Below Market Rate Purchaser. The new City Subsidy will be determined using the difference between the Fair Market Value of the home, as determined by an appraisal, and the BMR Plus or Below Market Rate purchase price.
- D. Selection Criteria for Ownership Units. No household at the time of move-in shall be permitted to purchase or occupy an affordable unit that is required under this Chapter unless its qualifications consistent with this Chapter and the Housing Director has approved the household's eligibility. Eligible potential occupants of ownership affordable units must be first-time homebuyers and will be qualified on the basis of household income as established by the Housing Director using available governmental indices, including but not

469-2 (8/18) ATTACHMENT 4 limited to all sources of income and assets, the relationship between household size and the size of the available units, and any further criteria required by law and/or established by resolution of the City Council. The City shall use an equitable selection method established in conformance with the terms of this Chapter and in compliance with state and federal law. First priority shall be given to current Ripon residents who either reside or work within the City of Ripon's zip code or planning area as defined in the Land Use Element of the General Plan.

E. <u>Use and Expenditure of Fees</u>.

- 1. All fees collected under this Chapter shall be deposited into a separate account administered by the City Administrator or his/her designee, to be designated the City Affordable Housing Fund.
- 2. The fees collected under this Chapter and all earnings from investment off the fees shall be expended exclusively for provision of below market rate housing in the City through acquisition, construction, development assistance, paying the costs of administering this Chapter, rehabilitation, financing, rent subsidies or other methods. The housing shall be of a type, or made affordable at a cost or rent, for which there is an unmet need in the City and which is not adequately supplied in the City by private housing development in the absence of public assistance. Ord. 646 §1,201; Ord. §1, 2003; Ord. 783 §1, 2011, Ord. 869, 2017)

16.194.100 Enforcement.

A. General. The City shall enforce this Chapter, and its provisions shall be binding on all agents, successors, and assigns of an applicant. The City may suspend or revoke any building permit or approval upon finding a violation of any provision of this Chapter. Use approval, building permit, or occupancy approval shall not be granted for any residential development unless it is in

compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.

B. Violation Abatement.

- 1. It shall be a misdemeanor for any person to sell or rent an affordable unit under this Chapter at a price exceeding the maximum allowed under this Chapter or to a household not qualified under this Chapter. In the alternative, the City Attorney may proceed in accordance with Chapter 1.12 of the Ripon Municipal Code.
- 2. The City Attorney shall be authorized to enforce the provision of the Chapter and all regulatory agreements and resale controls placed on affordable units by civil actions and any other proceeding method permitted by law.
- 3. The City may revoke, deny or suspend any permit or development approval, including without limitation a final inspection for occupancy or certificate of occupancy, for a residential project which has failed to comply with this Chapter.
- 4. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- 5. The City shall be entitled to recover all its costs, including reasonable attorney's fees, incurred in enforcing this Chapter. (Ord. 646 §1, 2001; Ord. 680 §1, 2003; Ord. 783 §1, 2011, Ord. 869, 2017)

16.194.110 Appeal.

- A. An owner of any affordable ownership unit subject to the requirements of this Chapter may appeal to the City Council from any decision of the Planning Director.
- B. Any such appeal shall be made in writing and filed with the City Administrator along with the applicable administrative fee for processing costs as set forth by City Council resolution no later than ten days following receipt of a written decision or determination by the Planning Director. The

469-3 (8/18) ATTACHMENT 4 appeal shall set forth in detail the factual and legal basis for the appeal. The City Council shall consider the appeal at a public meeting within sixty days after the filing of the appeal. The decision of the Council shall be final. (Ord. 843, 2016, Ord. 869, 2017)

16.194.120 Severability.

If any clause, sentence, section, or part of this Chapter, or any fee or requirement imposed upon any person or entity, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity, shall affect only such clause, sentence, section or part, or such person or entity, and shall not affect or impair any of the remaining provisions, clauses, sentences, sections, or parts or the effect of this Chapter on other persons or entities. It is hereby declared to be the intention of the City Council that this Chapter would have been adopted had such unconstitutional, illegal, or invalid clause, sentence, sections, or part not been included herein, or had such person or entity been expressly exempted from the application of this Chapter. (Ord. 646 §1, 2001; Ord. 680 §1, 2003, Ord. 869, 2017)

Davis Municipal Code

<u>Up</u> Previous <u>Next Main Collapse Search Print No Frames</u>

Chapter 18 HOUSING

Article 18.04 OWNER-OCCUPANCY

18.04.010 Purpose and findings.

- (a) The purpose of this article is to ensure that affordable units, built to provide affordable ownership opportunities required by the City of Davis, continue to be maintained as an ownership opportunity consistent with the public purpose that required provision of the affordable unit.
- (b) The city council hereby finds and determines:
 - (1) That in the past, single-family homes and individual ownership units were primarily purchased by persons who intended to reside therein and that rental housing was primarily within multiple dwelling developments. With the increase of investments being made in single-family dwelling units, the city council recognized a need to preserve units for owner occupancy.
 - (2) That California Government Code Section 65302(c) and various other state-adopted policies encourage and provide for adoption of local policies designed to provide for the housing needs of all economic segments of the community. The promotion of home ownership, owner occupancy, and the maintained availability of affordable ownership housing units have been recognized as valid purposes of the city's police power.
 - (3) That the protection of a residential environment has long been recognized as a valid purpose of the city's police power, including zoning regulations, especially in single-family residential districts.
 - (4) That the City of Davis general plan and implementing ordinances and resolutions have established an inclusionary housing requirement that requires the development of new affordable ownership housing units as part of new residential projects. This requirement produces ownership units at a below-market price affordable to very low, low, moderate, and middle income households. Said public purpose of this requirement was to provide ownership housing opportunities for households that would not otherwise be able to live in Davis. The public purpose continues to be served only if the affordable units are owner-occupied and not purchased by investors.
 - (5) That the public purpose that is provided by the city's inclusionary housing policies shall not unduly profit any household, including through the acceptance of rent for an entire affordable ownership unit that was purchased at a below-market affordable housing price, as a result of city inclusionary housing policy requirements.
 - (6) That an occupancy requirement ensures availability of affordable units to income-eligible households at the units' initial and subsequent sales. The city's inclusionary housing program also provides for affordable rental units that are separate from and in addition to the affordable ownership housing units produced by the program.
 - (7) Historically a large percentage of ownership units have been purchased by investors due to the rental demand that is produced by university students and visiting professors.
 - (8) That in approximately the last ten years there has been an increase in the price of homes in California, including in Davis, which is unprecedented in years past. In some areas the rate of inflation in prices has been two percent per month, or greater. Housing prices continue to rise throughout California, making it one of the least affordable states to purchase a home in.
 - (9) That the high level of speculative investment activity in the purchase of individual residential ownership units, especially lower priced units, tends to have, and has had, but is not necessarily limited to, the following effects:
 - (A) Removes a significant number of lower-priced residential ownership units from the stock of units available for purchase by owner-occupants;
 - (B) Contributes to the rapid escalation of the price of individual ownership units, and to the maintenance of inflated prices of local housing units; and

ATTACHMENT 5

- (C) Results in the conversion of significant numbers of individual residential ownership units from owner-occupied units to rental units.
- (10) That the effects referred to above tend to:
 - (A) Subvert the purpose of the city's inclusionary housing policies that require affordable ownership housing units to be built in order to serve owner-occupant households at specified income levels.
 - (B) Detrimentally affect the stock of available residential ownership units within the city in general and, in particular, detrimentally affect the availability of affordable ownership units to persons of low, moderate, or middle incomes desiring to purchase and occupy such units. (Ord. 1187 § 1; Ord. 2249, 2006)

18.04.020 Definitions.

For purposes of this article, the following words shall have the meanings ascribed by this section:

Affordable housing unit refers to any individual residential ownership unit which is subject to a recorded notice of restrictions as a designated below-market unit or affordable unit, as required by the city's inclusionary housing ordinances or other city conditions of the planning approval for the project in which the unit is built. An affordable unit could include units priced to serve very-low, low, moderate, and middle income households, as well as other household groups that the city finds to be underserved by the market or identifies as a public purpose within a specific project. This unit type was formerly known as and referred to as a designated low-price housing unit or a designated price unit.

Completion of purchase and completion of sale refers to the close of escrow and the transfer of title to the purchaser or in the alternative, the date of the first installment payment of the purchase price or interest thereon or, in the case of a city-approved lease with an option to purchase, the payment of the first lease payment.

Developer refers to any person who owns real property within the city and who constructs, causes to be constructed, or permits to be constructed on such property one or more individual residential ownership units.

Inclusionary housing policy refers to the city's locally adopted requirements that require the provision of affordable housing units within each new housing development, rental or ownership, consisting of five units or greater.

Individual residential ownership unit refers to any residential living unit (including condominiums and split lot units) which may be separately owned, or which is owned by a stock cooperative as defined in Section 11003.2 of the <u>Business and Professions Code</u>, or owned as a community apartment project as defined in Section 11004 of the <u>Business and Professions Code</u>.

Occupy means the establishment of a purchased affordable as the principal domicile of the person or persons who qualifies as the owner-occupant(s).

Person refers to an individual, group of individuals, partnership, or any other entity.

Principal domicile means that the person or persons who qualify/qualifies as the unit's owner-occupant(s) must reside in the unit for a minimum of ten months out of each calendar year, unless otherwise reviewed and approved by the city through the exemption process stated in this article.

Principal personal residence means principal domicile.

Purchase and **sell** refer to the execution of a binding and enforceable agreement (deposit receipt, contract of sale, agreement of sale, lease with an option to purchase, etc.) to purchase or sell a specific individual residential ownership unit for an agreed price. Subject to the provisions of Section 18.04.150, agreements entered into prior to the effective date of the ordinance codified in this article are not subject to its provisions.

Purchaser refers to any person or persons who acquire title to an individual residential ownership unit.

Sale refers to the sale or transfer by a developer or an owner of an affordable unit, or to the purchase of a membership share in a stock cooperative or community apartment. (Ord. 1187 § 1; Ord. 1222 § 1; Ord. 2249, 2006)

18.04.030 Applicability of article.

This article is enacted pursuant to the general police power of the city and is for the purpose of ensuring that affordable ownership housing units be provided and maintained as an affordable ownership opportunity, in an effort to fulfill the public purpose under which the affordable units were required. (Ord. 1187 § 1; Ord. 1373 § 2; Ord. 2249, 2006)

18.04.040 Owner occupancy requirements.

- (a) Owner occupancy duration. All original and subsequent owners and purchasers of an affordable unit, or other unit with a city-required occupancy restriction, shall occupy his or her or their unit as his or her or their primary residence for the entire duration of his or her or their ownership of the unit, unless otherwise approved by the city. Such occupancy must commence within six months following completion of the unit purchase.
- (b) **Required occupancy declarations.** Each purchaser must execute an initial declaration of occupancy and subsequent annual declarations, as required by the city.
- (c) All owners required to occupy, no co-signers. If more than one person purchases the affordable unit, then all of the purchasers must occupy the unit and execute the declaration of occupancy required by this article. No co-signers shall be permitted in the purchase of an affordable unit.
- (d) **Extended vacation.** In instances where purchaser(s) of an affordable unit intend to take an extended vacation lasting one to two months, during which time the purchaser will not be occupying his or her/their unit, the city shall be notified in writing of the absence, and the purchaser(s)' intent to reoccupy the unit after the specified time period, and a statement that the unit will not be rented in the interim.
- (e) Addition of owners to deed. In instances where the purchaser(s) of an affordable unit intends to add new persons to the deed, the new household must be recertified to meet the city's income restrictions for the affordable unit.
- (f) Vacancy of affordable unit. In instances where purchaser(s) vacate the affordable unit for more than one hundred eighty days, without requesting and gaining an approved exemption from the city, the purchaser(s) shall be required to sell the affordable unit upon the city's written direction to do so unless otherwise approved by the city.
- (g) No living trusts or multiple ownership properties. In order to meet the occupancy requirements of this chapter, purchaser(s) of affordable units shall not be permitted to be living trusts and shall not be permitted to own other residential units during his or her/their ownership of the affordable unit. (Ord. 1187 § 1; Ord. 2249, 2006)

18.04.050 Declaration of occupancy.

- (a) **Declaration requirement.** It is unlawful to sell, to purchase, or to act as the real estate agent, escrow agent, or broker for a seller or buyer of an affordable ownership housing unit without obtaining and filing the declaration of every purchaser of said unit that said purchaser(s) shall assume occupancy of the unit within six months following completion of the purchase and that upon commencement of said occupancy, the purchaser(s) shall occupy such unit as his or her principal personal residence for a minimum of twenty-four consecutive months, subject to the exceptions contained in this article. The declaration shall be made upon forms provided by the community development and sustainability department of the city.
- (b) **Declaration responsibility.** The seller, real estate agent, escrow agent, or broker of the seller and buyer of an affordable ownership housing unit shall be jointly and severely responsible for filing of the original declarations with the community development and sustainability department of the city, as required by Section 18.04.051 of this article. Such declaration shall be filed within ten days of the completion of sale of the affordable unit.
- (c) False dating of sale documents. It is unlawful for any person with the intent of evading this article, to date or sign any deposit receipt, sale agreement, contract of sale, lease with an option to purchase or other writing relating to the sale or purchase of an affordable unit which indicates that the agreement was executed on a date other than the actual date of acceptance and execution of the sale agreement, or to misrepresent to any person the character of any transaction which would otherwise be subject to this article. (Ord. 1187 § 1; Ord. 1242 § 1; Ord. 2249, 2006)

18.04.060 Exempt transactions.

- (a) Foreclosures. This article shall be inapplicable to foreclosures or private sales of security interests due to a default in payments by the purchaser(s) of an affordable unit, but shall apply to any purchasers (other than the foreclosing entity) taking title after such foreclosure.
- (b) **Inheritance or bequest.** This article shall be inapplicable to acquisition by inheritance or bequest, but shall apply to any purchaser upon sale of said unit.
- (c) **Public purpose.** This article shall be inapplicable to purchases of affordable units by a public agency for public purposes, as approved by the city.
- (d) **Property exchanges.** This article shall be inapplicable to tax-free exchanges of real property where the ultimate recipient of title through escrow complies with the provisions of Section 18.04.040, and the seller complies with Section 18.04.050 or 18.04.060 of this article; provided, that all deeds in the exchange are recorded within a period not exceeding ten days and that the purchase price or compensation paid by the ultimate recipient of title through escrow does not exceed the purchase price or compensation received by the initial seller.
- (e) City-permitted broker purchases. Notwithstanding other provisions of this article, the housing chapter of the City of Davis Municipal Code, and after obtaining an exemption for good cause, an affordable unit may, upon issuance of a permit for broker purchase, be sold to a real estate agent or broker.

A broker purchase permit may be issued upon application to the community development and sustainability department. The city manager's designee shall grant or deny the permit on the basis of the city's housing policies and the current climate of the local housing market. The decision of the city manager's designee may be appealed in the same manner and using the same procedure as decisions on applications for exemption as set out in Section 18.04.070. A broker purchase permit must be applied for by the owner(s) of the affordable unit under which the permit is being applied. The permit can only be issued for the convenience of the owner, upon the following conditions:

- (1) No right of first refusal. The affordable unit being sold does not have a right of first refusal recorded to it. If the unit has a right of first refusal deeded to it, directions of that deed restriction must be adhered to. If the city does not wish to exercise its right of first refusal, it may choose to approve the permit being requested.
- (2) **Good faith effort.** There has been a good faith effort by the owner and/or his or her broker to market the property for a period of at least ninety days.
- (3) **Declaration of marketing efforts.** Submission of a declaration under penalty of perjury declaring the circumstances of the owner's marketing effort (including the price listed) and the fact that no binding contract of sale to a successive owner-occupant has been entered into, together with an application for broker purchase.
- (4) **Continuous marketing**. The broker must agree to, upon purchase, continuously market the unit at a reasonable price, including listing of the property on a multiple listing service, if one is available in the community. For purposes of this subsection, a list price more than twenty percent over the price paid by the broker to the seller shall be prima facie evidence that the price is unreasonable and that a violation has occurred. The price shall be consistent with any price restrictions recorded to the deed, unless otherwise approved by the city.
- (5) Lease of the unit. Any leasing of the unit pending sale shall be on a month-to-month basis only and shall require approval by the city.
- (6) **Time limit.** No broker shall retain ownership of the unit for a period of more than eighteen months, unless he or she shall apply to the city council for an extension of time for good cause. Each such extension shall be granted for a period of no more than one hundred and eighty days.
- (7) **Reporting.** The broker-purchaser of the affordable unit shall provide periodic reports, as required by the city, outlining efforts of marketing the unit. (Ord. 1187 § 1; Ord. 1242 § 1; Ord. 2249, 2006)

18.04.070 Application for exemption.

(a) Exemption for unusual circumstances (before purchase). Any person adversely affected by the application of this article and believing that, due to unusual circumstances, the literal enforcement of the article would cause undue hardship, unnecessary to carry out the spirit and purpose of this article, may file a written application for exemption. Any approval may be made subject to such conditions as are necessary to assure that the public purposes

ATTACHMENT 5

of this article and the city's affordable housing program are effectuated, and that the approval does not result in the granting of a special privilege.

An application for exemption under this section may be granted only upon staff making the following findings:

- (1) **Unusual circumstances.** Unusual circumstances or conditions exist which are not typically present in the case of sales or purchases of affordable units subject to this article.
- (2) **Undue hardship.** The existence of such unusual circumstances or conditions would cause undue hardship to the applicant should the provisions of this article apply. An application shall not be approved to eliminate an inconvenience not amounting to undue hardship.
- (3) **Specific, unusual hardship.** The undue hardship sought to be alleviated is not so general or recurrent in nature as to cause the approval of the application to constitute a granting of a special privilege that is not made available to other purchasers.
- (4) **Unnecessary literal enforcement.** Under the circumstances, the literal enforcement of the requirements of this article would be unnecessary to carry out the spirit and public purpose of this article, and the approval of the application shall not subvert said spirit and purpose.

Examples of unusual circumstances before purchase may include, but are not limited to: a change in employment location to outside of the Sacramento Region (as defined by SACOG), a change in family situation, an unexpected substantial reduction in household income, ill health of purchaser or related persons, inability to break an outstanding housing contract elsewhere, or other such circumstances.

(b) **Exemption for unusual circumstances (after purchase).** Any person whose circumstances have unforeseeably changed, such that practical or economic difficulties occur which seriously affect the occupant's ability to continue occupancy and comply with this article, may file a written application for an exemption for unusual circumstances. Any approval may be made subject to such conditions as are necessary to assure that the public purposes of this article and the city's affordable housing program are effectuated, and that the approval does not result in the granting of a special privilege. An application for exemption under this article may be granted only upon staff making the findings listed above in subsection (a).

Examples of unusual circumstances after purchase may include, but are not limited to: a change in employment location to outside of the Sacramento Region (as defined by SACOG), a change of marital status, a change in family situation, ill health of the purchaser or related persons, addition of new family members, a substantial reduction in household income, an employer-approved research project, a sabbatical, or other such circumstances.

- (c) **Procedure for exemption request.** An owner(s) or purchaser(s) of an affordable unit may request an exemption for unusual circumstances upon filing an application and a declaration under penalty of perjury stating the nature of the unusual circumstances, and any reasons why the change in circumstances could not be foreseen at the time that the purchaser was bound to purchase the affordable unit, if the reason for the unanticipated change is not apparent on the face of the declaration.
 - (1) **Application process.** The application and declaration under penalty of perjury shall be submitted to the city manager's designee, together with the filing fee therefor, who shall act upon the matter within ten business days. The city manager's designee shall grant the application unless he or she finds, based upon evidence, that the facts are not substantially as stated in the declaration submitted, that staff cannot make the findings required in subsection (a), that the change of circumstances could have been reasonably foreseen by the purchaser at the time he or she became obligated to purchase the affordable unit, or that, notwithstanding the change in circumstances, the unit was not purchased in good faith for the purpose of occupancy. Notice of the determination of the city manager's designee shall be mailed to the applicant at the address he or she provides. The approval may be conditioned by the city as necessary in order to achieve the public purpose of this article.
 - (2) **Information requests.** The city manager's designee may request additional declarations or other evidence from the applicant and may procure evidence relevant to determination of the issue. Failure of the applicant to provide such information shall be grounds for denial of the application.
 - (3) **Appeal process.** An applicant who is dissatisfied with the determination of the city manager's designee may file a written appeal to the city council within ten days of date of the determination. Such appeals, together with the appeal fee, shall be filed with the city clerk and shall be brought before the city council for decision. The appellant may furnish such additional evidence as may be desired regarding good cause. In the

event of an appeal, the city council shall render a decision which shall be final. (Ord. 1187 § 1; Ord. 2249, 2006)

18.04.080 Fees.

The filings and applications required by this article shall be accompanied by fees established by resolution of the city council. Any such fees may be waived by the city staff person authorized to act on the accompanying submission upon a showing that payment of such fee would impose a personal financial hardship upon the applicant. (Ord. 1187 § 1; Ord. 2249, 2006)

18.04.090 Proof, penalties, and remedies.

- (a) **Proof.** In all actions brought under this article, proof of any of the following shall be presumptive evidence that a violation of Section 18.04.040 has occurred:
 - (1) Failure of Six-Month Occupancy Deadline. Proof that the purchaser or purchasers failed to take occupancy of the affordable unit within six months of completion of the purchase, or such other time specified in the declaration.
 - (2) Failure of Twenty-Four-Month Requirement. Proof that the purchaser or purchasers failed to occupy the affordable unit for twenty-four consecutive months as indicated by the sworn declaration.
 - (3) Vacated Affordable Unit. Proof that the purchaser or purchasers vacated the affordable unit without selling the unit or requesting an occupancy exemption from the city.
 - (4) Leasing Affordable Unit. Proof that the purchaser or purchasers rented or leased the affordable unit during any time when owner-occupancy is required.
 - (5) Second Ownership Unit. Proof that any or all purchaser or purchasers purchased or own a second ownership dwelling unit, without city approval, during any time when owner-occupancy is required.
 - (6) Not Principal Domicile for All Owners. Proof that not all of the owners of the affordable unit use the unit as their principal domicile.
 - The presumptions set forth above may be rebutted by submission and approval of an application for exemption.
- (b) **Penalties.** Persons who do not comply with the requirements of this article, may be subject to the penalties included below. Persons receiving a favorable determination of exemption from the city manager's designee, or city council, due to unusual circumstances, shall not be subject to the penalty provisions of this article.
 - (1) It shall be a misdemeanor for any person to violate the provisions of Section <u>18.04.040</u> or to knowingly provide false information on the declaration required by Sections <u>18.04.050</u> and <u>18.04.070</u> of this article.
 - (2) It shall be an infraction for any person required to do so to fail to file or fail to cause to be filed the declaration as required by Section 18.04.051 of this article, except that such failure which is shown to have been intentional on the part of any such person shall be a misdemeanor.
 - (3) It shall be a misdemeanor to violate the provisions of Section 18.04.053 of this article.
 - (4) If any owner or purchaser is found to be out of compliance with that which is required by this article and is given a reasonable amount of time to regain compliance, but chooses not to, the City of Davis shall have the ability to require the owner or purchaser to sell his or her/their affordable unit within ninety days of the city's notice of noncompliance.
- (c) **Remedies.** The city shall have the ability to, but is not restricted to, carrying out the following remedies as part of the enforcement of this article. Persons receiving a favorable determination of exemption from the city manager's designee, or city council, due to unusual circumstances, shall not be subject to the penalty or remedy provisions of this article.
 - (1) As a separate and additional remedy, violations of this article which threaten to continue or to be repeated may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction,

gcode.us/codes/davis/ ATTACHMENT 5 755

- which order may provide that the violator may not thereafter be a purchaser or obtain any interest in a designated low price unit.
- (2) As a separate and additional remedy, violations of this article shall be subject to a civil penalty up to the amount of five thousand dollars; or, if a unit is sold, the difference between the violator's purchase price and the violator's purchase price plus a compounded appreciation of eight percent per year, or the violator's purchase price and the unit sale price, whichever is greater.
- (3) The remedies provided herein shall not be exclusive and violations of any provisions of this article shall be subject to such other or further remedies as may be provided by law.
- (4) If any owner or purchaser is found to be out of compliance with any requirement of this article and is given a reasonable amount of time to regain compliance, but chooses not to, the City of Davis shall have the ability to require the owner or purchaser to sell his or her/their affordable unit within ninety days of the city's notice of noncompliance. (Ord. 1187 § 1; Ord. 2249, 2006)

View the mobile version.

ATTACHMENT 5

Davis Municipal Code

Up Previous Next Main Search Print No Frames

<u>Chapter 18 HOUSING</u>
<u>Article 18.05 AFFORDABLE HOUSING</u>

18.05.050 Ownership development affordable housing standards.

A developer of residential ownership developments consisting of five or more units shall provide in each development, to the extent feasible, affordable housing for very low, low and moderate income households, as set forth in an affordable housing plan approved by the city, in accordance with the requirements of this section.

The approval process for affordable housing plans will adhere to that which is required by Section 18.05.040(b).

The price of all affordable ownership housing units will be calculated based on payments to be made by the buyer that make up no more than thirty-five percent of the gross monthly target income level designated for a specific unit and shall include mortgage principal and interest, taxes, insurance, assessments, and homeowner fees, as applicable and adjusted for household size. Percentages allowed for the qualifying of the mortgage loan shall be determined by the lender or lenders involved with the income-qualified household.

A developer may, at his or her option, provide affordable rental units to meet the requirements of this section, pursuant to state law, provided that such rental units must comply with the affordable housing standards for rental units in Section 18.05.060 of this article, and as adopted by the city.

To the maximum extent feasible, each developer must meet the ownership affordable unit requirement as it pertains to the project, as set forth below:

- (a) **Standard ownership affordable housing requirements.** Any development that is comprised in whole or in part of ownership units shall comply with the following requirements, which shall be included in the development's affordable housing plan.
 - (1) Affordable Housing Requirements, by Residential Product Type.
 - (A) For projects comprised of market rate single-family detached ownership units on lots larger than five thousand square feet in area, the developer must provide for a number of affordable housing units equivalent to twenty-five percent of the total units being developed, including the affordable units, by means of one of the methods set forth in this section.
 - (B) For projects comprised of market rate single-family detached ownership units on lots smaller than five thousand square feet in area, the developer must provide for a number of affordable housing units equivalent to fifteen percent of the total units being developed, including the affordable units, by means of one of the methods set forth in this section.
 - (C) For projects comprised of market rate single-family attached ownership units, the developer must provide for a number of affordable housing units equivalent to ten percent of the total units being developed including the affordable units, by means of one of the methods set forth in this section.
 - (D) For projects comprised of market rate stacked condominiums or ownership units within vertical mixed-use development, the developer must provide for a number of affordable housing units equivalent to five percent of the total units being developed including the affordable units, by means of one of the methods set forth in this section.
 - (E) Exempt projects as identified in Section <u>18.05.080</u> have no affordability requirements except as provided therein.
 - (F) For developments that are comprised of more than one residential product type, the affordable housing obligation shall be calculated for each product type separately and then aggregated, before rounding, provided, however, if a development is comprised of ownership and rental product types, the affordable housing obligations for the ownership and rental units shall be calculated and applied separately.
 - (2) Affordable Housing Requirements, by Project Size.
 - (A) Exempt projects pursuant to Section 18.05.080.

gcode.us/codes/davis/

- (B) Projects Totaling Five or Greater Units for Purchase.
 - (i) The required affordable units must be provided through: on-site construction of affordable ownership or rental units, acquisition and recordation of permanent affordability restrictions on existing housing units within the city, provision of a land dedication site, and/or through payment of in-lieu fees, as further defined in subsections (b) through (f).
 - (ii) The on-site construction of affordable ownership or rental units may be fulfilled through the on-site development of affordable units for purchase or rental, in conformance with all that is stated in subsection (b).
 - (iii) The land dedication option shall be fulfilled by the developer by making an irrevocable offer to the city of sufficient land, without abnormalities (shape and terrain) and with complete environmental review that can accommodate the affordable housing requirement for the project. The land dedication shall be in conformance with all that is stated in subsection (c), entitled land dedication.
 - (iv) The option of purchase and placement of permanent affordability restrictions on existing housing units within the city is only available when determined to be appropriate by the city council in its sole discretion, and must be in conformance with all that is stated in subsection (e).
 - (v) The payment of in-lieu fees to fulfill part or a project's entire affordable housing requirement is subject to city council review and must be in conformance with all that is stated in subsection (f), entitled in-lieu fees.
- (C) Projects Totaling Two Hundred One Ownership Units or More. The required affordable units shall be provided through the following methods, as more specifically described in subsections (b) through (f):
 - (i) On-site construction of affordable ownership units;
 - (ii) On-site construction of accessory dwelling units for rental to fulfill up to half of the requirement;
 - (iii) Through payment of in-lieu fees for no more than fifty percent of the affordable housing obligation of the project, if approved by the city council;
 - (iv) Provision of a land dedication site; and/or
 - (v) On-site construction of affordable rental units, if the developer voluntarily requests to satisfy its requirements through this alternative.
- (3) Project Individualized Program.
 - (A) The developer may meet the city's affordable housing requirement with a project individualized program that is determined to generate an amount of affordability equal to or greater than the amount that would be generated under the standard affordability requirements. The affordable units must, at a minimum, meet the same income targets specified in the standard ownership affordable housing provisions.
 - (i) A project individualized program shall be developed by the developer and city staff, taken action on by the social services commission, and if the main project application requires, heard before the planning commission for decision.
 - (ii) If the main project is requesting planning entitlements that require city council approval, it shall then be heard before the city council for final decision.
 - (iii) If the main project does not require a city council hearing, the planning commission's or the social services commission's determination may be appealed to the city council by any member of the public.
 - (B) The project individualized program is not intended to allow exception to a public input and review process. The project individualized program is intended to be viewed thoroughly and scrutinized in public forums, allowing for input and competition from the public, other community-based nonprofits, staff, and at a minimum, the social services commission. The public hearing at the social services commission shall be noticed to all community-based housing nonprofits in the area, to the greatest extent possible,

regardless of their involvement in the project. This public hearing shall scrutinize the project based on the following criteria:

- (i) Need for government subsidy;
- (ii) Sustainability of the project and its services;
- (iii) Community need of the project type based on recent needs assessments and recent projects completed;
- (iv) Uniqueness/innovation of the proposed project;
- (v) Overall benefits and drawbacks of the project;
- (vi) Project's compliance with the standards as outlined within the affordable housing Sections 18.05.010 through 18.05.070 of the Davis Municipal Code.

These meetings shall be carried out without any finite contracts in place between the parties involved, allowing for the potential direction to the developer to change the project. If the social services commission finds that the proposed project does not satisfy one or all of the criteria listed above, it may choose to direct the developer to fulfill his or her affordable housing requirement through a land dedication process. This decision may be altered at either the planning commission or city council public hearing, if the project requires review by either of these deciding bodies. Decision of either the social services commission or the planning commission to direct the developer to do a land dedication to meet his or her affordability requirement, may be appealed to the city council.

- (b) On-site construction of affordable units for ownership developments. When a developer constructs on-site affordable ownership or rental units to satisfy its obligations under this article, the units shall be constructed in conformance with the requirements of this subsection (b).
 - (1) Density Bonus. A one-for-one city density bonus shall be awarded for construction of on-site affordable units meeting the requirements for a state density bonus.
 - (2) Housing Mix. The developer must provide a mix of two- and three-bedroom units, with a minimum of fifty percent of the units as three-bedroom units and in a combination of unit types as approved within the affordable housing plan through the appropriate review process. Smaller and larger unit sizes shall be provided as an option, based on local housing needs and project character, as approved during the affordable housing plan review process.
 - (3) Price of Affordable Ownership Units. The affordable ownership units will be affordable to moderate income households, households with incomes ranging from eighty percent of area median income to one hundred twenty percent of area median income, with the average affordability targeted at households with incomes at one hundred percent of area median income, the moderate target income.

The community development and sustainability director shall determine the maximum sales price for these units on an annual basis. The community development and sustainability director shall propose annual adjustments to the maximum purchase prices based on changes in the area median income, as determined by the U.S. Department of Housing and Urban Development. This price shall be reviewed annually for adoption by the city council.

(4) Rent for Affordable Rental Units. The affordable rental units will be leased at an affordable rent to low and very low income households. The average affordable price for each size category of affordable rental units, based on number of bedrooms, shall not exceed the low target income, sixty-five percent of median income. The maximum income level served shall not be greater than eighty percent of area median income. The developer shall offer affordable rental units in each size categories to multiple income levels to ensure that the rental units achieve the required average target income. For example, if three-bedroom units are offered to families at eighty percent of median income, the same number of three-bedroom units must be offered to households at fifty percent of area median income, making the average rent for the unit type sixty-five percent of area median income. Lower rents or an average that meets the same affordability target can be approved through the affordable housing plan review process.

ATTACHMENT 6

- (5) Buyer/Tenant Selection and Screening. Please refer to Section <u>18.05.040(g)</u> for the selection and screening requirements applicable to affordable units.
- (6) Owner-Occupancy Restrictions. Any person who purchases a designated ownership affordable unit pursuant to this article shall occupy that unit as his or her principal personal residence for as long as he or she owns the affordable unit. Such occupancy shall commence within six months following completion of the purchase. The purchases shall comply with the provisions of Sections 18.04.020 through 18.04.060, inclusive, of this Code.
- (7) Sustained Affordability. Restrictions shall be placed on the affordable housing units produced, in order to ensure a measure of sustained affordability. In an effort to maintain the greatest number of units as affordable for the greatest period of time, one of the following restrictions shall be adhered to:
 - (A) Appreciation Capped at Three Percent per Year plus a Three-Quarters of a Percent Maintenance Credit for Necessary Maintenance Costs of the Unit. The unit appreciates based on the average annual increase in Yolo County Area Median Income—Three percent, plus an additional three-quarters percent as a credit for maintenance costs of the unit. This restricts the total appreciation of an <u>ownership</u> unit to a maximum of three and three-quarters percent, compounded annually.
 - (B) Affordability Covenant. In order to qualify as affordable rental units pursuant to this subsection, such units shall be maintained in perpetuity as affordable units. The owner of the rental units shall enter into an agreement with the city to ensure the continued affordability of these affordable rental housing units in perpetuity. This agreement shall be recorded.
 - (C) Alternative Proposal. Any other program that proves its ability to provide for sustainable affordability, as approved by staff, the social services commission, and other public governing bodies as required by the individual project. Proposing an alternative method for sustained affordability must be justified based on current market trends and/or other prevailing circumstances.
- (8) Right of First Refusal. All affordable ownership units constructed after January 1, 2005, shall deed to the City of Davis a permanent right of first refusal on the property, allowing the city the ability to either purchase the unit, or designate an appropriate buyer for the unit at its resale. The deed restriction shall allow the city to designate a third party to carry out its right of first refusal, and shall also allow for a one percent fee to be taken from the real estate transaction in order to pay for the costs of carrying out the right of first refusal.
- (9) Resale Report. The owners of all affordable for-sale units that include a resale restriction or were constructed after January 1, 2005, shall be required to clear all resale reports completed on these units prior to the close of escrow on the resale of each unit. The findings of the resale inspection that are required to be addressed cannot be transferred to the household purchasing the affordable unit.
- (c) Land dedication. When a developer makes a land dedication in order to satisfy the requirements of this article, it shall comply with the following requirements:

The developer shall make an irrevocable offer to the city of sufficient land, without abnormalities (shape and terrain) and with complete environmental review, which can accommodate the land dedication requirement for the project in its entirety. The land dedicated shall be of sufficient size to make the development of the required affordable units economically feasible, no less than two acres. The density of development for the purpose of calculating the acreage to be dedicated under this section shall be fifteen units per acre. The proposed use of such land must be consistent with the general plan. The city may approve, conditionally approve, or reject such an offer of dedication. If the city rejects such an offer of dedication, the developer shall be required to meet the affordable housing obligation by other means set forth in this article and approved by the city.

The dedicated site shall be economically feasible to develop, of sufficient size to build the required number of affordable units, and physically suitable for development of the required affordable units prior to dedication of the land. The dedicated site shall also have appropriate general plan designation and zoning to accommodate the required units, be fully improved with infrastructure, frontage improvements (i.e., curb, gutter, walk), paved street access, utility (i.e., water, gas, sewer, and electric) service connections stubbed to the property lines, and other such off-site improvements as may be necessary for development of the required affordable units or required by the city.

The developer must identify the land to be dedicated at the time the developer applies for a pre-zoning or zoning amendment, but in no event later than the application for the tentative subdivision map. Building permits shall not be issued prior to identification of land to be dedicated under this section.

ATTACHMENT 6

- (1) Density Bonus. A one-for-one city density bonus shall be awarded for land dedication on the basis of fifteen units per net acre.
- (2) Housing Types on Dedicated Land. Housing built on land provided by dedication for affordable housing shall be permanently affordable. The city shall adopt a resolution establishing a process whereby property dedicated to the city pursuant to this section may be conveyed to third parties who shall enter into an agreement with the city to produce affordable housing within a specified period of time. The city shall consult with the social services commission, nonprofit corporations, affordable housing organizations, and developers in designing this process. Housing on land dedicated pursuant to this section may consist of any of the following:
 - (A) Resident controlled nonprofit housing corporation;
 - (B) Community based mutual housing association;
 - (C) Community based nonprofit controlled rental housing;
 - (D) Student housing cooperative;
 - (E) Limited equity housing cooperative;
 - (F) Public housing;
 - (G) Land trust;
 - (H) Self-help housing;
 - (I) Other forms of nonprofit housing containing a permanent affordability provision.
- (3) Price of Units. The average affordable price for each size category of units on land dedication sites shall not exceed the low target income, sixty-five percent of median income. The maximum income level served by any of the units located on a land dedication site shall not be greater than eighty percent of area median income. The developer shall offer affordable rental units in each size categories to multiple income levels to ensure that the rental units achieve the required average target income. For example, if three-bedroom units are offered to families at eighty percent of median income, the same number of three-bedroom units must be offered to households at fifty percent of area median income, making the average rent for the unit type sixty-five percent of area median income. Lower rents or an average that meets the same affordability target can be approved through the plan review process.
- (4) Buyer/Tenant Selection and Screening. Please refer to Section <u>18.05.040(g)</u> for the selection and screening requirements applicable to affordable units.
- (5) Owner-Occupancy Restrictions. Any person who purchases a designated affordable unit pursuant to this article shall occupy that unit as his or her principal personal residence for as long as he or she owns the affordable unit. Such occupancy shall commence within six months following completion of the purchase. The purchases shall comply with the provisions of Sections 18.04.020 through 18.04.060, inclusive, of this Code.
- (d) **Options for small developments.** Small developments of fifteen ownership units or fewer, and totaling no greater than thirty-eight bedrooms in the development, that are not otherwise exempt pursuant to Section 18.05.080, that are located within the core area and are found to meet a specified community goal, can request to fulfill the affordable housing requirement through one of the following options, which shall be considered during the review process of the development's affordable housing plan:
 - (1) Construction Subsidy. City staff will work with the developer to provide financial assistance to be used in the construction of the affordable unit(s) required on-site, in order to assist in ensuring the project's feasibility. The developer shall present a pro forma (for the affordable units) to staff showing the necessary amount of construction assistance needed through supplemental city funds, in order to make the project economically feasible. The project will require the standard review process, and the necessary funding approval from the city council.
 - (2) Combination of On-Site Construction and In-Lieu Fees. The affordability requirement may be fulfilled through a combination that includes the on-site development of a portion of the required affordable units, with the remaining amount of the affordability requirement fulfilled through in-lieu fees paid in accordance with subsection (f) of this section. The exact split of the combination shall be determined during the review of the project's affordable housing plan, based on the developer's stated ability to provide affordable units on-site.

gcode.us/codes/davis/ ATTACHMENT 6 761

- (e) Acquisition and recordation of permanent affordability restrictions on existing housing units. As an alternative to constructing affordable housing within a development project or providing for affordable housing through the payment of in-lieu fees, the affordability requirement may be fulfilled through the provision of off-site units being purchased/acquired and placed permanently into the city's affordable housing program through the recordation of affordability deed restrictions, subject to discretionary approval by the city council following review of the project's affordable housing plan. The city council may determine in its sole discretion whether this alternative is appropriate on a case-by-case basis. These units are required to have recorded permanent affordability deed restrictions recorded against them, in a form consistent with the affordability restrictions that are recorded against on-site affordable units constructed pursuant to the requirements of this affordable housing ordinance. In its review of an affordable housing plan that provides affordable housing pursuant to this option, the city council will consider the following:
 - (1) The condition and usable life of the units;
 - (2) Potential displacement of existing residents;
 - (3) The location and size of the proposed affordable units relative to disbursement of units throughout the city and local housing needs;
 - (4) Long-term ownership and maintenance of the units; and
 - (5) The level of affordability offered by the proposed alternative.

Any units provided under this option must ensure a unit life of no less than thirty years and may require rehabilitation prior to qualifying. Sale or long-term rental of these units would be at the sole expense and responsibility of the project developer, unless otherwise approved by the city council.

- (f) **In-lieu fees.** As an alternative to constructing on-site affordable housing within a development as required by this article, the affordability requirement may be fulfilled through the payment of in-lieu fees pursuant to an adopted fee schedule to be revised on an annual basis, provided that the payment of in-lieu fees has been approved by the city council following review of the project's affordable housing plan. The city council will review a request for payment of in-lieu fees taking into consideration the following:
 - (1) Project gross and net density;
 - (2) Project size;
 - (3) Economic or planning feasibility of affordable unit provision by another means within the development;
 - (4) Projected housing costs of the project's market rate housing/overall housing affordability of the project; and
 - (5) Accomplishment and tradeoffs of other local policy objectives, including smart growth principles, accessibility, energy efficiency, etc.

A payment plan may be approved by the city council in the event that the developer does not have the necessary funds available for payment; however, the majority of in-lieu fees shall be paid prior to the issuance of the certificate of occupancy on any of the market rate units. In addition to the standard in-lieu fee, the city maintains the right to adopt an in-lieu fee for use in future resource-pooled projects. This special in-lieu fee would apply to projects within a specific project area where the fee is intended to be used towards a planned resource-pooled project. (Ord. 2418 § 1, 2013; Ord. 2443 §§ 2, 3, 2015; Ord. 2545 § 3, 2019)

View the mobile version.

ORDINANCE NO. 2278 NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING TITLE 14 "HOUSING" TO THE MORGAN HILL MUNICIPAL CODE INCLUDING CHAPTER 14.04 "INCLUSIONARY HOUSING" THAT MANDATES 15 PERCENT AFFORDABLE HOUSING UNITS FOR NEW RESIDENTIAL DEVELOPMENTS WITHIN THE CITY

WHEREAS, the Morgan Hill City Council desires to adopt a Citywide Inclusionary Housing Program to enhance the public welfare by establishing policies that require the development of housing affordable to households of very low-, low-, and moderate-incomes, enable the City to meet its share of regional housing needs, and implement the City's Housing Element goals and objectives; and

WHEREAS, a Citywide Inclusionary Housing Program will assist in alleviating the lack of available residential land for affordable housing because market-rate development will be required to contribute to the provision of housing affordable for all segments of the Morgan Hill community; and

WHEREAS, a Citywide Inclusionary Housing Program will also assist in meeting the demand for housing affordable to very low-, low-, and moderate-income households caused by the service demands of new residents in market-rate residential units; and

WHEREAS, since 1977, the City has amassed one of the largest below market-rate ("BMR") property portfolios in the State, and has established a BMR Program that provides affordable ownership and rental opportunities to low-income and moderate-income households; and

WHEREAS, the Legislature of the State of California has found that the availability of housing is of critical statewide importance, and that providing housing for all Californians requires the cooperative participation of state and local governments and the private sector; and

WHEREAS, the City intends to establish an Inclusionary Housing Ordinance and affordable housing fees in order to promote this objective, mitigate the impacts of new market-rate housing development on the need for affordable housing, assist in meeting the City's share of the Regional Housing Needs Allocation (RHNA), and assist in implementing the goals, policies and actions specified in the Housing Element of the City's General Plan; and

WHEREAS, the Housing Element of the City's General Plan, adopted by the City Council on February 28, 2015, and approved by the Department of Housing and Community Development on April 21, 2015, includes the following housing policies and actions in support of the creation of an Inclusionary Housing Ordinance:

- Policy HE-1 c: RDCS Allocations
- Policy HE-1 d: Variety of Housing
- Policy HE-1 h: Affordable Housing Strategy Implementation
- Policy HE-li: Flexible Housing
- Policy HE-lj: New Market-Rate Developments

- Policy HE-11: Incentives for Affordable Developments
- Policy HE-1 q: Affordable Housing

WHEREAS, the Legislature recently enacted Assembly Bill 1505, which restores the authority of local governments to impose inclusionary housing requirements on residential rental housing, and the City intends to codify an Inclusionary Housing Program for both ownership and rental housing; and

WHEREAS, the proposed Ordinance requires developers of market-rate for-sale and rental residential projects of two (2) or more units to provide fifteen percent (15%) of the units at affordable rents or affordable sales prices; and

WHEREAS, the City Council adopted Resolution No. 16-018 on February 3, 2016, reaffirming the City of Morgan Hill's commitment to affordable housing; and

WHEREAS, the City Council adopted an ordinance on June 1, 2016 adding Chapter 15.23 Below Market-Rate (BMR) Program Administration to Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code; and

WHEREAS, at its meeting of May 2, 2018, the City Council considered the "Strategy for Increasing the Supply of Affordable Housing" dated March 28, 2018 and prepared by Keyser-Marston Associates, Inc., which included adoption of an Inclusionary Housing Ordinance as one of the recommended strategies.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 14 is hereby added the Morgan Hill Municipal Code as follows.

TITLE 14 - HOUSING

Chapter 14.04 - INCLUSIONARY HOUSING

14.04.010	Findings.
14.04.020	Purpose.
14.04.030	Definitions.
14.04.040	General Requirements.
14.04.050	Time of Performance.
14.04.060	Continued Affordability and City Review of Occupancy.
14.04.070	Alternatives.
14.04.080	Use of In-Lieu Housing Fees.
14.04.090	Waiver of Requirements.
14.04.100	Enforcement.
14.04.110	Monitoring.

14.04.010 - Findings.

The City Council finds that:

- A. Housing prices and rents in the City of Morgan Hill have increased at a significantly higher rate than general wages. The lack of affordable housing forces many residents to pay a very high percentage of their income for housing or to commute considerable distances, adding to air pollution and traffic congestion throughout Santa Clara County. The lack of affordable housing has made it more difficult to recruit workers, potentially affecting the economic vitality of the City. New housing developments do not provide an adequate supply of housing affordable to Low- and Moderate-Income Households.
- B. Rental and owner-occupied housing in Morgan Hill has become steadily more expensive. Although Morgan Hill has historically met its Regional Housing Needs Allocation goals, in recent years, housing costs have escalated sharply, increasing faster than incomes. As a result, there is a severe shortage of adequate, affordable housing for Extremely Low-, Very Low-, Low-, and Moderate-Income Households.
- C. In order to meet the needs of Morgan Hill households, residential developments will need to provide housing for a variety of household types of a range of incomes and ages. The Inclusionary Housing Ordinance codified in this Title will substantially advance the City's interest in providing additional rental and ownership housing affordable to all income levels and dispersed throughout the City.
- D. Continued new housing development that does not include housing for Low- and Moderate-Income Households will further contribute to the current shortage of affordable housing by reducing the small remaining supply of undeveloped land.
- E On February 18, 2015, the City Council approved the City's Housing Element, a chapter of the General Plan which includes strategies to build new housing to meet the full range of future community housing needs, including affordable and accessible housing.
- F. Implementation of the Inclusionary Housing Ordinance is a necessary part of the City's efforts to meet its Regional Housing Needs Allocation goals and obligations. Pursuant to the Ordinance, at least fifteen percent (15%) of the units in a new housing development of two (2) or more units will be required to be price or rent-restricted and available for occupancy by Low- and Moderate-Income households. In some circumstances, developers will have an option to provide Inclusionary Units off-site or to pay an in-lieu housing fee.

14.04.020 - Purpose.

The purpose of this Chapter is to further the City's efforts to require housing available to Extremely Low-Income, Very Low-Income, Low-Income and Moderate-Income Households. The Housing Element of 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.

City of Morgan Hill Ordinance No. 2278, New Series Page 4 of 16

Providing the Inclusionary Units required by this Chapter will help to ensure that part of Morgan Hill's remaining developable land is used to provide affordable housing to encourage an economically balanced community. Requiring builders of new market-rate housing to include some housing affordable to households at a range of incomes is consistent with the goal of fostering an adequate supply of housing for persons at all income levels, and serves the goal of mixed-income housing.

The Inclusionary Housing Ordinance is required in order to promote and protect the public health, safety, and general welfare while preserving and enhancing economic diversity and inclusiveness within the City.

14.04.030 - Definitions.

When used in this Chapter, the following terms shall have the meaning set forth below:

- 1. <u>"Affordable Ownership Cost"</u> means average monthly housing costs during the first calendar year of a household's occupancy, including mortgage principal and interest payments, mortgage insurance fees, if any, property taxes, reasonable allowances for utilities and property maintenance and repairs, homeowners insurance, and homeowners' association dues that in the aggregate do not exceed thirty five percent (35%) of the applicable income limit for Eligible Households for a particular Inclusionary Unit that is a for-sale unit.
- 2. <u>"Affordable Rent"</u> means a monthly rent and utility allowance that does not exceed the limits as defined in Section 50053 of the California Health and Safety Code, as may be amended from time-to-time.
- 3. "Affordable Sales Price" means a sales price that will result in an Affordable Ownership Cost for an Eligible Household of the applicable income limit for an Inclusionary Unit that is a for-sale unit, and that does not exceed the limits as defined in Section 50052.5 of the California Health and Safety Code, as may be amended from time-to-time.
- 4. <u>"Applicant"</u> means a person or entity who applies for approvals for a Residential Project, and if the applicant does not own the property on which the Residential Project is proposed, also means the owner or owners of the property.
- 5. <u>"Area median income" or "AMI"</u> means the median household income of households in Santa Clara County, adjusted for household size, as determined and published by the California Housing and Community Development Department (HCD).
- 6. <u>"Assumed Household Size"</u> means, for the purpose of establishing Affordable Sales Prices and Affordable Rent, a household with a total number of members equal to the number of bedrooms in the Dwelling Unit, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and subject to applicable federal rules (if any). For example, the assumed household size for a 3-bedroom home is a 4-person household.

- 7. <u>"Building Permit"</u> means full structural building permits as well as partial permits such as foundation-only permits.
- 8. "Certificate of Occupancy" means that construction is complete and the City Building Official or his or her designee has signed off the "Residential Dwelling Occupancy Approval" on the backside of the City of Morgan Hill Building Permit Card.
- 9. "City Manager" means the City Manager of Morgan Hill or his or her designee.
- 10. "Contiguous" means any parcel ofland that is:
 - a. Touching another parcel at any point;
 - b. Separated from another parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or
 - c. Separated from another parcel only by other real property of the Applicant which is not subject to the requirements of this Chapter at the time of the Planning Permit application by the Applicant.
- 11. <u>"Density Bonus"</u> means an increase in the number of units permitted in a proposed residential project provided pursuant to the State Density Bonus Law as set forth in Section 65915 *et seq.* of the California Government Code, as amended.
- 12. <u>"Downtown"</u> means the geographical area as depicted in Figure CNF-2 of the General Plan.
- 13. <u>"Dwelling Unit"</u> means a residential unit consisting of one or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.
- 14. <u>"Eligible Household"</u> means a household whose Gross Annual Household Income does not exceed the applicable maximum for a given Inclusionary Unit.
- 15. <u>"Extremely Low-Income Household"</u> means a household with a Gross Annual Household Income that does not exceed 30% of AMI for Santa Clara County. This definition corresponds to the definition of extremely low-income household used for state-and federally-assisted housing programs. Extremely Low-Income Households are a subset of Very Low-Income Households.
- 16. <u>"First Approval"</u> means the first of the following approvals to be issued with respect to a Residential Project: building permit, planned development permit, tentative parcel map, tentative subdivision map, conditional use permit, site and architectural review permit, or other discretionary City land use approval.
- 17. <u>"For-sale project"</u> means a Residential Project, or portion thereof, that is intended to be sold to owner-occupants upon completion.

- 18. "Gross Annual Household Income" means the combined adjusted gross (pre-tax) income of all adult persons in a household who is an Applicant for an Inclusionary Unit, or who are residing in an Inclusionary Unit, as calculated pursuant to the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor.
- 19. <u>"Inclusionary Affordable Housing Agreement"</u> means an agreement between the City and an Applicant, governing how the Applicant will comply with this Chapter.
- 20. <u>"Inclusionary Unit"</u> means a Dwelling Unit that pursuant to this Chapter is required to be rented at an Affordable Rent or sold at an Affordable Sales Price to Extremely Low-, Very Low-, or Moderate-Income Households as applicable.
- 21. <u>"In-Lieu Fee"</u> means the fee payable pursuant to this Chapter as an alternative to the construction of on-site Inclusionary Units.
- 22. <u>"Low-Income Household"</u> means a household with a Gross Annual Household Income between 51 % and 80% of AMI for Santa Clara County. This definition corresponds to the definition of lower income household used for state- and federally-assisted housing programs.
- 23. <u>"Market-Rate Unit"</u> means a Dwelling Unit offered on the open market at the prevailing market-rate for purchase or rental.
- 24. <u>"Moderate-Income Household"</u> means a household with a Gross Annual Household Income between 81% and 120% of AMI for Santa Clara County. This definition corresponds to the definition of moderate-income household for state-assisted housing programs.
- 25. <u>"Regional Housing Need Allocation" (RHNA)</u> means the State of California mandated process that identifies the total number of housing units by affordability level that each jurisdiction must accommodate in its Housing Element.
- 26. <u>"Rental Project"</u> means a Residential Project, or portion thereof, that is intended to be rented to tenants upon completion.
- 27. "Residential Project" means a project undertaken for the purpose of development of land for residential purposes that requires the issuance of a discretionary or ministerial approval or permit, including a permit for construction, and that will include two (2) or more Dwelling Units. "Residential Project" also includes developments on Contiguous lots for which applications are filed by the same property owner or Applicant and that will include two (2) or more Dwelling Units.
- 28. "Very Low-Income Household" means a household with a Gross Annual Household Income that does not exceed 50% of AMI for Santa Clara County. This definition corresponds to the definition of very low-income household used for state- and federally-

assisted housing programs. Very Low-Income Households are a subset of Low-Income Households.

14.04.040 - General Requirements.

- A. Percentage Requirement. Except as provided in paragraphs B and D of this Section, at least fifteen percent (15%) of all units in Residential Projects shall be Inclusionary Units that shall be made available at Affordable Rents or Affordable Sales Prices as prescribed in this Section. The Inclusionary Units shall be approved, and construction of the Inclusionary Units shall be completed not later than the times prescribed in Section 14.04.050 of this Chapter, unless an alternative requirement is approved pursuant to Section 14.04.070 of this Chapter.
 - Whenever application of the requirements of this Chapter results in a fractional number of required Inclusionary Units, if the fraction is 0.50 or greater, construction of the next higher whole number of Inclusionary Units shall be required, and where the fraction is 0.49 or less, payment of the applicable housing fee adopted by City Council shall be required for the fractional unit.
- B. <u>For-Sale Projects in Downtown.</u> All new for-sale Residential Projects consisting of two (2) or more Dwelling Units located within Downtown are required to restrict ten percent (10%) of the Dwelling Units for sale at Affordable Sales Prices to Moderate-II).come Households. Such Dwelling Units must be sold to Eligible Households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five (45) years.
- C. For-Sale Projects Outside of Downtown. All new for-sale Residential Projects consisting of two (2) or more Dwelling Units located within the City but outside of Downtown are required to restrict fifteen percent (15%) of the Dwelling Units for sale at Affordable Sales Prices to Moderate-Income Households. Such Dwelling Units must be sold to Eligible Households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five (45) years.
- D. Rental Projects in Downtown. All new rental Residential Projects consisting of two (2) or more Dwelling Units located within Downtown are required to restrict ten percent (10%) of the Dwelling Units for rent at Affordable Rents and occupancy by Low-Income and Very Low-Income Households. Such Dwelling Units must be occupied by, or if vacant, available for occupancy by Eligible Households, and such restrictions shall be documented in a recorded Inclusionary Affordable Housing Agreement with a term of fifty-five (55) years. At least one-half of the required Inclusionary Units shall be offered at Affordable Rents exclusively to Very Low-Income Households.
- E. Rental Projects Outside of Downtown. All new rental Residential Projects consisting of two (2) or more Dwelling Units located within the City but outside of Downtown are required to restrict fifteen percent (15%) of the Dwelling Units for rent at Affordable Rents and occupancy by Low-Income and Very Low-Income Households. Such Dwelling Units must be occupied by, or if vacant, available for occupancy by Eligible Households, and such restrictions shall be documented in a recorded Inclusionary Affordable Housing Agreement with a term of fifty-five (55) years. At least one-half of the required Inclusionary Units shall be offered at Affordable Rents exclusively to Very Low-Income Households.

- F. Location and Design of Inclusionary Units. All Inclusionary Units shall be reasonably dispersed throughout the Residential Project, and shall be comparable to the design of the market-rate units in the Residential Project in terms of distribution of model types, number of bedrooms, appearance, materials and quality of finishes. There shall not be significant identifiable differences between Inclusionary Units and market-rate dwelling units that are visible from the exterior of the dwelling units, and the size and design of the dwelling units shall be reasonably consistent with the market-rate units in the development. Occupants of Inclusionary Units shall be provided the same access to project amenities, recreational facilities, and common areas as occupants of market-rate units.
- G. <u>For-sale Projects.</u> Inclusionary Units that will be offered for sale shall be sold for owner-occupancy at an Affordable Sales Price to Moderate-Income Households that qualify as Eligible Households.
- H. <u>Rental projects.</u> The Inclusionary Units that are constructed in market-rate Rental Projects shall be offered for rent to Eligible Households at Affordable Rents to Low- and Very Low-Income Households. At least one-half of the required Inclusionary Units in Rental Projects, shall be offered at Affordable Rents exclusively to Very Low-Income Households.
- I <u>Exceptions</u>. The affordability levels required for a Residential Project may be modified by written agreement between the City and the Applicant upon a finding that such modification is necessary to effectively achieve the City's RHNA goals in the then-current housing element cycle:

14.04.050 - Time of performance.

- A. An application for First Approval of a Residential Project will not be deemed complete until the Applicant has submitted plans and proposals that demonstrate how the Applicant proposes to meet requirements of this Chapter, including any plans for the construction of on-site units pursuant to Section 14.04.040 of this Chapter or the Applicant's proposal for an alternative means of compliance pursuant to Section 14.04.070, of this Chapter.
- B. Conditions to carry out the purposes of this Chapter shall be imposed on the First Approval for a Residential Project. Additional conditions may be imposed on later City approvals or actions, including without limitation planned developm nt permits, tentative parcel maps, tentative subdivision maps, conditional use permits, site and architectural review permits, or building permits. The conditions of approval included with the First Approval of the Residential Project shall further provide that prior to the recordation of the parcel map or final map in the case of subdivisions and/or prior to the issuance of building permits in the case of all other land use permits to which this Chapter applies, the Applicant shall enter into an Inclusionary Affordable Housing Agreement prepared by the City Attorney and approved by the City Manager that contains specific requirements implementing the conditions of approval including, but not limited to, as applicable, the number of inclusionary Units, the level(s) of affordability, the location and type of Inclusionary Units, timing of construction of Inclusionary Units in relation to the construction of the Market-Rate units contained in the development, marketing and selection of tenants and homebuyers, and the amount of the In-Lieu Fee, if any. The Inclusionary Affordable Housing Agreement may be amended by the

- parties, provided the amendment is consistent with the condition of approval imposed as part of the First Approval and the then-existing City approvals. If such proposed amendment is minor or technical in nature, the City Manager shall have authority to approve or disapprove the amendment on behalf of the City. If such proposed amendment makes a substantive or material change to the Inclusionary Affordable Housing Agreement, such amendment shall be effective only following notice and hearing and such other procedures as may be required by law, and approval by the City department that issued the First Approval for the project.
- C. No building permit shall be issued for any Market-Rate unit until the Applicant has obtained permits for Inclusionary Units sufficient to meet the requirements of Section 14.04.040 of this Chapter, or received approval of an alternative requirement under Section 14.04.070 of this Chapter. No final inspection for occupancy for any Market-Rate unit shall be completed until the Applicant has constructed the Inclusionary Units required by Section 14.04.040 of this Chapter, or completed corresponding alternative performance under Section 14.04.070 of this Chapter. The time requirements set forth in this subsection for issuance of building permits for Market-Rate units and for final inspections for occupancy for Market-Rate units may be modified to accommodate phasing schedules, model variations, or other factors in a Residential Project, if the City determines this will provide greater public benefit.

14.04.060 - Continued affordability and City review of occupancy.

- A. Term of affordability-For-sale projects. A resale restriction, covenant, deed of trust and/or other documents in form prepared by the City Attorney, shall be recorded against each Inclusionary Unit that is a for-sale unit. These documents shall have an initial term of forty-five (45) years, and shall be renewed upon each change of title to the Inclusionary Unit. The resale restriction, or other documents required by this subsection, and any change in the form of any such documents, shall be approved by the City Manager or his or her designee prior to execution and recordation of such document. The City shall be a party to the resale restriction or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein.
- B. Term of affordability-Rental projects. A regulatory agreement, covenant, deed of trust, and/or other documents prepared by the City Attorney, shall be recorded against each Residential Project that contains Inclusionary Units that are rental units. These documents shall have a term of fifty-five (55) years. The regulatory agreement and other documents required by this subsection, shall run with the land and shall not be affected by the sale of the property or units in the project. The regulatory agreement and other documents required by this subsection, and any modification to such document, shall be approved by the City Manager or his or her designee and approved as to form by the City Attorney, prior to execution and recordation of such document. The City shall be a party to the regulatory agreement or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein.
- C. <u>Eligibility requirements.</u> No household shall be permitted to begin occupancy of an Inclusionary Unit unless the City or its designated administrator as referenced in the Below Market-Rate (BMR) Program Administration Ordinance 2204, Chapter 15.23, Section 15.23.040, Duties of Program Administrator, has approved the household's eligibility. If the

City of Morgan Hill Ordinance No. 2278, New Series Page 10 of 16

City or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of Inclusionary Units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with rules approved by the City Manager or his or her designee.

D. Below Market-Rate (BMR) Program Administration. Ordinance No. 2204, Chapter 15.23 of Title 15 of the Morgan Hill Municipal Code, is hereby incorporated, including but not limited to, Section 15.23.010 Purpose, 15.23.020 Definitions, 15.23.030 Applicability, 15.23.040 Duties of Program Administrator, 15.23.050 Occupancy and Sale Restrictions, 15.23.060 Affordable Housing Agreement, 15.23.070 Approved Program Participants and Vendors, 15.23.080 Default, Foreclosure, Loss of Units, 15.23.090 Annual Report, and 15.23.095 Enforcement.

14.04.070 - Alternatives.

In lieu of building Inclusionary Units within a Residential Project, an Applicant may propose to satisfy the requirements of this Chapter by one of the following alternative modes of compliance, provided that the Applicant includes such proposal in its application for the First Approval of the Residential Project, and further provided that the criteria stated in the relevant subsection below are satisfied.

- A. Rental units in for-sale projects. Where owner-occupied Inclusionary Units are required by Section 14.04.040 of this Chapter, an Applicant may instead elect to construct as part of the Residential Project the same or a greater number of rental units, affordable to Extremely Low-, Very Low-, Low- and Moderate-Income Households in the proportions and at the rents as prescribed in Section 14.04.030 of this Chapter. Substitution of rental units shall be allowed under this subsection only if either: (1) the rental units are at least equal in number of bedrooms to the owner-occupancy units that would have been allowed, or (2) any comparative deficiency in the number of bedrooms is compensated for by additional units and/or affordability to households with lower incomes.
- B. Off-site construction. An Applicant may propose to construct, or make possible construction by another developer, units that will not be physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the City determines this will provide greater public benefit). Off-site construction pursuant to this subsection shall be approved only if:
 - 1. An Inclusionary Affordable Housing Agreement acceptable to the City Manager or his or her designee that requires an equal or greater number of Inclusionary Units as required under Section 14.04.040 of this Chapter is recorded;
 - 2. Approval has been secured for the off-site units not later than the time the Residential Project is approved, and completion of the off-site units is secured by a requirement that Certificates of Occupancy for the related Market-Rate units will be issued after Certificates of Occupancy have been issued for the Inclusionary Units, provided that the time requirements set forth in this subsection for final inspections for occupancy for Market-Rate units may be modified to accommodate

- phasing schedules, model variations, financing requirements, or other factors, if the City determines this will provide greater public benefit;
- 3. The off-site units will be greater in number, larger, or will be affordable to households with lower incomes than would otherwise be required by Section 14.04.040 of this Chapter;
- 4. Financing or a viable financing plan is in place for the off-site units;
- 5. If the off-site units receive any public assistance, the developer of the market-rate project will contribute economic value to the off-site units equivalent to the cost that would have been incurred to provide the required number of Inclusionary Units on-site in the Residential Project; and
- 6. The City may require that completion of off-site units shall be further secured by the developer's agreement to pay an In-Lieu Fee in the amount approved by City Council in the event the off-site units are not timely completed.
- C. <u>Land dedication</u>. An Applicant may propose to dedicate without cost to the City, a lot or lots within or contiguous to the Residential Project, sufficient to accommodate at least the required Inclusionary Units for the Residential Project. An election to dedicate land in lieu of compliance with other provisions of this Chapter shall be allowed only if:
 - 1. The value of the lot or lots to be dedicated is sufficient to make development of the otherwise required Inclusionary Units economically feasible, and financing or a viable financing plan is in place for at least the required number of Inclusionary Units; and
 - 2. The lot or lots are zoned for and suitable for construction of affordable housing at a feasible cost, served by utilities, streets and other infrastructure; there are no hazardous materials present or other material constraints on development of affordable housing on the lot or lots; and land use approvals have been obtained as necessary for the development of the Inclusionary Units on the lot or lots.
- D. <u>In-lieu housing fee.</u> For Residential Projects for which a Residential Detached Low General Plan Land Use designation (allowing up to four (4) dwelling units per acre) (10,890 sflots) applies; for Residential Projects of four Dwelling Units or less; and as provided in Section 14.04.040A, whenever application of the requirements of this Chapter results in a fractional number of required Inclusionary Units, where the fraction is 0.49 or less; the Applicant may elect to pay an In-Lieu Fee, instead of developing the Inclusionary Units required in Section 14.04.040 of this Chapter, pursuant to the requirements set forth below in this subsection.
 - 1. The initial In-Lieu Fee schedule shall be set by City Council resolution or other action of the City Council so that the fee amounts are not greater than the difference between: (a) the amount of a conventional permanent loan that an Inclusionary Unit would support based on the Affordable Rent or Affordable Sales Price for the

Inclusionary Unit; and (b) the estimated total development cost of a prototypical Inclusionary Unit.

- 2. The City Council may annually review the fees authorized by this subsection by resolution, and may, based on that review, adjust the fee amount. For any annual period during which the City Council does not review the fee authorized by this subsection, fee amounts shall be adjusted once by the City Manager or his or her designee based on the construction cost index.
- 3. In-Lieu Fees shall be calculated based on the fee schedule in effect at the time the fee is paid. In-Lieu Fees shall be paid prior to issuance of building permits for Market-Rate units in a Residential Project. If building permits are issued for only part of a Residential Project, the fee amount shall be based only on the number of units then permitted. Where payment is delayed, in the event of default or for any other reason, the amount of the In-Lieu Fee payable under this subsection shall be based upon the fee schedule in effect at the time the fee is paid.

14.04.080 - Use of in-lieu fees.

- A. All In-Lieu Fees collected pursuant to this Chapter shall be deposited into a separate account to be designated as the City of Morgan Hill Housing In-Lieu Fee Fund.
- B. The In-Lieu Fees collected pursuant to this Chapter, and all earnings from investment of such fees, shall be expended exclusively to provide or assure continued provision of affordable housing in the City through acquisition, construction, development assistance, rehabilitation, financing, rent subsidies, or other methods, and for costs of administering programs that serve those ends. The housing assisted with such funds shall be of a type, or at an affordability level, for which there is a need in the City and that is not adequately supplied by private development

14.04.090 - Waiver of requirements.

Notwithstanding any other provision of this Chapter, the requirements of this Chapter shall be waived, adjusted, or reduced if the Applicant demonstrates that applying the requirements of this Chapter would take property in violation of the constitutions of the United States or the State of California or would otherwise result in an unconstitutional application of this Chapter. To receive a waiver, adjustment or reduction under this Section, the Applicant must file a written request together with the development application(s) when applying for a First Approval for the Residential Project, and/or as part of any appeal that the City provides as part of the process for the First Approval. The written request shall provide substantial evidence showing that applying the requirements of this Chapter would take property in violation of the constitutions of the United States or the State of California or would otherwise result in an unconstitutional application of this Chapter. The City may assume that: (a) the Applicant will provide the most economical Inclusionary Units feasible meeting the requirements of this Chapter; and (b) the Applicant is likely to obtain housing subsidies when such funds are reasonably available. The waiver, adjustment, or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this Section.

14.04.100 - Enforcement.

- A. The City Council may adopt guidelines, by resolution, to assist in the implementation and administration of all aspects of this Chapter.
- B. The City shall be authorized to enforce the provisions of this Chapter and all Inclusionary Affordable Housing Agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on Inclusionary Units by civil action and any other proceeding or method permitted by law.
- C. Failure of any official or agency to fulfil the requirements of this Chapter shall not excuse any Applicant or owner from the requirements of this Chapter.
- D. The remedies provided for in this Chapter shall be cumulative and not exclusive, and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.
- E. The City shall evaluate the effectiveness of the Ordinance codified in this Title, for review by the City Council, five (5) years after the operative date of this Title.
- F. No permit, license, map, or other approval or entitlement for a Residential Project shall be issued, including without limitation a final inspection or Certificate of Occupancy, until all applicable requirements of this Chapter have been satisfied.

14.04.110 - Monitoring.

The Inclusionary Housing Guidelines adopted or to be adopted by the City, and each Inclusionary Affordable Housing Agreement shall include provisions for monitoring by the City of each Residential Project and each Inclusionary Unit for compliance with the terms of this Chapter, the Inclusionary Housing Guidelines, and the applicable Inclusionary Affordable Housing Agreements. The City and/or its designated administrator shall also monitor and submit compliance reports to governmental agencies as required by law. Such provisions shall require property owners to submit annual compliance reports to the City and/or its administrator, and shall authorize the City or its administrator to conduct periodic on-site inspections and audits to ensure compliance with all applicable laws, policies, and agreements. The City Council may adopt fees to cover the City's costs of monitoring and compliance. Such fees shall be payable by the property owner and shall be deposited into the City's Housing In-Lieu Fee Fund.

14.04.120 - On-Site Inclusionary Housing Incentives.

A. The developer of a Residential Project providing all required Inclusionary Units on the same site as the Market-Rate units may, at the developer's option and concurrently with the submittal of the Affordable Housing Plan and the earlier of the zoning or Planning Permit application, submit a written request for one or more of the following on-site inclusionary housing development incentives:

- 1. <u>Density Bonus.</u> The Residential Project may receive a density bonus if the Residential Project includes affordable units in accordance with the threshold requirements for density bonus pursuant to California Government Code Section 65915 *et seq.* For Residential Projects qualifying for a density bonus pursuant to this subsection, the City shall, upon request of the Applicant at the time of application for the First Approval, authorize a density bonus in the amount specified in California Government Code Section 65915 *et seq.* unless such a density bonus would cause an adverse impact to the public health, safety and welfare, including but not limited to historic or natural resources, or the environment. The City shall not provide any other incentives or concessions, other than those listed in this Section 14.04.120, in addition to such density bonus unless otherwise required by law.
- 2. <u>Reduction in Minimum Setback Requirements</u>. The Developer may request a reduction in the minimum setback requirements for the Residential Project, provided such reduction will not cause an adverse impact to the public health, safety and welfare, including but not limited to historic or natural resources, or the environment.
- 3. <u>Alternative Unit Type.</u> The Developer may request to provide Inclusionary Units that are of a different unit type than the Market-Rate units to be constructed within the Residential Project; provided however, the Inclusionary Units shall have the same bedroom count in the same percentage distribution as the Market-Rate units.
- 4. <u>Alternative Interior Design Standards.</u> The Developer shall provide the same amenities within the Inclusionary Units as provided in the Market-Rate units, but may request to provide different but functionally equivalent amenities for the Inclusionary Units; provided however, residents of Inclusionary Units shall have access to all common areas of the Residential Project equal to the access provided to residents of Market-Rate units.
- **SECTION 2.** The Development Standards considered and adopted by Resolution of the City Council of the City of Morgan Hill at its regular meeting of July 18, 2018, as such Development Standards may be amended, are hereby incorporated by this reference.
- **SECTION 3.** Adoption of this Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City; specifically, adoption of the Ordinance is consistent with and implements several policies and programs reviewed in the Morgan Hill 2035 Environmental Impact Report (EIR) for the General Plan Update, which was certified and adopted on July 27, 2016 by Council Resolution No 16-128. No additional environmental analysis is warranted at this time. All future discretionary development that may be impacted by the Ordinance will be subject to a project-specific CEQA analysis as part of the required planning entitlement review (e.g. Rezoning, Site and Architectural Review, Subdivision, etc.) to determine if there are any environmental impacts.
- **SECTION** 4. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

City of Morgan Hill Ordinance No. 2278, New Series Page 15 of 16

SECTION 5. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 18TH DAY OF JULY 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 25^{TU} DAY OF JULY 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Larry Carr, Rich Constantine, Rene Spring

Caitlin Robinett Jachimowicz, Steve Tate

NOES: COUNCIL MEMBERS: None ABSTAIN: COUNCIL MEMBERS: None ABSENT: COUNCIL MEMBERS: None

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Effective Date: August 25, 2018

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2278, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 25th day of July 2018.

3.040 Inclusionary Housing.

This section shall govern inclusionary housing as part of residential development pursuant to Housing Element Policy 4.2 and associated Program 4.3.

- A. *Applicability*. The provisions of this section shall apply to all residential projects of five or more units, including residential components of mixed-use projects.
- B. Requirements. All residential projects of five or more units shall comply with the following requirements:
 - 1. *Location.* Unless otherwise permitted in accordance with this section, inclusionary housing units shall be provided on the site of the residential development.
 - 2. *Quantity*. The number of onsite inclusionary housing units shall be equal to or greater than 15 percent of the total number of residential units or lots in the residential project.
 - 3. *Income Levels*. The following income restrictions shall apply based on the ownership structure of the residential project.
 - a. Inclusionary housing units in a rental project shall be made affordable to very low and low income households as follows: 7.5% of the total number of residential units or lots in the residential project shall be affordable to very low income households and 7.5% of the total number of residential units or lots in the residential project shall be affordable to low income households.
 - b. Inclusionary housing units in an ownership project shall be made affordable to low and moderate income households as follows: 7.5% of the total number of residential units or lots in the residential project shall be affordable to low income households and 7.5% of the total number of residential units or lots in the residential project shall be affordable to moderate income households.
 - 4. *Duration*. Affordable units required pursuant to this section shall be made subject to affordability covenants that are binding on owners of the units and their successors for a duration of at least 55 years in the case of rental projects and for a duration of at least 45 years in the case of ownership projects.
 - 5. Fractional Units. In determining the number of inclusionary units required to be provided pursuant to this section, fractional units shall be rounded up to the nearest whole integer. For fractions less than 0.5 the number shall be rounded down and the fractional unit shall be paid by applicable in-lieu fee. For fractions 0.5 or greater, the number shall be rounded up to the nearest whole integer to provide onsite units. For example, in the case of a 20 unit residential rental project, provision (B)(3)(a) would require making 7.5% or 1.5 of the units affordable to very low income households, and 7.5% or 1.5 of the units affordable to low income households. In this example, the inclusionary unit obligation for the project would be rounded up to 2 units affordable to very low income households and 2 units affordable to low income households.
- C. Inclusionary unit development standards. In addition to other development standards and requirements set forth in this ordinance and other applicable laws and regulations, all inclusionary housing units shall be consistent with the following standards:

- 1. Inclusionary units shall be constructed and occupied concurrently with or prior to the construction and occupancy of the market rate residential units in the project, unless an alternative schedule based on extenuating circumstances is adopted as part of the project approval. In phased projects inclusionary units shall be constructed and occupied in proportion to the number of units in each phase of the project.
- 2. Inclusionary units shall be distributed throughout the residential project site, to the fullest extent practicable.
- 3. The design, appearance and general quality of the affordable units shall be comparable and compatible with the design of the market rate units as determined through the Site Plan and Architectural Review process, provided that all other zoning and building codes are met.
- D. *Alternative Compliance*. At the sole discretion of the City Council, a project's inclusionary housing requirement may be met through alternative compliance in one of the following ways or a combination thereof:
 - 1. Donation of a portion of the project site or an off-site property to the City or a non-profit organization deemed acceptable by the City for development of affordable housing; or
 - 2. Payment of a housing in-lieu fee established by the City's adopted fee schedule; or
 - 3. Alternative mixture of units by income levels; or
 - 4. Use of an alternative method, such as provision of a smaller percentage of onsite inclusionary units coupled with payment of in-lieu fee for the inclusionary units not provided.
- E. Submittal Requirements. All applications submitted to the City for development of a residential project of five or more units or a mixed-use project including a residential component of five or more units shall include the proposed method of satisfying the requirements of this section. Compliance with the inclusionary housing requirements shall be reviewed as part of the development review process and presented to the decision making body as part of the overall project analysis for consistency with both the City's General Plan and this section. Submittal requirements to demonstrate compliance with this section shall include the following:
 - 1. Total number of residential units in the project
 - 2. Number of onsite inclusionary units
 - 3. Proposed sale price of both market rate and inclusionary units and/or proposed rental price for both market rate and inclusionary units
 - 4. Location of onsite inclusionary units within the project
 - 5. Size and bedroom count for the proposed inclusionary units
 - 6. Should the applicant wish to request alternative compliance from the City Council, the application shall include the request and describe the method and details of proposed alternative for compliance. In considering requests from a developer for alternative compliance to creating inclusionary affordable units, the City Council's consideration will include whether creating inclusionary affordable units would render the

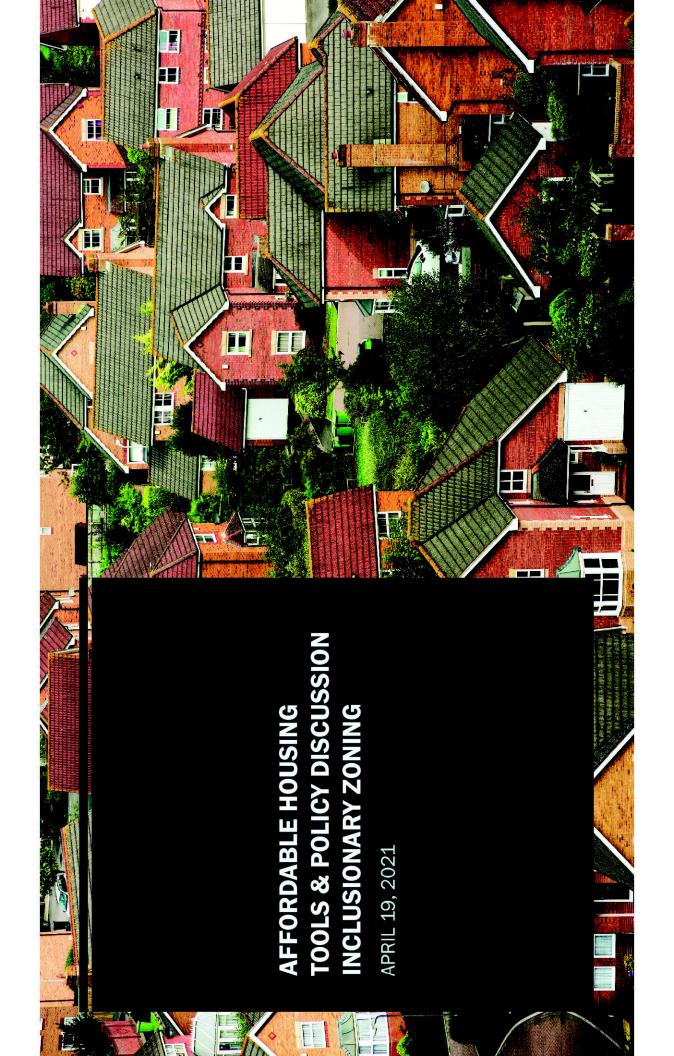
overall project financially infeasible under then current economic conditions. To that end, the developer may, at its option and at its own expense, provide its project financial information to an independent third-party housing/real estate analyst retained by the City to conduct a financial feasibility analysis. The independent analysis will be conducted utilizing the applicant's data, and any additional information that may be required of the developer to complete a thorough assessment. The independent analyst shall employ recognized best practices for the industry and render a detailed recommendation to the City Council to support its conclusions. Any of the developer's sensitive proprietary information shall be redacted before making the report public to the extent permitted by law.

The Petaluma Implementing Zoning Ordinance is current through Ordinance 2738, passed June 15, 2020.

Disclaimer: The city clerk's office has the official version of the Petaluma Implementing Zoning Ordinance. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

<u>City Website: cityofpetaluma.net</u> <u>Code Publishing Company</u>



COMMUNITY AND STAKEHOLDER INPUT

Stakeholder Meeting March 24th

Annual Action Plan Public Meetings - March 30th and 31st

April 5th City Council - Housing Resources

Community Meeting April 8th

Builder and Staff Conversations

Community Feedback Topics

Current housing market and conditions

Inclusionary Zoning Ordinance

Other policy options for affordable housing

Other housing related policies

HOUSING PROGRAMS FINANCIAL TOOLS

POLICY

Housing Division - (HUD) - CDBG & HOME

lousing Successor Agency

Loss of Redevelopment Funding

General Plan – Housing Element

Zoning Ordinance

Subdivision – Map & Engineering Standards

Impact and other fees

Housing Element - Goals and Programs

Zoning Ordinance – Standards and Procedures

Single Family - Multifamily

EXAMPLES

POLICY

Density Bonus - Accessory Dwelling Units

Planned Development - Small Lots

HOUSING PROGRAMS FINANCIAL

CDBG

Ш ≥ О Income Qualified - Income Level

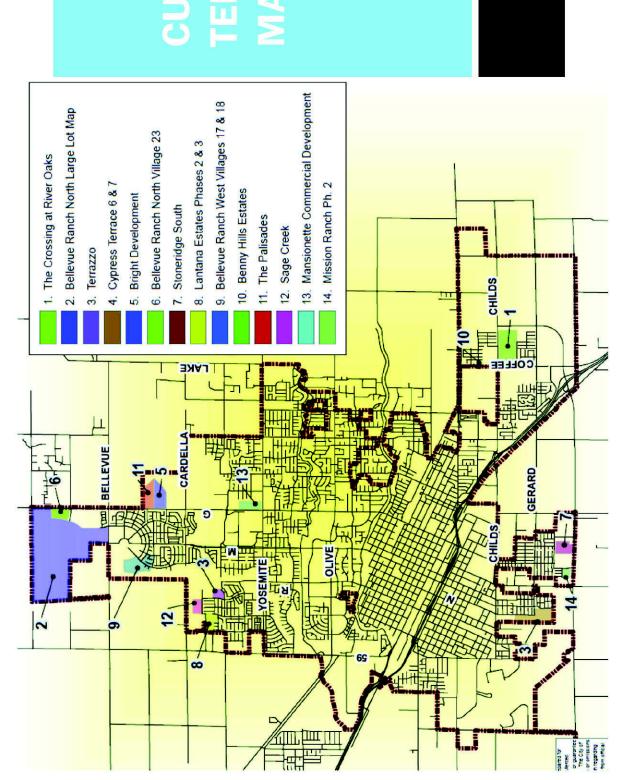
National Objective - Area of Benefit

Housing Acquisition, Rehabilitation, Const.

Community Facilities and Services



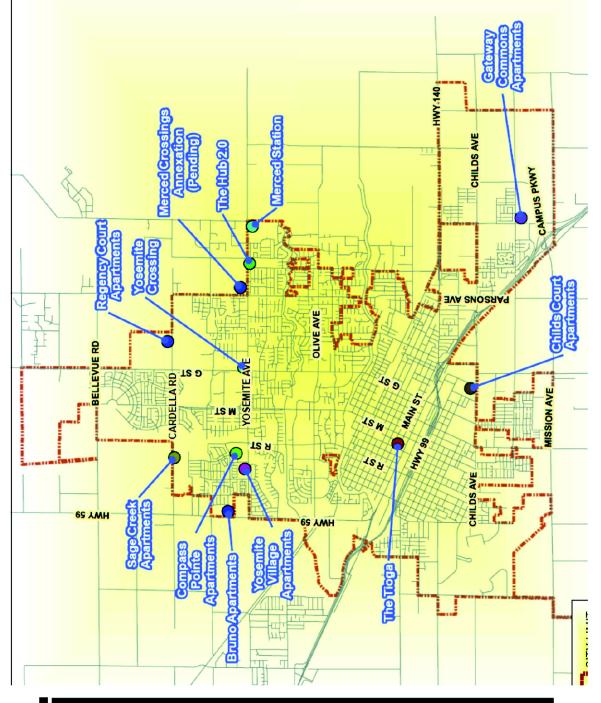
EXISTING PLANNED DEVELOPMENTS



CURRENT TENTATIVE MAPS

TENTATIVE MAPS

	Units
599 Acres of Development	1,736
Does not include Bellevue Ranch North – Only Large Lot Map	2,050 +/-
Does not include any proposed Annexation Areas or Infill Development	evelopment





2006-07 Merced County Workforce Housing Taskforce A policy implemented through zoning that requires affordable housing to be built as part of a market rate City Council direction to engage the community and solicit input project.

INCLUSIONARY

SONING

INCLUSIONARY CONSIDERATIONS

When do requirements apply - Exclusions

Define the development - Number of Units

what income levels - Area Median Income Target Goals – what percentage of units,

Single Family vs. Multi Rental vs. Ownership

Patterson, Davis, Windsor, Petaluma, Ripon

Should there be in lieu options?
Should there be off site location options?
Land dedication options?
Specific Design requirements?
Timing and Performance requirements
Restrictions on Resale – Covenants
Program Management and oversight

Housing Market Analysis Economic or Financial Feasibility Analysis

Other Policy Considerations

OTHER OPTIONS

Market Rate Affordable Housing Fee

ommercial Linkage Fee

Affordable by Design

Diversify Housing Partners - RFQ

Housing Consortium

MARKET RATE AFFORDABLE HOUSING FEE

otential funding source

Down payment Assistance – GAI Financing

Housing Production, Acquisition Rehabilitation

COMMERCIAL LINKAGE FEE

HOUSING TRUST

Impact Fee applied to non-residential development

Housing Trust Fund – where funds can be deposited and also a tool

epresentative communities - Petalum

Feedback from Stakeholder Meetin

ADDITIONAL

SUBSIDIES

subsidy to assist the homebuyer

FINANCIAL TOOLS

nfill and Affordable Impact Fee

AFFORDABLE

BY

DESIGN

Built in standards with specific development requirements

Smaller lots sizes with smaller home footprints providing variety in pricing

Duplex on corner lots - integration of triplex

A percentage of units to include ADU's

LEAP and SB2 Grants

DIVERSIFY HOUSING PARTNERS

City has issued a Request for Qualifications for Housing Partners

Housing Resources update provided to City Council on April 5th

Provides for a pre-qualified list of potential Housing Partners City doesn't construct or rehabilitate units done through partnerships

City's role is to provide assistance and process entitlements

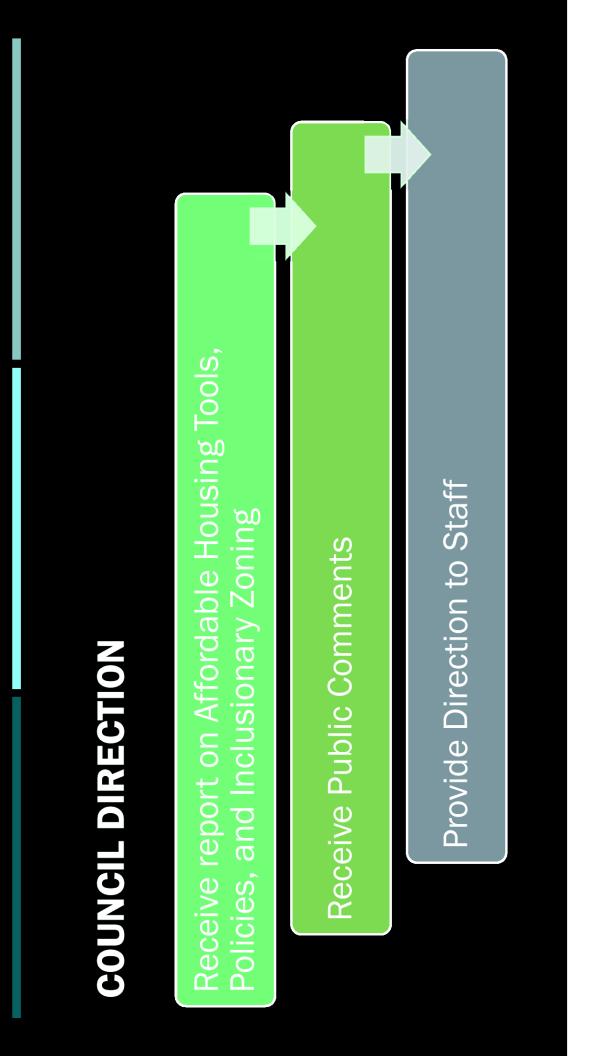
HOUSING

Approach being used in Stanislaus and Fresno Counties

County wide approach to affordable housing

County as a whole becomes an entitlement community - receives HUD funding

Diversifies housing in all communities





CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

File #: 21-699 Meeting Date: 9/7/2021

Report Prepared by: Scott McBride, Director of Development Services

SUBJECT: Report on Pro-Housing Policies, Housing Production, Affordable Housing and Request for City Council Direction on Policies, Programs, and Other Actions

REPORT IN BRIEF

Report on Pro-Housing Policies, Housing Production Affordable Housing and Receive City Council Direction on Policies, Programs, and other Actions.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting the report on pro-housing policies, housing production, affordable housing; and,
- B. Provide direction to staff on potential policies, programs, and actions in support of housing production and affordable housing.

ALTERNATIVES

- 1. Approve, as recommended by Staff; or,
- 2. Approve, subject to conditions other than recommended by Staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
- 3. Deny; or,
- 4. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Merced City Charter, Section 200.

CITY COUNCIL PRIORITIES

Fiscal Year 2021/22 Adopted Goals & Priorities, 4. Housing & Homelessness, ii. Policy Direction.

DISCUSSION

Background

The City Council was previously provided with two presentations related to Affordable Housing Resources and Affordable Housing Tools. Those were provided at the April 5th and April 19th meetings. Staff was provided direction at those meetings which include the following:

Housing Resources, April 5, 2021

 Funding swap of HUD 108 Loan Guarantee funds to Community Development Block Grant Program Income Funds (CDBG PI) for the Childs and B Project

 Direction to proceed with utilizing Housing Successor Agency Funds for the Gateway Terrace II project

Affordable Housing Tools, April 19, 2021

Provide additional options to consider in support of housing production and affordable housing

Current Affordable Housing Projects

Childs and B Project - the City Council has recently taken action to amend the Disposition and Development Agreement and various loan documents - regulatory agreements to implement the Childs and B funding change. That change was a switch of HUD 108 Loan Guarantee funding to Community Development Block Grant (CDBG) Program Income in the amount of \$2.0 million. Construction is underway and ahead of schedule.

Gateway Terrace II - Staff is currently working with the Central Valley Coalition for Affordable Housing to outline the various documents that will be necessary for the change in funding approach related to Gateway Terrace II. Staff has also been coordinating with the Department of Housing and Urban Development (HUD) on the specific mechanics of repayment of the previously expended HUD funding, CDBG and HOME.

April 19th Council Meeting

In response to the April 19th Council Direction Staff has prepared this administrative report and attached presentation. The April 19th meeting included information and community input on Inclusionary Zoning as well as other potential tools or activities that may assist in housing production or affordability. They included the following:

- Commercial Linkage Fee
- Market Rate Affordable Housing Fee
- Identification of additional subsidy
- Diversify Housing Partners Housing RFQ
- Affordable by Design
- Countywide Housing Consortium

Additional Affordable Housing Activities

In support of Affordable Housing since the last report was provided to the City Council in April 2021 some additional activities have been completed or initiated. They include the following:

- Housing Partner RFQ
 - Received responses from five qualified firms
 - Several are pursuing site acquisition and land use entitlements cumulatively over 600

affordable units

- · Working on project Pro Forma financial needs
- Funding requests to be discussed on a project-by-project basis
- Infill Housing Request for Proposals Housing Successor Agency properties
 - Received three response from qualified firms
 - Council consideration to enter into site disposition negotiations

It should be noted that the State of California Housing and Community Development Department (HCD) is drafting a Notice of Funding Availability of all their various funding programs into one "Super NOFA." The anticipated release is early 2022. To receive consideration a site must be under control, owned or an option to purchase. Additionally, having land use entitlements in place provides for higher scoring.

Administrative Report and Presentation Goals

- Provide comprehensive data points related to housing in the City of Merced
- Outline Entitlement process and current policies
- Identify policies, processes, and programs where the City Council can influence housing production and investment:
 - Time to produce units
 - Costs related to producing the unit
- Potential Pro-Housing Designation by the State of California

Evaluation of Data and Studies

To identify additional ways the City of Merced can advance housing production and affordable housing, staff has sought data sources to assist in identifying current housing issues and needs. The data provided includes the following:

- Annual Data State Department of Finance
- Annual City Data and Studies annual sources including Housing Element Annual Report, General Plan Annual Report, Housing and Urban Development (HUD) Annual Action Plan, and Consolidated Annual Performance Evaluation Report (CAPER), and City permit data
- Recurring City Studies Housing Element, Consolidated Plan, Regional Housing Needs Assessment, and Municipal Service Reviews prepared by Merced County LAFCO
- Other Data including the Census
- Other Studies including State Auditor, Health Impact Assessment by Merced County Public Health on the UC Merced LRDP, Merced County Board of Realtors - California Realtors Association, Continuum of Care - Point in time Count

It should be noted that the City currently has over 2,700 approved multi family or apartment units. There are additionally over 1,700 approved Tentative Map Lots. These are typically single-family home arranged lots. This is the approval status before a Final Map is submitted. The Tentative Map lots do not include sections in Bellevue Ranch North which are currently under large lot maps. Those areas may provide an additional 1,700 plus units in a variety of configurations. Additionally, the City

is receiving Annexation Pre-Applications for additional areas that may support both single family and multi-family development.

Over the past 10-year period, the City has issued 2,441 single-family building permits and 678 multifamily building permits.

Conclusions from the data and studies include the following:

- Action is needed to increase the supply of housing given the low vacancy rate Health Assessment
- Action is needed to support affordable housing population is rent burdened Health Assessment & State Auditor
- There is a need for shelter supportive services to assist those experiencing homelessness, approximately 214 units - COC Data
- City and partners are producing units at a high rate, but an additional 500 to 600 are needed in the marketplace to help stabilize availability - Real Estate Data
- UC Merced will need off campus housing for approximately half of the annual increase of 530 students per year, 265 students per year - 2017 and 2020 LRDP
- The City is producing affordable housing units, but more are needed State Auditor

City Housing Support and Funding

The City has some direct areas of service in support of housing production. Examples include the Development Services Department which includes the Planning and Inspection Service Divisions. These two divisions are involved in the project entitlements, environmental or CEQA review, building plan review, and building inspections. Support is also provided by other departments through the entitlement and construction phases. An example is the Engineering Division which is involved in the processing of maps, review of improvement plans, and construction of subdivision and public improvements. Once completed all city departments provide some type of service to the housing unit and residents.

In addition to development support the Housing Division also provides support utilizing entitlement allocation funding form the Department of Housing and Urban Development (HUD) and other funding sources. These funding sources are typically tied to income qualifications and eligible census tracts. These funds augment other sources from project developers to assist making the project meet specific affordability standards. It should be noted that HUD funding is provided under two sources, Community Development Block Grant (CDBG) and Home Investment Partnership (HOME). CDBG may be utilized on some certain housing activity and public services and public improvements. HOME provides more flexibly in support of affordable housing, but also has a specific allocation which must be made to a Community Housing Development Organization (CHDO). The City only has one established CHDO the Central Valley Coalition for Affordable Housing.

Over the past ten years the Housing Division, utilizing HUD sources as well as Neighborhood Stabilization, Cal Home, State Home, and Housing Successor Agency - former Redevelopment Lowand Moderate-Income Funds has committed the following:

Housing Activities - \$19,792,210

- Public Services \$1,134,708 (CDBG)
- Infrastructure Capital Improvements \$1,481,078 (CDBG)

These funding programs do not include one-time funds received under the special Allocation for COVID 19 relief. The City pledged use of a portion of those funds for Emergency Rental and Utility Assistance.

Under two rounds of allocation the City made \$186,005 available followed by an additional \$432,327. The City has two service providers implementing these programs. Anyone in need of assistance should contact them to determine eligibility. Their contact numbers are:

Sierra Saving Grace - 209-626-5660 Merced Salvation Army - 209-383-4225

In addition to the City's allocation Merced County received funding for these activities. Their funding can be used in any jurisdiction within the County. Remaining funds are approximately \$30 million. Action was recently taken for implementation directly by the State of California.

The County's program provided this update - Beginning on August 11, 2021, all new applications for rental and/or utility assistance not already scheduled with CVOC will need to be submitted to the CA COVID-19 Rent Relief Program https://housing.ca.gov/covid rr/index.html>. For additional information, including eligibility and application help, you can call the State's COVID-19 Rent Relief Call Center at 1-833-430-2122.

Permitting - Land Use Entitlements

The City's primary role in providing housing is in the areas of Permitting and Land Use Entitlements. Permitting occurs after entitlements are in place. They are typically ministerial in nature. Examples include Plan Checks of building plans and issuance of a building permit. Another example is review of improvement plans for a new subdivision. To help in these areas the City utilities a combination of contact and staff plan checkers as well as engineers. The City also allows for the use of Master Plans which allow a builder to use the same building plans in multiple locations without the need for plans to be reviewed for each permit application.

The area of land Use Entitlements is generally coordinated by the City's Planning Division. They may include processing of a General Plan Amendment, Zone Change, formation of a Planned Development, a Conditional Use Permit, and Tentative Subdivision Map. These types of actions not discretionary and require consideration by the Planning Commission or some cases the Commission as a recommending body with the City Council as an approving body. These various types of approvals are all subject to the California Environmental Quality Act or CEQA. The actions may be a Resolution or Ordinance depending on the City's General Plan and Zoning requirements.

There are however several examples within the City's Zoning Code which allows for "By Right" development to occur. This avoids the need for action by the Commission or Council and greatly accelerates the ability to review and approve a proposed development. The State has long been pushing for more By Right approvals for housing projects.

Housing Influences

There are many factors which affect the supply of housing units and production of units. Some include the following:

- Population Growth Economic Conditions
- Changing population characteristics income, age, family size
- UC Merced student growth and program growth
- Homelessness
- New Conditions migration from more urban areas, teleworking, future transportation investments (ACE and HSR)

Evaluation of Policies, Procedures, and Processes

To assist in evaluating ways to help encourage and expedite housing production considerable work has also been done in identifying policies contained within the General Plan and other Municipal Code Sections that should be considered for modification. These tools can also support increased housing production including affordable housing. They include the following:

General Plan

- Establish a Density for Residential Development in Commercial GP Areas
 - Current policy supports mixed use, but does not provide a residential or mixed-use maximum density
- Create more flexible standards for Subdivision Improvements part width streets and special road sections for example

Housing Element

- New development to provide a plan for housing production in line with City's Regional Housing Needs Assessment (RHNA) requirements
- This may be a potential alternative to an Inclusionary Zoning Ordinance
- Merced County has incorporated a requirement as part of new Specific and Community Plans
- The City may implement this requirement as part of various discretionary entitlements
 - Annexation requests.
 - · General Plan Amendments
 - Zone Changes
- May be implemented using Legislative Action Agreement, Development Agreement (DA) or Pre-Annexation Development Agreement (PADA) mechanisms already in use

Mapping - Subdivision

- Expedite Streamline the approval process for Tentative Maps and Final Maps
- Deposit and Reimbursement Agreements consider policy deferring to the City Manager up to a specified dollar amount
- Delegate Final Map and Acceptance of Improvements to the City Engineer
- Subdivision Agreement defer approval to the City Manager
- Update Title 18 match the Map Act as much as possible
- Pre-Qualified List of Consultants to assist Engineering Division already in progress

The City has a Local Early Planning Grant (LEAP) from HCD that can assist

CEQA - Environmental

- Update Title 19 of the Municipal Code many CEQA updates
- Deposit and Reimbursement Agreements Consider policy deferring to the City Manager up to a specified dollar amount
- Vehicle Miles Traveled Guidelines (VMT) Support Merced County Association of Governments (MCAG) creation of a local model and guidelines - adopt as a General Plan Amendment
- Update General Plan and Zoning to create more By Right entitlements
- Abandon Programmatic Climate Action Plan (PCAP) as currently prepared may hinder housing development, duplicates other new state requirements

Zoning Code Updates

- Reduce steps streamline procedures
- Create more By Right entitlements Affordable by Design
- Use of Objective Standards
- Update standards to take into consideration new housing types choices
- Updates for consistency with state laws
- Updates for Supportive Services
- City has a LEAP and SB2 Grant to assist

Specific Zoning Updates include the following

Streamlining & Flexibility

- Add for the ability to utilize non-PD Zoning Standards when none were approved for the PD lot size, setbacks, building heights as examples
- Reduce the size requirement to create a Residential Plan Development Area currently 1 acre
- Clearly specify that the PD may have different standards from both single family and multifamily design guidelines and other standards
- Consider changes to the Interface Requirements including eliminating the Site Plan Requirement when a project is consistent with the General Plan, underlying Zoning, and is a residential project (20.32)

Supportive Housing

- Density Bonus (20.56) State updates include AB 2162 Supportive Housing
- By Right Location of Emergency Shelters (20.10.20) expand from CG to CT and CC
- Group/Transitional/Supportive (20.08-1) Housing and Residential Care Facilities non state licensed and no services provided
- Consider expanding Single Room Occupancy in specified residential zones and commercial zones (20.144.120)

In Fill - Affordable by Design

- Reduce the requirement to utilize Small Lot Design Standards (20.40) from a Conditional Use Permit (CUP) to a Site Plan
- Pre-Qualify or Designate areas as qualifying for Urban Residential Overlay Zone (20.22.040) -

Opportunity Zone for example

- By Right Duplexes in Single Family Zones (20.08.020(B)) currently only on corner lots on larger roadways - all residential zones and residential PD's
- By Right or Streamlined Administrative approval for Tri-Plex units in Single Family Zones and residential PD's
- SB 35 update application and add Objective Design Standards

Promote Housing Choices and Affordability

- Create Tiny Home Standards and designate zones for by right or other streamlined administrative approval
- Update Single Family Design Standards (20.46.020) roof pitch and width
- Update Multifamily Design Standards General and Specific (20.46.030 & 20.46.040)
 - Allow Roof Mounted A/C Units when screened
 - Eliminate setback requirements that are more stringent than underlying zone
 - Allow for exceptions modification through a PD
- Add Mixed Use Development Standards address densities in commercial zones where housing is allowed (20.20.10)
- Consider Updates to the Definition of Lot alley facing and other access easement options
- Remove the requirement to process a Condominium Map by way of a Conditional Use Permit (CUP) (20.54.030)
- Update Parking Requirements for Multi Family (20.38) does not promote mixed use impacts reuse of existing buildings

Financial

- Community Facilities District Policy Update (CFD)
 - Streamline procedures to establish annex
 - Identify which project types are not subject to CFD
- Public Facility Impact Fees (PFFP)
 - Deferral Options Multi Family fees are not currently eligible
 - Multi phased projects are not currently addressed
 - Change security from property based to a bond
 - Establish a reduced Infill Rate Opportunity Zone, update underway
- Developer Financial Tool Kit
 - Expand and educate on BOLD, SCIP, Opportunity Zone, consider use of EIFD, other State Grants and Programs

To assist in these updates, the City has some tools available including two grants awarded to the City by the State Department of Housing and Community Development. They include the following:

- Local Early Action Planning Grant (LEAP)
 - Funding to prepare updates to the General Plan and Zoning Code Objective Standards, by right, up zoning, streamlining
 - Funding to amend the Subdivision Map Ordinance
 - Funding to review Development Review Processes and Fees

Funding to Establish Pro Housing Policies - seek HCD approval - evaluate a Housing Trust Fund

- SB2 Planning Grant
 - ADU & JADU Ordinance Update
 - Off the Shelf ADU Plan
 - Off the Shelf Duplex/Triplex Plan
 - · Tiny Home Ordinance Zoning
 - · Infill and Overlay in the Downtown Area

Regional Early Action Planning Grant - MCAG

MCAG has received REAP 1 and will receive REAP 2 funding. REAP 1 is focused on technical assistance - REAP 2 can also fund housing programs and projects.

A Housing Workgroup has been formed and is providing input to the Technical Review Board (TRB) and Governing Board. The Workgroup has several recommendations related to the use of the REAP 1 allocation:

- Completion of Regional Housing Needs Assessment (RHNA)
- Evaluation of a multi-jurisdictional Housing Element or independent
- Preparation of Housing Element(s)
- Evaluation of Housing Consortium and Housing Trust

A Housing Trust or Housing Trust Fund is an organization and financial tool to provide affordable housing. They can be a single agency, multiple agencies, or nonprofit organization. A dedicated funding source is often created to provide resources. An example is commercial linkage fee - an impact fee levied on nonresidential development projects.

A Housing Consortium is a potential tool to also assist in affordable housing production. They goal of forming an agency of this type is to leverage HUD funding similar to the City's allocation. These sources can be used by other agencies that do not currently receive funding in support of affordable housing and other eligible activities. Stanislaus County has several jurisdictions that have formed a consortium.

Policy Recommendations

- Begin General Plan and Zoning Updates
 - Integrate RHNA Policy for unit distribution, with Development Agreements or Legislative Action Agreement delineation
 - Required to comply with new State Legislation
 - Streamline entitlement processes to reduce time from application to construction
 - Provide enhanced ministerial and By Right entitlement opportunity
 - General Plan and Zoning updates that encourage affordable by design and income type across all areas
- **Enhanced City Programs**
 - Develop and expand Financial Toolkit for PFFP

- Re-invest program income into 1st Time Home Buyer Program
- Create CEQA support to assist with regional review and mitigation needs

Pro-Housing Policies

The State of California Housing and Community Development Department (HCD) has created an application process for a local agency to be considered as a Pro Housing Community. Although not competitive, the process does require that the local agency act in many ways to encourage by right development and various other methods to encourage housing productions and affordability. Some benefits of being designated include:

- Support exploration of Regional Housing partnership within County
- Provide funding sources and technical assistance to all agencies
- Recommend adoption of a Regional Housing Element
- Seek Pro Housing Designation by the State Housing and Community Development Department (HCD)
 - Access to additional financial resources to affordable housing projects
 - Provides additional points on competitive funding applications
- Continue Fair Housing Support through HUD allocation
- Continue Continuum of Care Support through HUD Allocation

Next Steps

Fall 2021

- Housing Successor Agency Property Disposition Direction Scattered Sites RFP
- Funding Commitments to Affordable Housing RFQ Partners
- ARPA Public Input Council Direction
- Gateway Terrace II Funding Approval and Agreements
- Acceptance of SB2 and LEAP Grants budget amendments
- HUD CAPER

Winter 2021-22

- Housing RFQ Partners Tax Credit and State Funding Applications
- RFQ's for SB2 and LEAP Implementation
- HUD Annual Plan Process Public Hearings and Community Outreach
- Home Key Grant applications

Spring 2022

- Childs and B on Site Construction Completion
- HUD Projects and Program Funding RFQ Housing and Community Services
- SB2 and LEAP Contracts

IMPACT ON CITY RESOURCES

None

ATTACHMENTS

1. Presentation on Pro Housing Policies, Housing Production, and Affordable Housing



Pro-Housing Policies

Housing Production

and Affordable

Housing

September 7, 2021



Data Discussion



Entitlement Processes



Presentation

Overview

Policy Evaluation



Available Programs



Council Direction

816

Presentation Goals

- Provide data driven responses to housing needs
- Identify policies, processes, and programs where the City Council can influence housing production and investment
- Time to produce units
- Costs related to producing the unit
- Potential Pro-Housing Designation by the State of California
- Encouragement of Affordable Housing Production
- Next Steps and other actions



Data Discussion

Important Sources

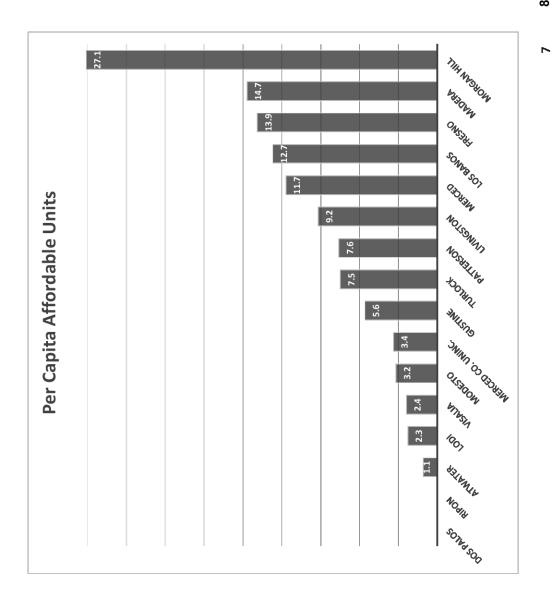
- Annual Data State Department of Finance
- Studies
- State Auditors Report
- UC Merced Housing Study
- Health Impact Assessment by Merced County Public Health
- UC Merced Long Range Development Plan
- Merced County Board of Realtors Market indicators
- Continuum of Care Homelessness data
- Local Data annual production
- Funding Summaries CDBG & Home funds

		Ta	ble 2: E-5	City/Count	Table 2: E-5 City/County Population and Housing Estimates, 1/1/2021	n and Hou	sing Estin	nates, 1/1/	2021			
	-	POPULATION			Н	HOUSING UNITS	NITS					
				Total								
			Group	Housing	Single	Single	Two to		Mobile		Vacancy	Persons per
City	Total	Honsehold	Quarters	Units	Detached	Attached	Four	Five Plus	Homes	Occupied	Rate	Honsehold
Atwater	31,810	31,708	102	10,358	6,793	616	1,627	582	740	9,758	2.8%	3.25
Dos Palos	5,575	5,547	28	1,782	1,527	8	81	120	46	1,655	7.1%	3.35
Gustine	5,845	5,845	0	2,128	1,757	48	87	84	152	1,945	8.6%	3.01
Livingston	15,448	15,444	4	3,773	3,192	11	193	312	99	3,647	3.3%	4.24
Los Banos	42,869	42,688	181	12,826	10,861	142	549	878	396	11,958	6.8%	3.57
Merced	90,971	89,823	1,148	30,041	19,167	1,045	4,127	4,956	746	28,221	6.1%	3.18
Balance Of County	92,318	89,949	2,369	28,647	22,382	934	1,007	738	3,586	25,767	10.1%	3.49
Incorporated	192,518	191,055	1,463	60,908	43,297	1,870	6,664	6,932	2,145	57,184	6.1%	3.34
County Total	284,836	281,004	3,832	89,555	65,679	2,804	7,671	7,670	5,731	82,951	7.4%	3.39

Source: CA Department of Finance, May 7, 2021

Merced County Demographics

Owner Occupied Units in Merced – 41.3% - US Census 2015-2019 Countywide is 52% owner occupied



State Auditor

Data

Area	Severe Cost-Burden Rating	Overcrowded Housing	Unavailability of Housing
Dos Palos	High	High	Very High
Ripon	High	High	High
Atwater	High	Very High	High
Lodi	High	High	High
Visalia	High	High	High
Modesto	High	High	High
Merced County	High	Very High	High
Gustine	Moderate	High	Very High
Turlock	High	High	High
Patterson	High	High	High
Livingston	High	Very High	Very High
Merced	High	High	High
Los Banos	High	Very High	High
Fresno	High	High	High
Madera	Moderate	Very High	High
Morgan Hill	High	High	High

State Auditor Data – Housing Index

UC Merced Long Range Development Plan

Projected Enrollment and Employment TABLE 2.1

Headcounts	2018	2020 2030	2030	Projected Increase 2020-2030
Students	8,500	000'51 002'6	15,000	5,300
Faculty	415	440	982	346
Staff (On Campus)	800	840	1,625	785
Total Population	9,715	9,715 10,980 17,411	114,71	6,431

Prepared by IRDS, September 7, 2018 Fall 2018 are not census based

- Estimated growth per year (530 students per year)
- UC Merced's goal is to house population on campus. 50% of the student
- 2017 & 2020 LDRDP

10

UC Merced Environmental Health Assessment

assessment of the Long Range Development Plan Completed by UCM in July 2020 – self-(LRDP)

- Conclusion:
- Lack of housing supply and rent burden has negative health impacts
- Goal of 50% on campus housing not being met – 35% plus 12% by contracts
- Key recommendations:
- Collaboration between UC Merced and surrounding communities is needed to maintain or improve on campus housing supply
- City of Merced has a low vacancy rate and actions to increase the housing supply are necessary

Existing City Data

Annual Items

Housing Element Annual Report

General Plan Annual Report

Housing and Urban Development Annual Action Plan

Consolidated Annual Performance Evaluation Report (CAPER)

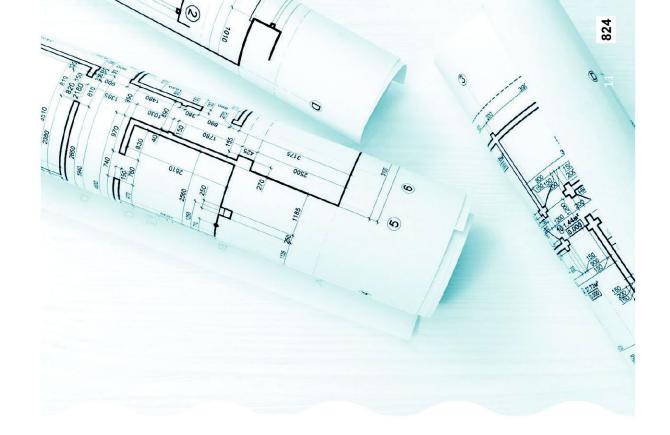
City Permit Data

Reoccurring

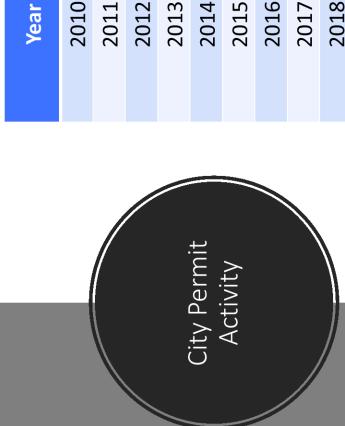
Housing Element – included in the General Plan, 8-year cycle Consolidated Plan – Housing and Urban Development (HUD), 5-year cycle

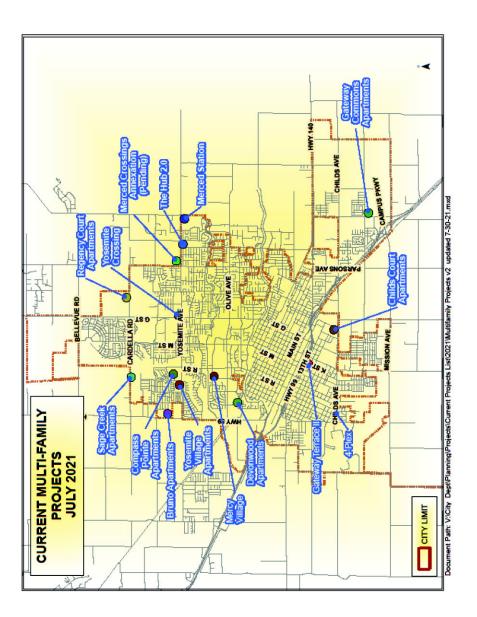
Regional Housing Needs Assessment (RHNA)- prior to each Housing Element Cycle, prepared by MCAG

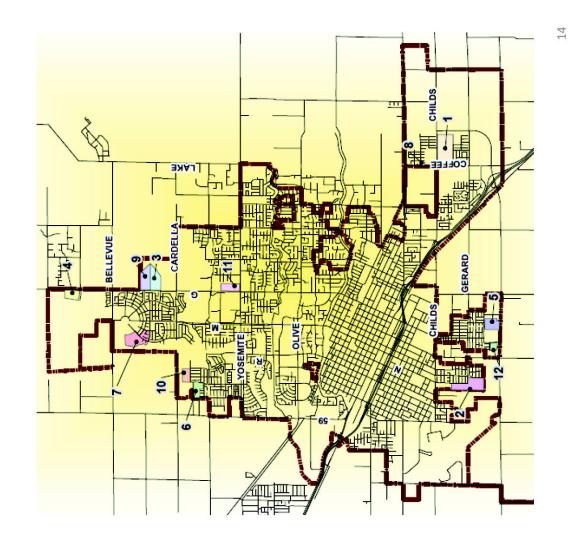
Municipal Service Review (MSR) — prepared by LAFCO, 5-year cycle



Year	Single Family Units	Multi-Family Units
2010	П	2
2011	0	10
2012	Т	176
2013	10	0
2014	53	0
2015	85	1
2016	171	36
2017	148	48
2018	581	16
2019	899	0
2020	723	389
Total	2,441	678







Approved Tentative Maps

1,737 Map Lots

Tentative Maps -1,737 lots

Merced Housing Partners

City Housing Investment

- Regular operational support all departments
- Entitlement Community
 Designation: qualifies for federal & state resources annually
- Allocation is in two program areas:
- Community Development Block Grant (CDBG)
- Home Investment Partnership (HOME)

City Housing Funding Committed

NSP1 (Foreclosed Property Acquisition, Rehab, & FTHB) Acquisition, Rehab, & FTHB)
\$501,518.64
\$678,192.70
\$50,418.99
\$104,495.81
\$72,115.21
\$27,469.00
\$0.00
\$0.00
\$0.00
\$0.00
\$1,434,210.35

Current Fiscal Year Housing Commitments

AMOU	AMOUNT COMMITTED TO	O HOUSING ACTIV	HOUSING ACTIVITIES/PROJECTS (FY 21/22)	(FY 21/22)			
HOUSING PROJECTS & ACTIVITIES	CDBG	HOME	ΙΜΙ	CALHOME06	CALHOME12	STATE HOME (FUND 034, 041 & 042)	FY 21/22 TOTALS
Merced Rescue Mission - Acquisition/Rehab of Property	\$400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$400,000.00
Sierra Saving Grace - Acquisition/Rehab of Property	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$500,000.00
Housing Project TBD - CHDO FY 21/22)	\$0.00	\$85,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$85,000.00
Housing Project TBD -	\$0.00	\$3,084,350.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,084,350.00
Housing Project (GTII project and/or TBD)	\$0.00	\$0.00	\$2,024,603.65	\$0.00	\$0.00	\$0.00	\$2,024,603.65
First Time Home Buyer Program	\$0.00	\$0.00	\$0.00	\$292,850.00	\$155,421.00	\$0.00	\$448,271.00
First Time Home Buyer Program and/or OOR Program (Housing will need direction from our State Program Representative on what is allowed for reuse funds from this PI)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$523,515.99	\$523,515.99
TOTAL:	\$900,000.00	\$3,169,350.00	\$2,024,603.65	\$292,850.00	\$155,421.00	\$523,515.99	\$7,065,740.64

Approximate Available to be programmed: \$2,800,000

20

Influences Housing

- Population Growth Economic Conditions Changing population characteristics
 - Income
- Age
- Family Size
- UC Merced Growth
- Homelessness
- Emerging Influences
- Migration from more urban areas
- Teleworking
- Future Transportation Investments

Cost of Production

City Influenced	Market Influenced
Entitlement Costs & Processes	Financing Costs
Permit and Plan Check	Material Costs
Utility Connections	Labor Costs
Design & Construction Requirements	Design, Engineering, Architecture
Public Facilities & Park Fees	Other utility connections – gas, electric, data
	Other Fees – School Fees
	Insurance & Warranty
	Land Acquisition

Permitting

- Occurs after Land Use Entitlements are in place Ministerial Action
- Plan Check Building Permits
- Master Plans allows the same plans to be built in multiple locations
- "By Right" allows for the issuance of building permits without any discretionary review
- Fees Due
- Pre-Designed or Off the Shelf Plans

lomes
ingle Family

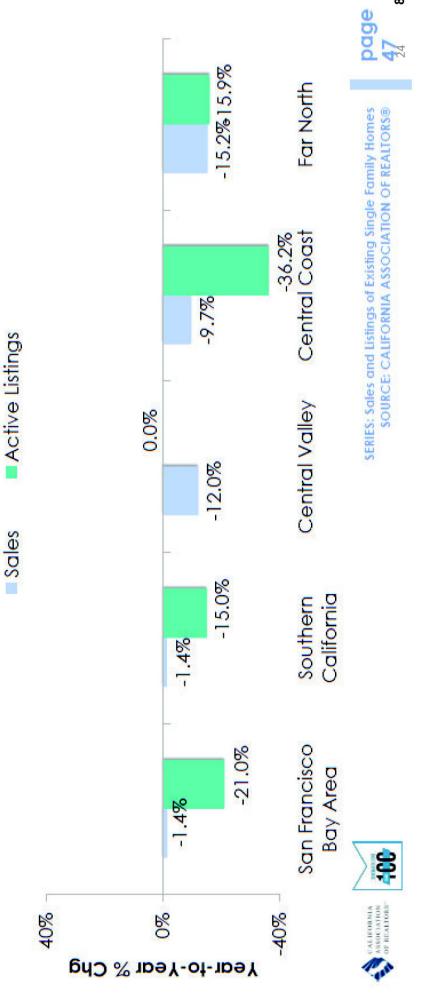
	1,700 sf	2,000 sf	2,300 sf
Building Permit	\$2,269	\$2,650	\$3,031
Plan Check*	\$1,475	\$1,773	\$1,970
Sewer	\$5,236	\$5,236	\$5,236
Sewer Line	\$1,267	\$1,267	\$1,267
Water	\$8,528	\$8,528	\$8,528
Park Fees	\$662	\$662	\$662
CRIS Tax**	\$1,547	\$1,820	\$2,093
Public Facility Impact Fees	\$5,533	\$5,533	\$5,533
Other	\$1,028	\$1,028	\$1,028
Total	\$27,545	\$28,497	\$29,348
* Non-Master Plan – using a Master Plan can reduce Plan Check costs by 85%	· Plan can redu	ce Plan Check	costs by 85%

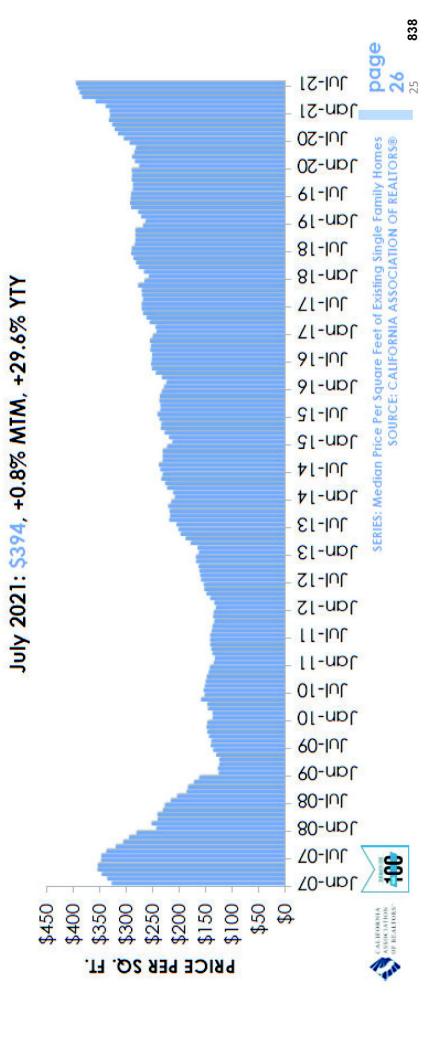
** Owner-occupied is exempt

Demand & Supply seeking for balance

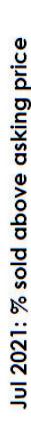


July 2021





Homes sold above asking price - by county



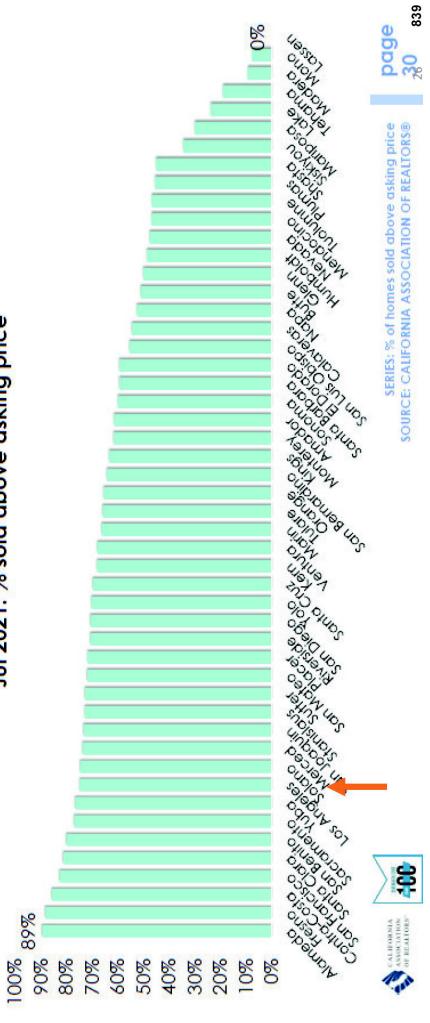


Table 2. Total Number of Unsheltered and Sheltered Persons Counted in 2021 by Jurisdiction

Total # of

→ Table 9. Total Shelter Count by Program

ß

8 4

	Unshe	Unsheltered	Shel	Sheltered		
	8	Count	ಬ	Count	Total	Total Count
	#	%	#	%	#	%
Atwater	35	∞	18	2	53	100
Cressey	0	0	0	0	0	100
Delhi	e	1	0	0	m	100
Dos Palos	19	4	7	2	26	100
El Nido	0	0	0	0	0	100
Gustine	0	0	7	2	7	100
Hilmar	1	0	0	0	1	100
Le Grande	0	0	ε	1	ю	100
Livingston	19	4	15	4	34	100
Los <u>Banos</u>	109	24	09	16	169	100
Merced	224	49	258	29	482	100
Planada	2	1	0	0	2	100
Santa Nella	22	2	0	0	22	100
Snelling	0	0	2	1	2	100
South Dos Palos	0	0	0	0	0	100
Stevinson	1	0	0	0	1	100
Winton	17	4	0	0	17	100
County-wide (DV programs)	0	0	10	2	10	100
Total:	455	100	380	100	835	100

61

2

Tranquility Village

Community Social Model Advocates Community Social Model Advocates

Transitional Housing:

Valley Crisis Center

Hobie House

Parsons House

163

Sub-Total:

σ

Domestic Violence Shelter

Room at the Inn Shelter Winter Warming Center

Hope Respite Care

D Street Shelter Motel Vouchers

Merced County Human Services Agency

Community Action Agency

Shelters:

Facility

Merced County Rescue Mission Merced County Rescue Mission Merced County Rescue Mission

Continuum of Care

Data

Area	
þ	l
Persons	
Sheltered	
d and	
lterec	-
Unshe	
ot	
rison	
Compa	
2021	
. 2019 -	
3	
<u>e</u>	l

Incorporated and		Total	_			Total	_					
Unincorporated Areas	Uns	Number of Unsheltered Persons	er of d Persor	SI	ક	Number of Sheltered Persons	er of Person	v		P	Total	
	2019	2019 2021 Difference	Differ	ence	2019 2021 Difference	2021	Diffe	rence	2019	2019 2021	Difference	rence
	#	#	#	*%	#	#	#	*%	#	#	#	*%
Merced	204	224	+20	10	204 224 +20 10 215** 258 +43 20	258	+43	20	419	419 482	+63	15
										1		

Total: 323

160

Sub-Total:

Domestic Violence Transitional Hg

Hope Respite Care Transition to Hope

Merced County Rescue Mission

Valley Crisis Center

Hope for Women

Hope for Men

4 5

8 =

Bridge to Hope - Los Banos

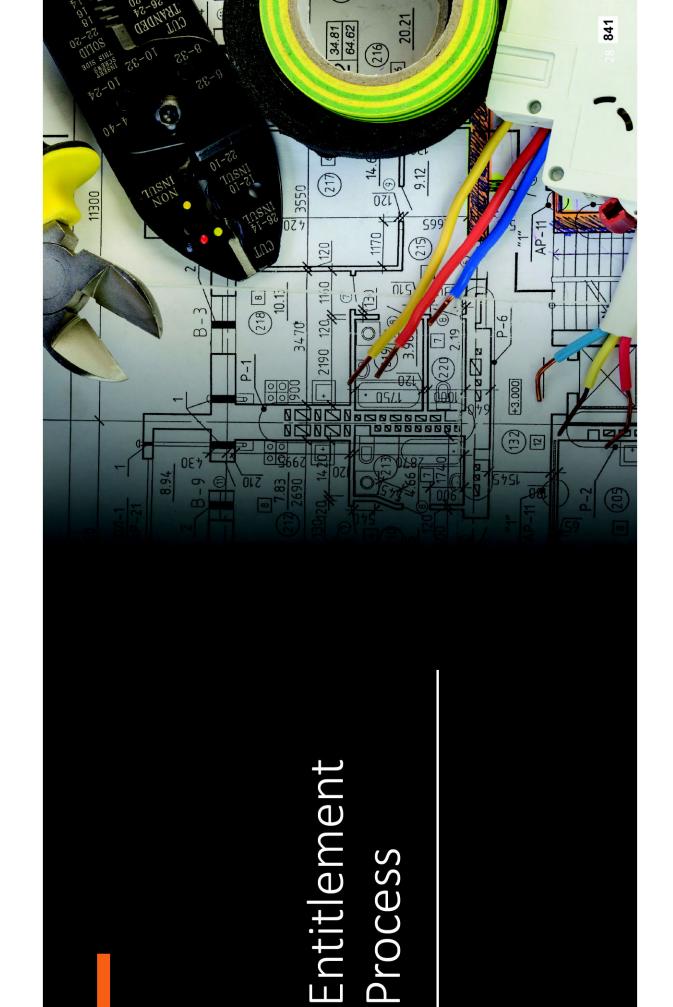
Bridge to Hope – Merced

Merced County Rescue Mission

Merced County Rescue Mission

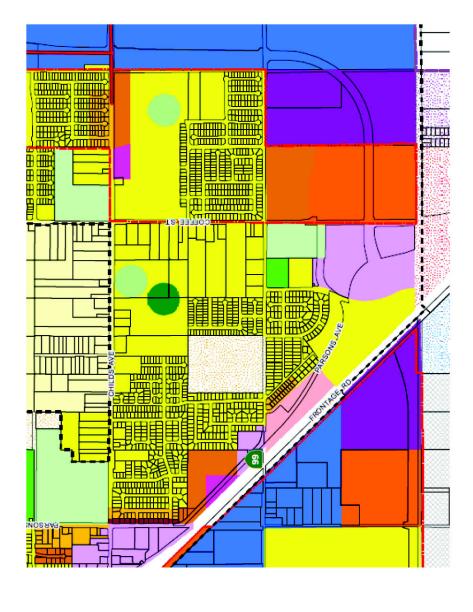
Merced County Mental Health

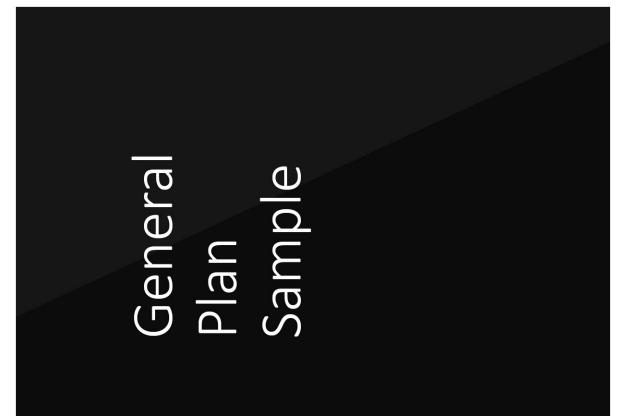
27 840

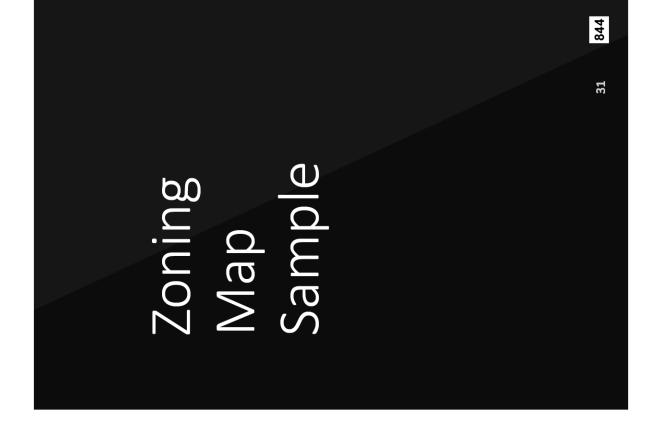


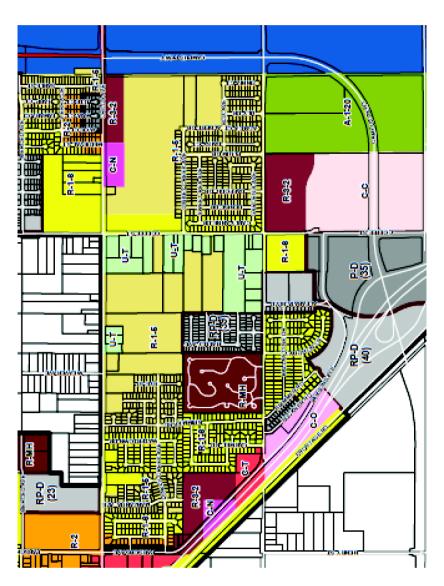
- Planning
- Zoning
- Development Laws
- General Plan Law
- Subdivision Map Act
- California Environmental Quality Act
- Redevelopment Law
- Cortese-Knox Local Government Reorganization
- Local requirements and processes specific to the General Plan (GP) and the Zoning District

29



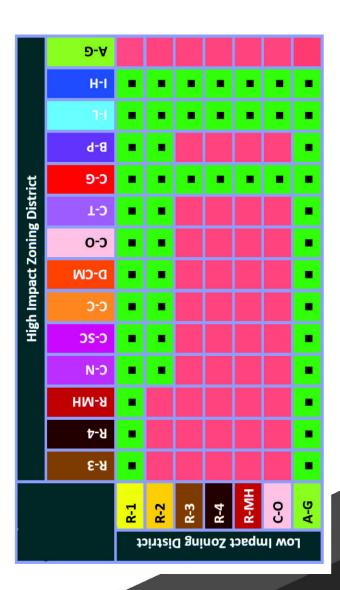






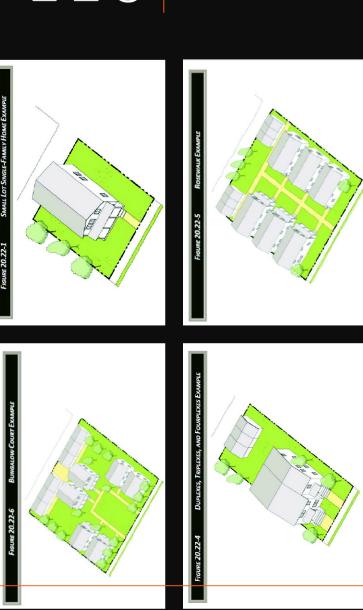
P Permitted UseM Minor Use Permit RequiredSP Site Plan Review Permit RequiredC Conditional Use Permit RequiredX Use Not Allowed R-R R-1		R-2	R-3	R.4	× ×	Additional Regulations Chapter 20.42
R-R		R-2	R-3	R-4	R-MH ×	Additional Regulations Chapter 20.42
R-R		R-2	R-3	R-4	R-MH	Additional Regulations Chapter 20.42
R-R		R-2	R-3	R-4	R-MH	Additional Regulations Chapter 20.42
d R-R		R-2	R-3	R4	× ×	Regulations Chapter 20.42
		م م	۵ ۵	۵	××	Chapter 20.42
RESIDENTIAL USES		۵ ۵	<u>а</u> а	۵ ۵	××	Chapter 20.42
Accessory Dwelling Units		۵	Ь	Ь	×	
Duplex Homes X M[2]	500	I				
Fraternities and Sororities C		U	J	O	×	Sec. 20.44.060
Group/Transitional/Supportive Housing P[3] P[3]		P [3]	P [3]	P [3]	P [3]	
Mobile Home Parks C	\$21 . \$6.	×	×	X	SP	
Multiple-Family Dwellings X X	Assets	c [4]	۵	Ь	×	
Residential Care Facilities, Small <i>(1-6 persons)</i> PPP		Ь	Ь	Ь	Ь	
Residential Care Facilities, Large (More than 6) C C		C	С	С	×	
Single-Family Dwellings		Ь	Ь	Р	M	Sec. 20.46.020
Single-Room Occupancy X X		×	SP	SP	×	Sec. 20.44.120

33



Site Plan Permit Required
No Site Plan Permit Required

Interface



Example of Housing Configuration

848

Annexation

- Development Agreement (DA) & Pre-Annexation Development Agreement (PADA)
- Pre-Zoning or Zoning Amendment

Ordinance

- Specific Plan Community Plan
- Planned Development (PD) & Site Utilization Plan (SUP)

Resolution or Other Action

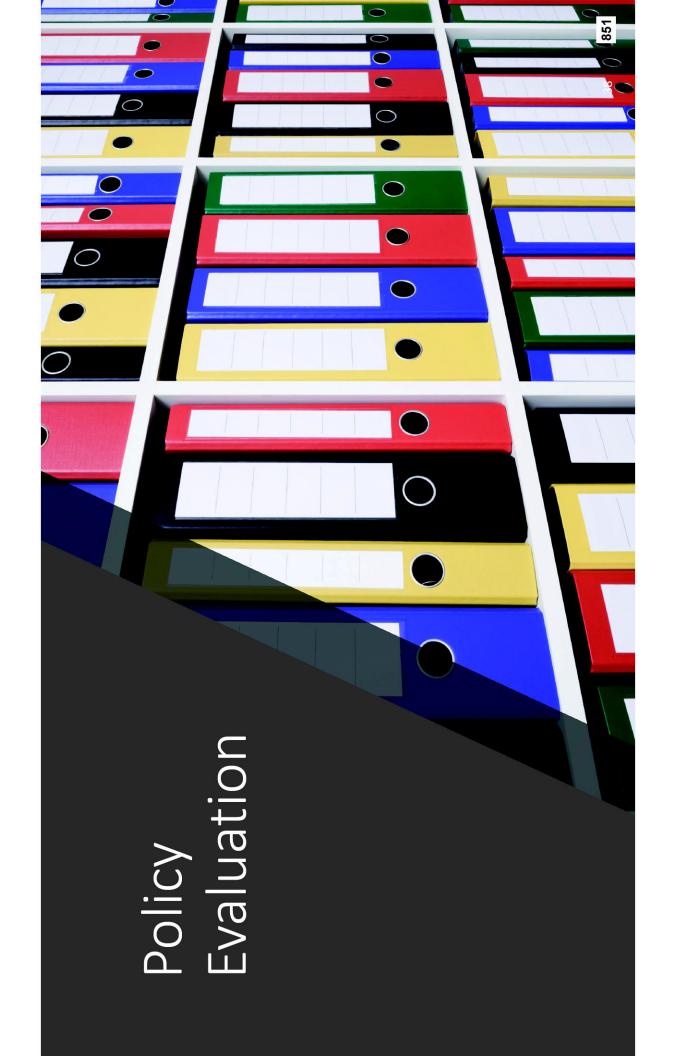
- Tentative Map & Final Map
- General Plan Amendment (GPA)
- Conditional Use Permit (CUP)
- Site Plan (SP)
- Design Review and Administrative Approvals
- By Right ministerial
- Building Permit

849

850

California Environmental Quality Act -CEQA

- Preparation of an Initial Study leads to a determination of the process document type
- Environmental Impact Report (EIR)
- Mitigated Negative Declaration (MND)
- Negative Declaration (ND)
- Statutory Exemption
- Categorical Exemption
- Any Change in the General Plan requires a CEQA review — Initial Study
- Current Issues
- Change from Levels of Service (LOS) for Traffic to Vehicle Miles Traveled (VMT)
- Establishment of qualified consultants list for expedited processing
- Green House Gas and Air Quality Studies



Policy – Influences

State	Local
Housing Element – General Plan Requirements	General Plan and Zoning - Standards
Regional Housing Needs Assessment (RHNA)	Map Procedures – Community Facility Districts (CFD)
Housing Accountability Act – Objective Standards	Entitlement & Permit Processes
SB 35 – By Right Ministerial Housing Production	Fees and Permit Costs
State Grants and Technical Resources	Housing Assistance Programs
California Environmental Quality Act (CEQA)	Availability of Public Services

Policy -General Plan

- Establish a Density for Residential Development in Commercial GP Areas
- Create more flexible standards for Subdivision Improvements
- Form Based Codes check list that expedite process to building permit

41

Zoning Code Updates

- Updates for consistency with state laws
- Consistency with the General Plan
- Streamline procedures By Right
- Affordable By Design

Use of Objective Standards

- Expand Housing Choices
- Flexibility Updates to the Planned Development Zoning District

Housing Element

- New development to provide a plan for housing production in line with City's Reginal Housing Needs Assessment (RHNA) requirements
- Potential phased approach to Inclusionary Zoning Ordinance
- Merced County has incorporated a requirement as part of new Specific and Community Plans

Mapping – Subdivision

- Expedite/Streamline the approval process for Tentative Maps and Final Maps
- Update current code to comply with newly enacted State Legislation
- Consider Updates to the Definition of Lot
- Streamline the Condominium and Planned Unit Development Maps

CEQA -Environmental

- Vehicle Miles Traveled Guidelines (VMT) adoption of local guidelines
- Amendments to review process
- Update General Plan and Zoning for objective standards
- Update General Plan and Zoning to create more By Right entitlements

In Fill – Affordable by Design

- Streamline use of Small Lot Design Standards
- Pre-Qualify or Designate areas as qualifying for Urban Residential Overlay Zone
- Expand By Right Duplexes in Single Family Zones and residential PD's
- Up Zoning By Right or Streamlined Administrative approval
- SB 35 update application and add Objective Design Standards

Streamlining & Flexibility

- Updates to the Planned Development Zoning District
- Updates to Interface Requirements Site Plan Review
- Add Mixed Use Development Standards
- Update Parking Requirements for Multi-Family

Supportive Housing

- Updates are necessary to meet State Density Bonus Updates
- By Right Location of Emergency Shelters
- Group/Transitional/Supportive
- Consider expanding Single Room Occupancy

- Create Tiny Home Standards
- Update Single Family Design Standards
- Update Multifamily Design Standards

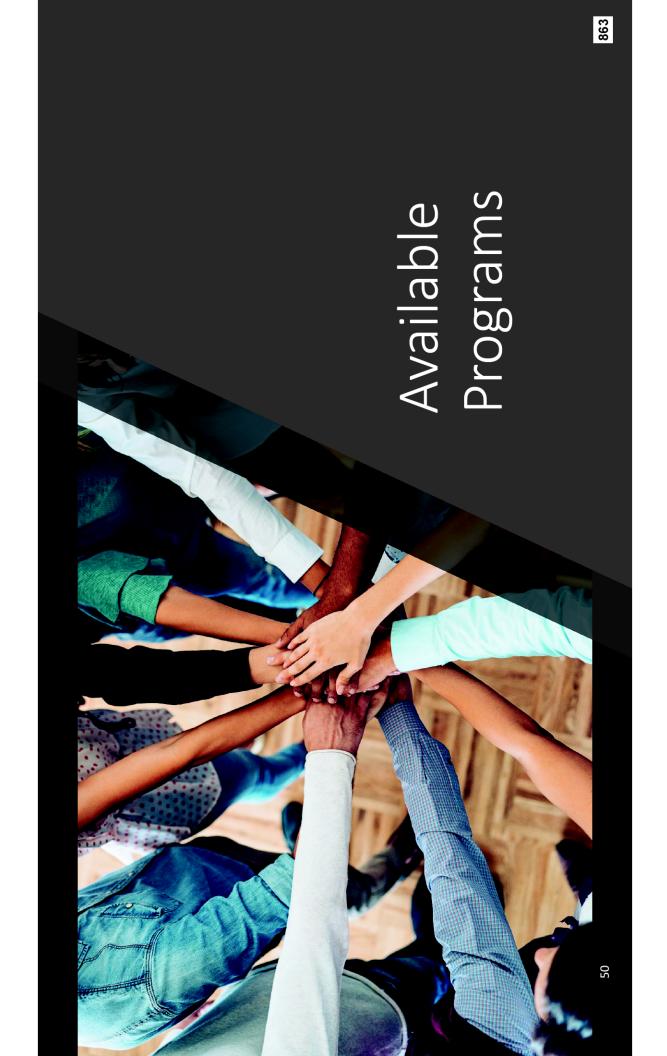
Streamline Community Facilities Districts (CFD)

Adopt the updated Public Facility Impact Fees (PFFP)

Financial

Administrative Policy A-32 Update

Expand Development Financial Tool Kit



Current State Grant Resources

Local Early Action Planning Grant (LEAP)

- Prepare updates to the General Plan and Zoning
- Amend the Subdivision Map Ordinance
- Revise Development Review Processes and Fees
- Establish Pro Housing Policies seek HCD approval
- Evaluation of a Housing Trust Fund

SB2 Planning Grant

- Off the Shelf ADU Plans
- Off the Shelf Duplex/Triplex Plans
- Tiny Home Ordinance Zoning Update
- Infill and Overlay in the Downtown Area

864

Regional Early Action Planning - MCAG

MCAG has received REAP 1 and will receive REAP 2 funding for the region

REAP 1 is focused on technical assistance (\$1 mil)

REAP 2 can fund housing programs and projects (est. \$4 mil)

County Housing Workgroup formed to provide input to Technical Review Board (TRB) and Government Board

Recommending use of REAP 1:

- Completion of Regional Housing Needs Assessment (RHNA)
- Evaluation of a multi-jurisdictional Housing Element or independent
- Preparation of Housing Element(s)
- Evaluation of Housing Consortium and/or Housing Trust

Emergency Rental Assistance

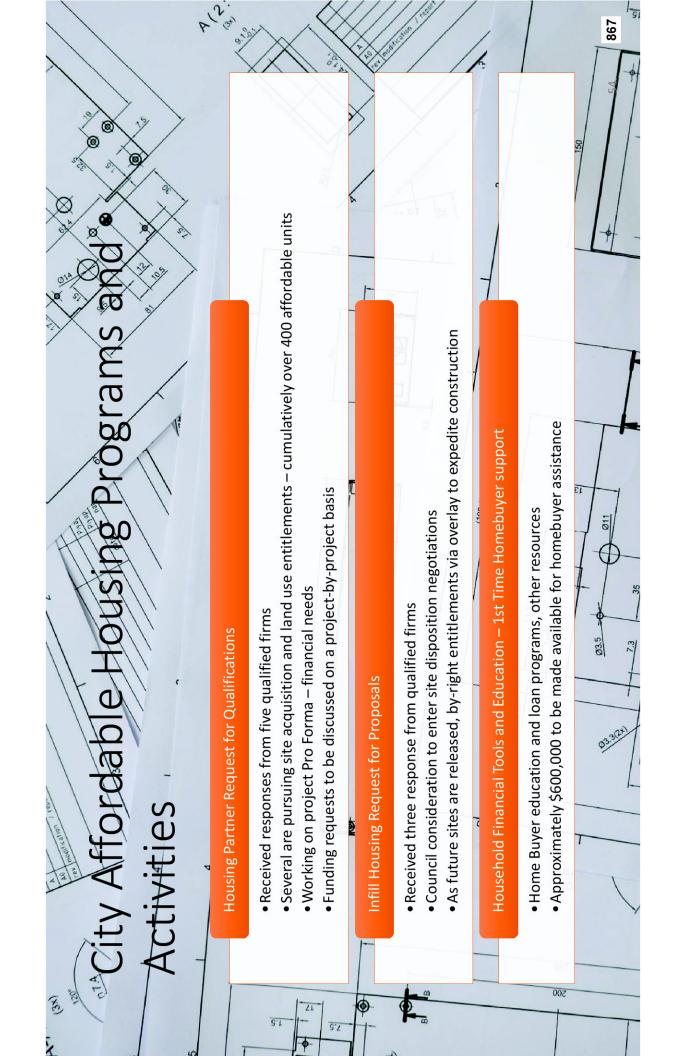
- Local Rental & Utility support \$2.4 mil (est. through Sept 30th)
- Supported over 400 household
- Remaining funds of approx. \$30 mil administered by State

Rental & Utility

Assistance

City CDBG-CV

- Round 1
- Rental & Utility support \$186,005
- Round 2
- Rental & Utility support \$432,327



868 Conclusions & Next Steps Council Direction

Policy Recommendations

Begin General Plan and Zoning Updates

- Development Agreement or Legislative Action Agreement Integrate RHNA Policy for unit distribution, with delineation
- Comply with new State legislation
- Streamline entitlement processes to reduce time from application to construction
- Provide enhanced ministerial and By-right entitlement opportunity
- General Plan and Zoning updates that encourage affordable by design and income type across all areas

Enhanced City Programs

- Develop and expand Financial Toolkit for PFFP
- Re-invest NSP income into a 1st Time Home Buyer Program
- Create CEQA support to assist with regional review and mitigation needs

Pro-Housing Policy Recommendations

- Support exploration of Regional Housing partnership within County
- Provide funding resources and technical assistance to all agencies
- Recommend adoption of Regional Housing Element
- Seek Pro Housing Designation by HCD
- Access to additional financial resources for local affordable housing projects
- Increases scoring for competitive funding
- Continue Fair Housing funding support
- Continue CoC funding support

Fall 2021

- Housing Successor Agency Property Disposition Direction
- Funding Commitments to Affordable Housing RFQ Partners
- ARPA Public Input Council Direction
- Gateway Terrace II Funding Approval and Agreements
- Acceptance of SB2 and LEAP Grants budget amendments
- Adoption of HUD CAPER

Winter 2021-22

Next Steps

- Housing RFQ Partners Tax Credit and State Funding Applications
- RFQ's for SB2 and LEAP Implementation
- HUD Annual Plan Process Public Hearings and Community Outreach
- Home Key Grant applications

Spring 2022

- Childs and B On Site Construction Completion
- HUD Projects and Program Funding RFQ Housing and Community Services
- SB2 and LEAP Contracts



Income Levels

	240			\$26,200 \$34,950	5 \$30,680 \$37,750			8 \$44,120 \$46,150
Low Income \$39,150	\$44,7	\$44,750 \$5	\$50,350	\$55,900	\$60,400	\$64,850	\$69,350	\$73,800
Median Income \$49,500	\$56,5	\$ 055,95\$		\$70,700	\$76,350	\$82,000	\$87,650	\$93,300
Moderate Income \$59,400	\$67,900		\$76,350	\$84,850	\$91,650	\$98,450	\$105,200	\$112,000



- Extremely Low-Income Households: Households with annual income of 30% or less of the AMI
- Very Low-Income Households: Households with annual income of 50% or less of the AMI
- Low Income Households: Households with annual income of 80% or less of the AMI
- Moderate Income Households: Households with annual income of 120% or less of the AMI

62

(Y)
t	•	٦

				MERCE	MERCED COUNTY				
				STATE INCOME	STATE INCOME LIMITS FOR 2021				
				Number of Per	Number of Persons in Household				
Category	1	2	ю	4	ß	9	7		∞
Median Income (100%)	\$ 49,500.00	\$ 56,550.00	\$ 63,650.00	\$ 70,700.00	\$ 76,350.00	\$ 82,000.00	\$ 87,650.00	\$ 93,3	93,300.00
Maximum Income Limits Low Income @ 80% of the Median Income	\$ 39,150.00	\$ 44,750.00	\$ 50,350.00	\$ 55,900.00	\$ 60,400.00	\$ 64,850.00	\$ 69,350.00	\$ 73,800.00	00:00:
Maximum Monthly Rent Limits 30% of the 80% of Median Income / 12 months	\$ 978.75	\$ 1,118.75	\$ 1,258.75	\$ 1,397.50	\$ 1,510.00	1,118.75 \$ 1,258.75 \$ 1,397.50 \$ 1,510.00 \$ 1,621.25 \$ 1,733.75 \$ 1,845.00	\$ 1,733.75	\$ 1,8	45.00

Note: Maximum Rents will vary based on 30% of actual household income.

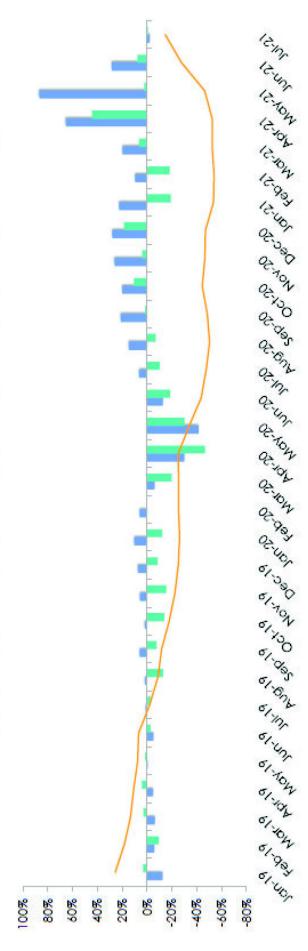
Inventory ticked up from prior month but remains below last year's level





yty% chg. in new active listings

-yty% chg. in total active listings





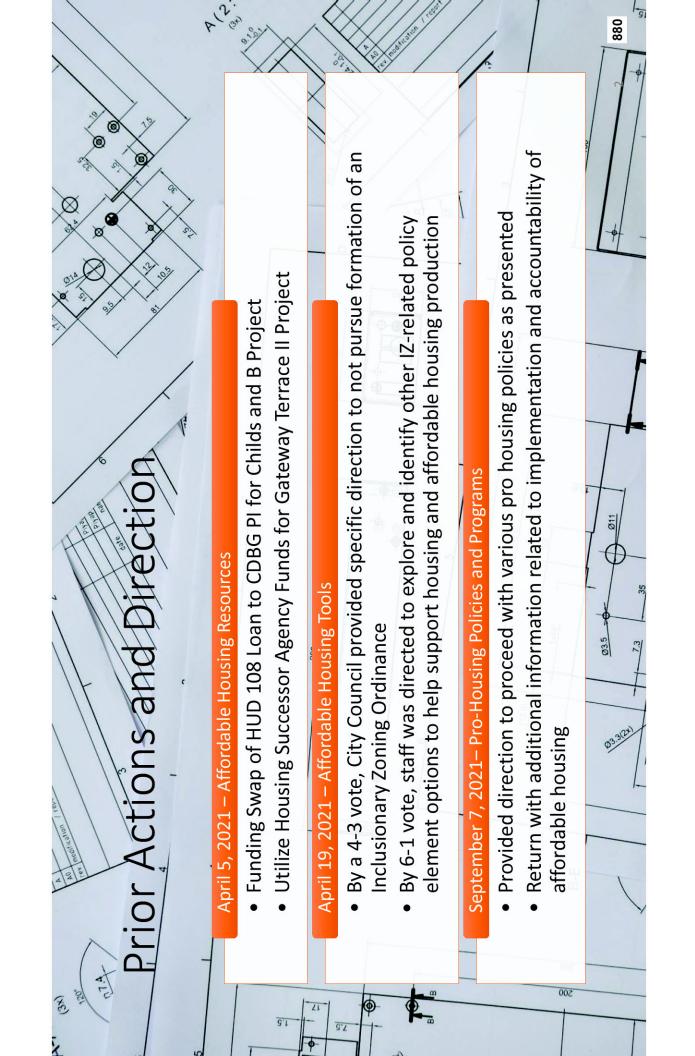


Pro-Housing Policies

Implementation

Accountability

September 20, 2021



City Authority for Development

- Derived from Police Powers authorized by the State
- Implemented through the Zoning Ordinance
- Subdivision Map Act
- Cortese-Knox Local Government Reorganization (Annexations)
- CECA
- Direct Financial Assistance

Past Examples

Childs and B	Silverleaf – Bellevue Ranch
100% Affordable – Rental – low and very low target	Mixed Project – Ownership – moderate and below target
Project Entitlement Approvals	Project Entitlement Approvals
Financial Assistance focused on the units	Financial Assistance focused on the buyers
Disposition Development Agreement	Down payment or Gap Assistance
HSA, CDBG, HOME, Enterprise Funds, AHSC	HCD Begin Program
Loan Agreements, Covenants, Regulatory Agreements	Loan Agreements, income verification

883

Affordable without Inclusionary Zoning

- Rely on areas of project entitlement authority
- Discretionary Approvals
- Structured Agreement not a set policy
- RHNA Goals
- Use of Development Agreements

Agency	Implementation Tool	Accountability Method
Davis	Affordable Housing Plan and DA	Legal – misdemeanor, infraction
Hercules	Affordable Housing Plan and DA	Legal – misdemeanor, infraction
Morgan Hill	Affordable Housing Plan and DA	Various agreements and tools, withholding services
Patterson	DA	Misdemeanor and Civil Action
Ripon	DA	Civil Action, withholding services

Tools used by other Agencies

Other Considerations

- Plans were specific to targeted income level goals, owner occupied vs. rental, locations in the project, phasing, and term of availability
- Often provide for alternative means to achieve the goal
- Off Site Development
- In Lieu Fee
- Rehabilitation of existing units and recording a covenant
- Acquisition of a covenant on an existing home
- Acquisition and donation of land
- City support is also necessary
- Development Standards including Density Bonus and Deviation from Standards
- Fee and other Financial Assistance

Development Agreements

- Chapter 20.86 of the Zoning Ordinance

 purpose, applicability, process, and
 implementation
 - Contract between the City and an Applicant
- Section 20.86.150 Pre-Annexation Development Agreement (PADA)
- Approved by Ordinance as a Legislative Action
- Other Legislative Actions
- Annexation Pre-Zoning
- Zoning Amendment
- Planned Development (PD) & Site Utilization Plan (SUP)
- Specific Plan Community Plan

887

Current entitled projects may have vested rights

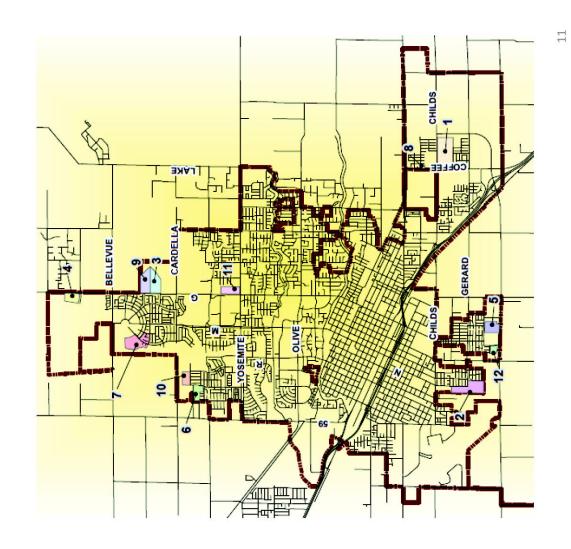
- Great interest in annexations will require PADA
- Some entitled projects may need discretionary amendments or financial assistance

DA - PADA

Applying



CURRENT MULTI-FAMILY PROJECTS JULY 2021 CITY LIMIT



Approved Tentative Maps

1,737 Map Lots

Tentative Maps -1,737 lots

Bellevue Ranch North 1,700 lots

Evaluate compared to Inclusionary Zoning

- Palmer Decision
- AB 1505 & Costa Hawkins Act
- IZ capped at 15% without Nexus Study and HCD approval

|mp|ementation

Tools

Implementation Tools

- Use Local Early Action Planning Grant (LEAP) already awarded by HCD
- Contract services that specialize in this area
- Public Input and involvement in the Housing Element Update – General Plan and implementation

891

Policy Recommendations

- Update of the Housing Element Policies to include new goal for market rate housing development to assist in meeting RHNA goals for affordable housing
- Establish standards for when requirements would be applied
- Use of Pre-Annexation Development Agreement, Development Agreement, or other agreement as the implementation tool
- Pending legal review and additional public input, employ Local Early Planning Grant (LEAP) grant to facilitate update.

Fall 2021

- Housing Successor Agency Property Disposition Direction
- Funding Commitments to Affordable Housing RFQ Partners
- ARPA Public Input Council Direction
- Gateway Terrace II Funding Approval and Agreements
- Acceptance of SB2 and LEAP Grants budget amendments
- Adoption of HUD CAPER

Winter 2021-22

Next Steps

- Housing RFQ Partners Tax Credit and State Funding Applications
- RFQ's for SB2 and LEAP Implementation
- HUD Annual Plan Process Public Hearings and Community Outreach
- Home Key Grant applications

Spring 2022

- Childs and B On Site Construction Completion
- HUD Projects and Program Funding RFQ Housing and Community Services
 - SB2 and LEAP Contracts