

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2006-001

(3075)

**AN ORDINANCE AMENDING ARTICLE 30, SECTIONS 6-3002, 6-3004, 6-3006 AND 6-3014 OF THE SAN LEANDRO ZONING CODE REGARDING THE APPLICATION OF THE INCLUSIONARY ZONING REGULATIONS TO CONVERSION OF EXISTING RENTAL PROJECTS TO FOR SALE PROJECTS**

RECITALS

A. In December 2004, the City of San Leandro amended the Zoning Code by adopting Article 30, Inclusionary Housing. The purpose of the Inclusionary Zoning Ordinance is to encourage the development and availability of housing affordable to a broad range of households with varying income levels within the City, to increase the supply of affordable housing units in San Leandro, and to generally require that residential developers construct affordable housing units within their projects.

B. In October 2005, the City Council Business Development Committee supported proposing Zoning Code amendments to expand the application of the ordinance to include condominium conversions, noting that the update would be consistent with City goals and policies encouraging the development of housing for all income levels.

C. This Ordinance does not itself approve or allow the construction of any project and, therefore, has no potential for resulting in physical change in the environment, directly or ultimately. Therefore, adoption of this Ordinance is exempt from environmental review under the California Environmental Quality Act pursuant to Public Resources Code section 21065 based on the finding that this Ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines.

NOW, THEREFORE, the City Council of the City of San Leandro does ORDAIN as follows:

Section 1. Findings

The City Council of the City of San Leandro does hereby find as follows:

(A) The Zoning Code encourages the development and availability of housing affordable to a broad range of households with varying income levels within the City as mandated by State Law. However, condominium conversions, another source of ownership housing, is not currently included under the definition of residential development. The current ability of a residential development to be converted from all market-rate rental to market-rate for sale units is not consistent with the goals and policies related to the purposes of the General Plan to create affordable housing opportunities.

(B) Rising land prices along with limited available land have been key factors in preventing development of new affordable housing. New for sale units in the City which do not include inclusionary units aggravates the existing shortage of affordable housing.

Section 2. Sections 6-3002, 6-3004, 6-3006 and 6-3014 of Article 30 of the San Leandro Zoning Code are amended as set forth in Exhibit A, which is attached and incorporated by reference into this Ordinance.

Section 3. Effective Date and Publication

This ordinance shall take effect thirty (30) days after adoption and the title thereof shall be published once prior to adoption.

Introduced by Councilmember Santos on this 3<sup>rd</sup> day of January, 2006, and passed to print by the following called vote:

Members of the Council:

AYES: Councilmembers Badger, Grant, Nardine, Santos; Mayor Young (5)

NOES: Councilmembers Starosciak, Stephens (2)

ABSENT: None (0)

ATTEST: Marian Handa  
Marian Handa, City Clerk

Passed and adopted this 17<sup>th</sup> day of January, 2006, after publication on January 9, 2006, by the following called vote:

Members of the Council:

AYES: Councilmembers Badger, Grant, Nardine, Santos, Stephens; Mayor Young (6)

NOES: Councilmember Starosciak (1)

ABSENT: None (0)

ATTEST: Marian Handa  
Marian Handa, City Clerk

## **PART VI AFFORDABLE HOUSING**

### Article 30 Inclusionary Zoning

#### **6-3000 Purpose.**

The purpose of this ordinance is to:

- A. Encourage the development and availability of housing affordable to a broad range of Households with varying income levels within City as mandated by State Law, California Government Code Sections 65580 and following;
- B. Promote the City's goal to add affordable housing units to the City's housing stock in proportion to the overall increase in new jobs and housing units;
- C. Offset the demand on housing that is created by new development and mitigate environmental and other impacts that accompany new residential and commercial development by protecting the economic diversity of the City's housing stock, reducing traffic, transit and related air quality impacts, promoting jobs/housing balance and reducing the demands placed on transportation infrastructure in the region; and
- D. Increase the supply of affordable ownership and rental housing in San Leandro as identified in the established Housing Element Goal 53, Affordable Housing Development. Policy 53.03 of Goal 53. requires the inclusion of affordable housing in new housing developments - both inside and outside the redevelopment project areas.

#### **6-3002 Findings.**

The City Council finds and determines:

- A. Both California and the City face a serious housing problem that threatens their economic security. Lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of City. The City will not be able to contribute to the attainment of State housing goals or to retain a healthy environment without additional affordable housing. The housing problem has an impact upon a broad range of income groups including many who are not impoverished by standards other than those applicable to California's and the City's housing markets, and no single housing program will be sufficient to meet the housing need.
- B. Rising land prices along with limited available land have been key factors in preventing development of new affordable housing. New housing construction in the City which does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. At the same time new housing contributes to the

demand for goods and services in the City, increasing local service employment at wage levels which do not permit employees to afford housing in the City. Providing the affordable units required by this ordinance will help to insure that part of the City's remaining developable land is used to provide affordable housing.

- C. The City's adopted Housing Element has determined that 35 percent to 40 percent of the Households in the city have very low or low incomes. There is an affordability gap for low and very low income Households in San Leandro for both rental and for sale units. Among City groups identified in the Housing Element with especially significant housing needs are large and extended families. Also, currently there are limited housing choices for young adults or singles within San Leandro.
- D. Development of new commercial projects and Market-Rate housing encourages new residents to move to the City. These new residents will place demands on services provided by both public and private sectors. Some of these employees earn incomes only adequate to pay for affordable housing, not market rate housing. Because affordable housing is in short supply within the City, these employees may be forced to live in less than adequate housing within the City, pay a disproportionate share of their incomes to live in adequate housing within the City, or commute ever-increasing distances to their jobs from housing located outside the City. These circumstances harm the City's ability to attain goals articulated in the City's General Plan.
- E. A lack of new inclusionary units will have a substantial negative impact on the environment and economic climate because (i) housing will have to be built elsewhere, far from employment centers and, therefore, commutes will increase, causing increased traffic and transit demand and consequent noise and air pollution; and (ii) City businesses will find it more difficult to attract and retain the workers they need. Inclusionary housing policies contribute to a healthy job and housing balance by providing more affordable housing close to employment centers.
- F. The California Legislature has required each local government agency to develop a comprehensive, long-term general plan establishing policies for future development. As specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must: (i) "encourage the development of a variety of types of housing for all income levels, including multifamily rental housing;" (ii) "assist in the development of adequate housing to meet the needs of low- and moderate-income Households;" and (iii) "conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action."
- G. The citizens of the City seek a well-planned, aesthetically pleasing and balanced community, with housing affordable to very low-, low- and moderate-income Households. Affordable housing should be available throughout the City, and not restricted to a few neighborhoods and areas. Therefore, our

primary goal with this policy is to have diverse housing. However, there may also be trade-offs where constructing affordable units at a different site than the site of the principal project may produce a greater number of affordable units without additional costs to the project applicant. Thus, the City finds that in certain limited circumstances, the purposes of this Article may be better served by allowing the developer to comply with the inclusionary requirement through alternative means, such as development of off-site housing or dedication of land. For example, if a project applicant can produce a significantly greater number of affordable units off-site, it may (but not always) be in the best interest of the City to permit the development of affordable units at a different location than that of the principal project.

- H. Federal and state funds for the construction of new affordable housing are insufficient to fully address the problem of affordable housing within the City. Nor has the private housing market provided adequate housing opportunities affordable to moderate-, low- and very low-income Households.

#### **6-3004 Definitions.**

As used in this Article, the following terms shall have the following meanings:

- A. **Affordable Rent** means monthly rent that does not exceed the following calculation for a Household of the applicable income level (moderate-, low-or very low-income). :
  - 1.) For low-income rental households: 1/12 of 30% of 60% area median income (AMI)
  - 2.) For very low income households: 1/12 of 30% of 50% AMI
- B. **Affordable Ownership Cost** means a sales price that results in a monthly housing cost (including mortgage payment, interest, property taxes, insurance, utilities, maintenance and home association costs, if any) that does not exceed the following calculation for a Household of the applicable income (moderate or low income).
  - 1.) For moderate-income households, 1/12 of 35% of 110% AMI
  - 2.) For low-income households, 1/12 of 35% of 70% of AMI
- C. **Approval Authority** means a person or body that is authorized to approve the Housing Development as specified in the San Leandro Zoning Code.
- D. **Area Median Income** means the median household income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937.
- E. **City** means the City of San Leandro.

- F. **Community Development Director** means the Community Development Director of the City or his or her designee.
- G. **Construction Cost Index** means the Engineering News-Record San Francisco Building Cost Index. If that index ceases to exist, the Community Development Director will substitute another Construction Cost Index, which, in his or her judgment, is as nearly equivalent to the original index as possible.
- H. **Developer** means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a residential or commercial development.
- I. **Eligible Household** means a Household whose gross Household income does not exceed the maximum specified in Section 6-3004 and Section 6-3006 for a given affordable unit.
- J. **Eligible Household List** means the list of eligible households compiled by the City ranked by preference. All San Leandro residents, City or school district employees, and persons employed in San Leandro shall be given a preference and ranked higher on the list than other persons.
- K. **For Sale Project** means a new residential project, or existing rental project or portion thereof, which is intended to be sold to owner-occupants upon completion or conversion.
- L. **Household** means one person living alone or two or more persons sharing residency.
- M. **Household Income** means the combined adjusted gross income for all adult persons living in a living unit as calculated for the purpose of this Article.
- N. **Inclusionary Housing Plan** means a plan for a residential development submitted by a developer as provided by Section 6-3014(b).
- O. **Inclusionary Housing Agreement** means a written agreement between Developer and the City as provided by Section 6-3014(c).
- P. **Inclusionary Unit** means a dwelling unit that must be offered at Affordable Rent or available at an Affordable Housing Cost to moderate-, low- and very low-income Households.
- Q. **Income: Low-Income Rental Household** means a Household whose gross annual income does not exceed 60 percent of the area median income, adjusted for household size and revised annually.
- R. **Income: Low-Income Household** means a Household whose gross annual income does not exceed 80 percent of the area median income adjusted for household size and revised annually.

- S. **Income: Moderate-Income Household** means a Household whose gross annual income does not exceed 120 percent of the area median income, adjusted for household size and revised annually.
- T. **Income: Very Low-Income Household** means a Household whose gross annual income does not exceed 50 percent of the area median income, adjusted for household size and revised annually.
- U. **Living Unit** means one or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.
- V. **Market-Rate Unit** means a dwelling unit in a Residential Development that is not an Inclusionary Unit.
- W. **Median Sales Price** means sales price in San Leandro as reported by Data Quick, California Resources, or similar service on February and August of each year.
- X. **Off-Site Unit** means an Inclusionary Unit that will be built separately or at a different location than the main development.
- Y. **On-Site Unit** means an Inclusionary Unit that will be built as part of the main development.
- Z. **Residential Development** means the construction of a new residential project or the conversion of an existing rental project to a for sale project that consists of two new dwelling units or more as defined in the Zoning Code.
- AA. **Rental Project** means a residential project, or portion thereof, which is intended to be rented to tenants upon completion.

### **6-3006 Residential Development.**

For all Residential Developments, at least 15 percent of the total units must be Inclusionary Units restricted for occupancy by moderate-, low- or very low-income Households at either the Affordable Rent or Affordable Ownership cost appropriate for the income of the Household. The number of Inclusionary Units required for a particular project will be determined only once, at the time of tentative or parcel map approval, or, for developments not processing a map, prior to issuance of a building permit. If a change in the subdivision design results in a change in the total number of units, the number of Inclusionary Units required will be recalculated to coincide with the final approved project.

- A. **Calculation.** For purposes of calculating the number of inclusionary units required by this Article, any additional units authorized as a density bonus under California Government Code Section 65915(b)(1) or (b)(2) will not be counted in

determining the required number of Inclusionary Units. In determining the number of whole Inclusionary Units required, any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number.

**B. Rental Project.**

The Inclusionary Units must be restricted to occupancy as follows:

<u>Total Units in Project</u>	<u>Required Inclusionary Units</u>		
	Total (A + B)	Low Income	
		Renter Household (A)	Very Low Income Household (B)
4 to 9	1	1	0
10 to 16	2	1	1
17 to 23	3	1	2
24 to 29	4	2	2
30 to 36	5	2	3
37 to 43	6	2	4
44 to 49	7	3	4
50+	15% of Total Units	40% of Total Inclusionary Units	60% of Total Inclusionary Units

**C. For Sale Project.**

The Inclusionary Units shall be restricted to occupancy as follows:

<u>Total Units in Project</u>	<u>Required Inclusionary Units</u>		
	Total (A + B)	Moderate Income Household (A)	Low Income Owner Household (B)
2 to 6		1 or in-lieu fee	1 or in-lieu fee
7 to 9	1	1	0
10 to 13	2	2	0
14 to 16	2	1	1
17 to 23	3	2	1
24 to 29	4	3	1
30 to 36	5	3	2
37 to 43	6	4	2
44 to 49	7	4	3
50+	15% of Total Units	60% of Total Inclusionary Units	40% of Total Inclusionary units

**D. Sequencing Inclusionary Units.** To assure that the inclusionary units are occupied at the beginning of the project, a provision outlining the sequencing of the units will be included in the Inclusionary Housing Plan. An example of sequencing might be requiring the very low income inclusionary units to be occupied before moderate- or low- income or affordable units constructed in proportion to construction of Market Rate Units.

### **6-3008 Exemptions.**

The requirements of this Article do not apply to:

- A. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature.
- B. Developments that already have more units that qualify as affordable to moderate-, low- and very low- income Households than this Article requires.
- C. Housing constructed by other government agencies.
- D. Secondary dwelling units.

### **6-3010 Inclusionary Housing Standards.**

- A. Design. Inclusionary Units built under this Article shall generally be indistinguishable from the Market Rate Units and shall conform to the following standards:
  - 1. Location within Project. Inclusionary Units shall not be clustered together in any building, complex or area in the Residential Development, whenever feasible,
  - 2. Infrastructure. The Inclusionary Units shall be comparable in infrastructure (including sewer, water, and other utilities) to the Market Rate Units.
  - 3. Exterior of Inclusionary Units. The construction quality and exterior design of the Inclusionary Units shall be architecturally consistent with the Market Rate Units in terms of design, articulation, quality of materials and finishes.
  - 4. Interior of Inclusionary Units. Inclusionary Units may have different interior finishes and features than the Market Rate Units provided the interior features are durable, of good quality, and consistent with contemporary standards for new housing.
  - 5. Size of Inclusionary Units.
    - a. *Projects with Several Housing Products*: Where a project consists of several housing products with different lot sizes and lot configurations (e.g. mixture of single-family detached, single-family attached, courtyard housing, townhouses, and/or condominiums), the Inclusionary Units may be comparable to the smallest or lowest priced Market Rate product. The size of the Inclusionary Units may be up to 15 percent smaller in livable floor

area than the average size of the smallest or lowest priced Market Rate product. The average number of bedrooms and bathrooms in the Inclusionary Units shall equal the average number of bedrooms and bathrooms in the smallest or lowest priced Market Rate product.

- b. *Projects with One Housing Product:* Where a project consists of one housing product with similar lot sizes and lot configurations, the size of the Inclusionary Units may be up to 25 percent smaller in livable floor area than the average size of the Market Rate Units. The average number of bedrooms and bathrooms in the Inclusionary Units shall equal the average number of bedrooms and bathrooms in the Market Rate Units; however, the Inclusionary Units do not have to exceed three bedrooms with two and one-half bathrooms.
- c. *Exception to the Minimum Size and Housing Type:* For single-family detached projects, the size of the Inclusionary Units may be less than the minimum size stipulated in Section 6-3010 A 5 a and b above, if such units are combined to appear as a single-family home and the building is very similar in size and architectural design to a larger single-family detached unit within the project. This is not an exception to the bedroom and bathroom requirements as stipulated in Section 5 a and b above.

- B. Timing. All Inclusionary Units must be constructed and occupied concurrently with or prior to the construction and occupancy of Market-Rate Units or development or in accordance with the approved Inclusionary Housing Plan sequencing requirements . In phased developments, Inclusionary Units must be constructed and occupied in proportion to the number of units in each phase of the Residential Development.
- C. Duration of Affordability Requirement. Inclusionary Units produced under this ordinance must be legally restricted to occupancy by Households of the income levels for which the units were designated for a minimum of 55 years for rental units and 45 years for owner occupied units.

### **6-3012 In-Lieu Fees.**

For Residential Developments of a for-sale project of six or fewer units, including Inclusionary Units, the requirements of this Article may be satisfied by paying an in-lieu fee to the Affordable Housing Trust Fund as provided in Section 6-3028. For Residential Developments with more than six units, including Inclusionary Units, the Approval Authority may allow the requirements on this Article to be satisfied by paying an in-lieu fee in combination with one or more of the production alternatives described in Section 6-3016.

The fee shall be the Median Sales Price of a dwelling unit in San Leandro, (single family detached, single family attached or condominium, whichever is applicable), minus the

Affordable Ownership Cost, multiplied by the fractional inclusionary unit required. The fractional inclusionary unit shall be as follows:

<u>Total units in project</u>	<u>Fractional Inclusionary Unit required</u>
2	0.3
3	0.45
4	0.60
5	0.75
6	0.9

- A. Timing of Payment. The fee shall be calculated based on the price and cost figures established by the City at the time of building permit issuance. The fee must be paid prior to the issuance of the first building permit for the Development with the option to establish an alternative payment schedule if approved by the Community Development Director or designee. For phased developments, payments may be made for each portion prior to the issuance of a Building Permit for that phase. When payment is delayed, in the event of default, or for any other reason, the amount of the in-lieu fee payable under this Article will be based upon the fee schedule in effect at the time the fee is paid.
- B. Effect of No Payment. No final inspection for occupancy will be completed for any corresponding Market-Rate Unit in a Residential Development unless fees required under this Article have been paid in full to the City.

**6-3014 Compliance Procedures.**

- A. General. The Approval Authority shall approve, conditionally approve, or reject the Inclusionary Housing Plan concurrent with action on any tentative map, parcel map, or planning approval for any Residential Development for which this article applies. The subsequent Inclusionary Housing Agreement shall be approved by the Community Development Director prior to approval of a final map or building permit for the applicable Residential Development. This Section does not apply to projects where the requirements of the Article are satisfied by payment of an in lieu fee under Section 6-3012.
- B. Inclusionary Housing Plan. The Community Development Director must determine completeness within 30 days of submittal of a complete application. If the Inclusionary Housing Plan is incomplete, the Inclusionary Housing Plan will be returned to the Developer along with a list of the deficiencies or the information required. No application for a tentative map, parcel map or planning approval to which this Article applies may be deemed complete until an Inclusionary Housing Plan is submitted to the Community Development Director. At any time during the review process, the Community Development Director may require from the Developer additional information reasonably necessary to clarify and supplement the application or determine the consistency of the proposed Inclusionary Housing Plan with the requirements of this Article. The Inclusionary Housing Plan must include:

1. The location, type of structure (attached, semi-attached, or detached), proposed tenure (for sale or rental), and size of the proposed Market-Rate Units, any commercial space and/or Inclusionary Units and the basis for calculating the number of Inclusionary Units;
2. A site plan (and floor plan for multi-story developments) depicting the location of the Inclusionary Units;
3. The income levels to which each Inclusionary Unit will be made affordable;
4. The mechanisms that will be used to assure that the Inclusionary Units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and rights of first refusal and other documents;
5. For phased development, a phasing plan that provides for the timely development of the number of Inclusionary Units proportionate to each proposed phase of development as required by Section 6-3010.
6. A description of any incentives as indicated in Section 6-3018 that are requested of City;
7. Any alternative means designated in Section 6-3016 proposed for the Development along with information necessary to support the findings required by the same Section for approval of such alternatives; and
8. Any other information reasonably requested by the Community Development Director to assist with evaluation of the Plan under the standards of this Article.

C. Inclusionary Housing Agreement. The Inclusionary Housing Agreement shall consist of deeds of trust and other documents that address resale and rental restrictions, rights of first refusal, and other items required by this subsection. Any changes to such documents which materially alter any policy in the document, must be approved by the Community Development Director prior to being executed with respect to any Residential Development or affordable housing proposals. The form of the Inclusionary Housing Agreement will vary depending on the manner in which the provisions of this Article are satisfied for a particular development. All Inclusionary Housing Agreements must include, at a minimum, the following:

1. Description of the development, including whether the Inclusionary Units will be rented or owner-occupied;
2. The number, size and location of Very Low-, Low- or Moderate-Income Units;
3. Inclusionary incentives by the City (if any), including the nature and amount of any local public funding;

4. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal, and/or rental restrictions;
  5. Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident Households for income eligibility.
- D. Recording of Agreement. Inclusionary Housing Agreements that are acceptable to the Community Development Director must be recorded against owner-occupied Inclusionary Units and residential projects containing rental Inclusionary Units. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents acceptable to the Community Development Director must also be recorded against owner-occupied Inclusionary Units. In cases where the requirements of this Article are satisfied through the development of Off-Site Units, the Inclusionary Housing Agreement must simultaneously be recorded against the property where the Off-Site Units are to be developed.

#### **6-3016 Off-Site Alternatives.**

- A. Developer Proposal. A Developer may propose and the Approval Authority may approve an alternative means of compliance with an Inclusionary Housing Plan as provided in Section 6-3014(b) which may include, but is not limited to the following provisions:
1. *Off-Site Construction.* Inclusionary Units may be constructed off-site if the Inclusionary Units will be located in an area where the Approval Authority finds that, based on the availability of affordable housing, the need for such units is equal or greater than the need in the area of the proposed development.
  2. *Land Dedication.* In lieu of building Inclusionary Units, a Developer may choose to dedicate to the City land suitable for the construction of Inclusionary Units as determined by the Approval Authority. The site must be sufficient to allow construction of the required inclusionary units plus ten percent. Infrastructure, such as sewer, water, and utilities, must be adjacent to the property.
  3. *Credit Transfers.* In lieu of building Inclusionary Units, the Developer may contribute funds to another project for the purpose of increasing the production of affordable units within said project. The Approval Authority will determine the credit that the developer may receive for the total number of affordable units produced over and above the number of Inclusionary Units that would otherwise be required for said project.
  4. *In-lieu Fee.* The Approval Authority may accept an in-lieu fee to partially satisfy the inclusionary requirement when such fee payment is combined with one or a combination of the above alternatives. (Projects with six or fewer for-sale units may fully satisfy the inclusionary requirement with an in-lieu fee per Section 6-3012.)

5. *Combination*. The Approval Authority may accept any combination of on-site construction, off-site construction, land dedication, credit transfer, or in-lieu fees that produces at least the number of Inclusionary Units that would otherwise be required by this Article.
- B. Discretion. The Approval Authority may approve, conditionally approve or reject any alternative proposed by a Developer as part of an Inclusionary Housing Plan. Any approval or conditional approval must be based on a finding that the purposes of this Article would be better served by implementation of the proposed alternative(s). In determining whether the purposes of this Article would be better served under the proposed alternative, the Approval Authority shall consider: (i) whether implementation of an alternative would overly concentrate Inclusionary Units within any specific area and, if so, must reject the alternative unless the undesirable concentration of Inclusionary Units is offset by other identified benefits that flow from implementation of the alternative in issue; and (ii) the extent to which other factors affect the feasibility of prompt construction of the Inclusionary Units on the property, such as costs and delays, the need for an appraisal, site design, zoning infrastructure, clear title, grading and environmental review.

#### **6-3018 Incentives for Rental and For-Sale On-Site Housing.**

- A. An additional incentives may be provided in accord with Density Bonus Ordinance, Article 31, Part VI, of the Zoning Code. However, the density bonus affordable housing production requirements would be in addition to the requirements to provide inclusionary units.
- B. The Approval Authority may consider flexibility in zoning standards for a Residential Development such as, but not limited to, maximum density, lot size, lot width, yards, and parking in order to better accommodate the required Inclusionary Units if it is determined that such flexibility would result in a higher quality project and would improve the financial feasibility of the project.

#### **6-3020 Eligibility for Inclusionary Units.**

- A. General Eligibility. No Household may occupy an Inclusionary Unit unless the City or its designee has approved the Household's eligibility. If the City or its designee maintains a list or identifies eligible Households, initial and subsequent occupants will be selected first from the list of identified Households, to the maximum extent possible, in accordance with any rules approved by the Community Development Director.
- B. Occupancy. Any Household that occupies a rental Inclusionary Unit or purchases an Inclusionary Unit must occupy that unit as a principal residence.

### **6-3022 Owner Occupied Units.**

- A. Initial Sales Price. The initial sales price of the Inclusionary Unit must be set so that the eligible Household will pay an Affordable Ownership Cost.
- B. Resale Agreement. The initial purchaser of each Inclusionary Unit shall execute an instrument or agreement approved by the City restricting the sale of the Inclusionary Unit in accordance with this Article during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Inclusionary Unit and shall contain such provisions as the City may require to ensure continued compliance with this Article.
- C. Resale. The maximum sales price permitted on resale of the Inclusionary Unit designated for owner-occupancy shall be the lower of: (1) fair market value or (2) the seller's lawful purchase price, increased by the lesser of (i) the rate of increase of Area Median Income during the seller's ownership or (ii) the rate at which the consumer price index increased during the seller's ownership. To the extent authorized in any resale restrictions or operative Inclusionary Housing Agreement, sellers may recover, at time of sale, the market value of capital improvements made by the seller and the seller's necessary and usual costs of sale, and may authorize an increase in the maximum allowable sales price to achieve such recovery feasible.
- D. Changes in Title. Title in the Inclusionary Unit may change due to changes in circumstance, including death, marriage and divorce. Except as otherwise provided, if a change in title is occasioned by events that change the financial situation of the Household so that it is no longer income-eligible, then the property must be sold to an income-eligible Household within 180 days from the date of the event. Upon the death of one of the owners, title in the property may transfer to the surviving joint tenant without respect to the income-eligibility of the Household. Upon the death of a sole owner or all owners and inheritance of the Inclusionary Unit by a non-income-eligible child or step child of one or more owners, there will be a one year compassion period between the time when the estate is settled and the time when the property must be sold to an income-eligible Household. Inheritance of an Inclusionary Unit by any other person whose Household is not income-eligible shall require resale of the unit to an income-eligible Household as soon as is feasible but not more than 180 days.

### **6-3024 Rental Units.**

Rental units will be offered to eligible Households at an Affordable Rent. The owner of rental Inclusionary Units shall certify each tenant Household's income to the City or City's designee at the time of initial rental and annually thereafter. The owner must obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns or W-2s for the previous calendar year, and submit such information on a form approved by the City.

- A. Selection of Tenants. The owners of rental Inclusionary Units may fill vacant units by selecting income-eligible Households from the Section 8 Housing Choice

Voucher Waiting List maintained by the Alameda County Housing Authority or any other list maintained by the City or City's designee. Alternatively, owners may fill vacant units through their own selection process, provided that they publish notices of the availability of Inclusionary Units according to guidelines established by the Community Development Director.

- B. Annual Report. The owner shall submit an annual report summarizing the occupancy of each Inclusionary Unit for the year, demonstrating the continuing income-eligibility of the tenant. The Community Development Director may require additional information if he or she deems it necessary.
- C. Subsequent Rental to Income-Eligible Tenant. The owner shall apply the same rental terms and conditions to tenants of Inclusionary Units as are applied to all other tenants, except as required to comply with this Article (for example, rent levels, occupancy restrictions and income requirements) or with other applicable government subsidy programs. Discrimination against persons receiving housing assistance is prohibited.
- D. Changes in Tenant Income. If, after moving into an Inclusionary Unit, a tenant's Household income exceeds the limit for that unit, the tenant Household may remain in the unit as long as his or her Household income does not exceed 140 percent of the income limit. Once the tenant's income exceeds 140 percent of the income limit, the following shall apply:
  - 1. If the tenant's income does not exceed the income limits of other Inclusionary Units in the Residential Development, the owner may, at the owner's option, allow the tenant to remain in the original unit and redesignate the unit as affordable to Households of a higher income level, as long as the next vacant unit is re-designated for the income category previously applicable to the tenant's Household. Otherwise, the tenant shall be given one year's notice to vacate the unit. If during the year, an Inclusionary Unit becomes available and the tenant meets the income eligibility for that unit, the owner shall allow the tenant to apply for that unit.
  - 2. If there are no units designated for a higher income category within the Development that may be substituted for the original unit, the tenant shall be given one year's notice to vacate the unit. If within that year, another unit in the Residential Development is vacated, the owner, at the owner's option, may allow the tenant to remain in the original unit and raise the tenant's rent to Market-Rate and designate the newly vacated unit as an Inclusionary Unit affordable at the income level previously applicable to the unit converted to market rate. The newly vacated unit must be comparable in size (for example, number of bedrooms, bathrooms, square footage, etc.) as the original unit.

### **6-3026 Adjustments, Waivers.**

The requirements of this Article may be adjusted or waived if the Developer demonstrates to the Approval Authority that there is not a reasonable relationship between the impact of a proposed Residential Development and the requirements of this Article, or that applying the requirement of this Article would take property in violation of the United States or California Constitutions.

- A. Timing. To receive an adjustment or waiver, the Developer must make a showing when applying for a first approval for the Residential Development, and/or as part of any appeal that the City provides as part of the process for the first approval.
- B. Considerations. In making a determination on an application to adjust or waive the requirements of this Article, the Approval Authority may assume each of the following when applicable: (i) that the Developer is subject to the inclusionary housing requirement or in-lieu fee; (ii) the extent to which the Developer will benefit from inclusionary incentives under Section 6-3018; (iii) that the Developer will be obligated to provide the most economical Inclusionary Units feasible in terms of construction, design, location and tenure; and (iv) that the Developer is likely to obtain other housing subsidies where such funds are reasonably available.
- C. Modification of Plan. If the Approval Authority determines that the application of the provisions of this Article lacks a reasonable relationship between the impact of a proposed residential project and the requirements of this Article, or that applying the requirement of this Article would take property in violation of the United States or California Constitutions, the Inclusionary Housing Plan shall be modified, adjusted or waived to reduce the obligations under this Article to the extent necessary to avoid an unconstitutional result. If the Approval Authority determines no violation of the United States or California Constitutions would occur through application of this Article, the requirements of this Article remain applicable.

### **6-3028 Affordable Housing Trust Fund.**

- A. The Trust Fund. There is hereby established a separate Affordable Housing Trust Fund ("Fund"). This Fund shall receive all fees contributed under Section 6-3012, as required in Section 66606(a) of the California Government Code. The Fund may also receive monies from other sources.
- B. Purpose and Limitations. Monies deposited in the Fund must be used to increase and improve the supply of housing affordable to moderate-, low-, and very low-income Households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Article.

- C. Administration. The fund shall be administered by the Community Development Director, who may develop procedures to implement the purposes of the Fund consistent with the requirements of this Article and any adopted budget of the City.
- D. Expenditures. Fund monies shall be used in accordance with City's Housing Element, Redevelopment Implementation Plan, Consolidated Plan or subsequent plan adopted by the City Council to construct or convert to affordable housing or assist other governmental entities, private organizations or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases or other public-private partnership arrangements. The Fund may be used for the benefit of both rental and owner-occupied housing. The Fund may also be used to administer the City's housing monitoring program to assure long term compliance with all affordable housing agreements.
- E. Annual Report. The Community Development Director shall provide a report to the City Council on the status of activities undertaken with the Fund as provided by Section 66006(b) of the California Government Code. The City Council shall review the information made available to the public at the next regularly scheduled public meeting, not less than 15 days after this information is made available to the City Council and the public. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the City for mailed notice of the meeting.

The report shall include a statement of income, expenses, disbursements and other uses of the Fund. The report should also state the number and type of inclusionary units constructed or assisted during that year and the amount of such assistance. The report will evaluate the efficiency of this Article in mitigating the City's shortage of affordable housing and recommend any changes to this Article necessary to carry out its purposes, including any adjustments to the number of units to be required.

#### **6-3030 Enforcement.**

- A. Penalty for Violation. It shall be a misdemeanor to violate any provision of this Article. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an affordable unit under this Article at a price or rent exceeding the maximum allowed under this Article or to sell or rent an inclusionary unit to a Household not qualified under this Article. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which he or she is not eligible.
- B. Legal Action. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Article, including: (i) actions

to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; (ii) actions to recover from any violator of this Article civil fines, restitution to prevent unjust enrichment from a violation of this Article, and/or enforcement costs, including attorneys fees; (iii) eviction or foreclosure; and (iv) any other appropriate action for injunctive relief or damages. Failure of any official or agency to fulfill the requirements of this Article shall not excuse any person, owner, Household or other party from the requirements of this Article.

### **6-3032 Minimum Requirements**

The requirements of this Article are minimum and maximum requirements, although nothing in this Article limits the ability of a private person to waive his or her rights or voluntarily undertake greater obligations than those imposed by this Article.

### **6-3034 Appeals**

Any decision of the Approval Authority pursuant to this Article may be appealed in accordance with the provisions in Article 28 of the Zoning Code.