

Chapter 18.31 AFFORDABLE HOUSING FUND AND INCLUSIONARY/IN-LIEU FEE REQUIREMENTS

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18.31.010 Purpose.

The purpose of this chapter is to maintain the City's affordable housing fund and establish an inclusionary requirement or an in-lieu fee on developers of residential development projects to mitigate the impacts caused by these development projects on the rising land prices for a limited supply of available residential land. The purpose is also to achieve a balanced community with housing available for households with a range of income levels. In-lieu fees will be used to defray the costs of providing affordable housing for very low-, low-, and moderate-income households in the City of Larkspur. The fees and inclusionary requirements required by this chapter do not replace other regulatory, development and processing fees or exactions, funding required pursuant to a development agreement or reimbursement agreement, assessments charged pursuant to special assessments or benefit assessment district proceedings, etc., unless so specified. (Ord. 941 § 1, 2005)

18.31.020 Definitions.

For the purposes of this chapter, the following words, phrases, and terms shall have the meanings set forth herein. Words not defined shall be given their common and ordinary meaning.

A. "Affordable rent" means: (1) monthly rent that does not exceed one-twelfth of thirty percent of eighty percent of median income for low-income households; and (2) monthly rent that does not exceed one-twelfth of thirty percent of fifty percent of median income for very low-income households.

In each case, the median income applicable to Marin County is as determined annually by the Marin Housing Authority in consultation with the City of Larkspur, adjusted for household size, less a reasonable allowance for utilities. Affordable rent shall be based on presumed occupancy levels of 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 thereafter.

B. "Affordable sales price" means the maximum purchase price that will be affordable to the specified target income household. A maximum purchase price shall be considered affordable only if the owner-occupied monthly housing costs, including principal, interest, utilities, and insurance, is equal to or less than one-twelfth of thirty percent of the annual household income for the specified target income household. 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.

C. "Affordable units" means 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 LMC 18.31.040.

D. "Annual household income" means 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 United States Housing Act of 1937, as amended, or its successor.

E. "Building permit" means a permit issued pursuant to Chapter 15.08 LMC.

F. "Building Official" means the chief building official of the City of Larkspur, or the designee of such individual.

G. "Concession" or "incentive" shall have the same meaning and applicability as set forth in Government Code Section 65915. Concessions and incentives may include, at the discretion of the City, any of the following:

1. A reduction in site development standards, or a modification of zoning requirements or architectural design requirements which exceed the minimum building standards approved by the State, including but not limited to minimum lot size, open space, yard, landscape maintenance, fencing, utility undergrounding, sidewalk, right-of-way dedication (not including curb-to-curb street width standards), parking and/or setback requirements;

2. Approval of mixed use zoning in conjunction with the housing project if the nonresidential uses will reduce the cost of the residential development and if the City determines that the nonresidential uses are compatible with both the housing project and the existing or planned development in the area in which the housing project will be located; or

3. Other regulatory incentives or concessions proposed by the developer which the developer shows will result in identifiable cost reductions, including but not limited to a waiver, reduction and/or reimbursement of taxes and fees which otherwise would be imposed on the project.

H. "Construction costs" means the estimated cost per square foot of construction, as established by the Building Official using the most current International Code Council (ICC) assessed valuation data with a regional modifier that is used in the setting of regulatory fees and building permits, multiplied by the total square footage, minus the garage floor area, to be constructed.

I. "Developer" means every person, firm, or corporation constructing, placing, or creating residential development directly or through the services of any employee, agent, independent contractor or otherwise.

J. "Dwelling unit" shall have the meaning set forth in Chapter 18.08 LMC.

K. "Housing fund" means the City of Larkspur's affordable housing fund.

L. "Housing in-lieu fee" means the fee established pursuant to LMC 18.31.040 for residential development projects.

M. "Low-income households" means those households with incomes of up to eighty percent of median income as determined annually by the Marin Housing Authority in consultation with the City of Larkspur.

N. "Market rate units" means those dwelling units in a residential project which are not affordable units.

O. "Median income" means the annual median income, adjusted for household size, applicable to Marin County as determined annually by the Marin Housing Authority in consultation with the City of Larkspur.

P. "Moderate income households" means those households with incomes of up to one hundred twenty percent of median income as determined annually by the Marin Housing Authority in consultation with the City of Larkspur.

Q. "Owner-occupied monthly housing payment" means the sum equal to the principal, interest, homeowner's insurance and homeowner's association dues paid on an annual basis divided by twelve.

R. "Residential development project" means a project for the new construction, creation, or placement of any dwelling unit in a permanent location, or the subdivision of land which is planned, designed, or used for the following land use categories:

1. Single-Family Residential. This category consists of single-family detached units and duplexes.

2. Multifamily Residential. This category consists of buildings containing three or more dwelling units and mobile home parks.

For purposes of this chapter, this term does not include remodels where no new dwelling units are created, but does include projects where an existing structure is voluntarily demolished for rebuilding.

S. "Very low-income households" means those households with incomes of up to fifty percent of median income as determined annually by the Marin Housing Authority in consultation with the City of Larkspur. (Ord. 959 § 1, 2007; Ord. 941 § 1, 2005)

18.31.030 Affordable Housing Fund.

A. The housing fund shall be administered by the City Manager, or his/her designee, who shall have the authority to govern the housing fund consistent with this chapter, and with prescribed procedures for said purpose, subject to approval by the Council.

B. Purposes and Use of Funds.

1. Monies deposited in the housing fund along with any interest earnings on such monies shall be used solely to increase and improve the supply of housing affordable to moderate-, low- and very low-income households. Monies may be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the establishment and/or administration of the housing fund and reasonable expenses for administering the process of calculating, collecting, and accounting for inclusionary fees and any deferred City fees authorized by this section. No portion of the housing fund may be diverted to other purposes by way of loan or otherwise.

2. Expenditures by the City Manager from the housing fund shall be by contract and controlled, authorized and paid in accordance with general City budgetary policies.

3. Investment of monies from the housing fund shall be made in accordance with the City's investment policy. (Ord. 941 § 1, 2005)

18.31.040 Residential Development Project: Inclusionary/In-Lieu Fee Requirements.

A. Inclusionary Requirement.

1. In a residential development of five to fourteen units, at least fifteen percent of all dwelling units shall be affordable, and shall be constructed and completed not later than the related market rate units, as follows:

a. In a rental housing project the affordable units shall be affordable to very low- and low-income households.

b. In a for-sale project the affordable units shall be affordable to low- and moderate-income households.

2. In a residential development of fifteen or more units, at least twenty percent of all dwelling units shall be affordable as outlined above in subsection (A)(1)(a) and (b) of this section, and shall be constructed and completed not later than the related market rate units.

3. In subdivisions of two or more parcels, where five or more additional housing units could be developed, developable parcels shall be set aside to allow for the future development of the equivalent percentages of affordable units as outlined above. The applicant or another for-profit or nonprofit applicant may develop the land. The units built on the parcels may be rental or owner-occupied, and shall be in compliance with this chapter. The method of providing inclusionary units from lot subdivisions shall be specified in the conditions of approval of each applicable subdivision.

Notwithstanding the above, this section shall not apply to projects which fall into one or more of the following categories:

a. 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.

b. 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.

c. Any dwelling unit or residential development project which is damaged or destroyed by fire or other calamity so long as the square footage and use of the building remains the same.

B. For fractions of required affordable units, the developer may elect, at his or her option, to construct the next higher whole number of affordable units, perform an equivalency action alternative which has received the approval of Council pursuant to subsection C of this section, or pay the in-lieu fee specified in subsection D of this section for such fraction.

C. Alternative Equivalent Action.

1. A developer of a residential development project may propose to meet the requirements of subsection A of this section by an alternative equivalent action, subject to the review and approval by the City Council.

2. An alternative equivalent action may include, but is not limited to, dedication of vacant land suitable for housing to a nonprofit housing development (see subsection (C)(2)(a) of this section), transfer of inclusionary unit credits (see subsection (C)(2)(b) of this section), construction of affordable units on another site or enforcement of required rental/sales price restrictions on existing market-rate dwelling units consistent with this section, and development of second dwelling units (see subsection (C)(2)(c) of this section).

All applicants proposing the use of an alternative equivalent action shall show how the alternative will further affordable housing opportunities in the City to an equal or greater extent than compliance

with the express requirements of subsection A of this section.

a. Land Donation. Upon approval of the City Council, an applicant may donate land to a nonprofit housing developer in place of actual construction of required affordable units. The dedicated land must be appropriately zoned, buildable (e.g., fully improved as noted below), and free of toxic substances and contaminated soils as defined by the State Department of Toxics Substance Control. The land must be large enough to accommodate the number of required affordable units as indicated by a conceptual development plan. The land that is donated shall be fully improved with access infrastructure, adjacent utilities, and grading, and fees paid.

b. Transfer of Inclusionary Unit Credits. Upon approval of the City Council as set forth herein, the requirements of this section may be satisfied by acquiring inclusionary unit credits that are transferable from one residential development project to another; provided, that no other concessions have been granted to the developer acquiring the credits. The City Council may approve issuance of a credit certificate for each affordable unit provided by a particular residential development project in excess of the minimum number required for the project and it may establish a cap on the value of the certificates. Credit certificates shall be issued for specific income categories and may only be used to satisfy the requirements for affordable units within that same income category. If the holder of the credit certificates transfers any or all certificates to a developer of a residential development project, the parties shall report the transaction to the Planning Director, who will document the transfer. When a credit certificate is applied to meet the affordable unit requirement of a particular project, it shall be recorded at the time of project approval, and subject certificates shall be returned to the Planning Director.

c. Second Dwelling Units. Not more than fifty percent of the requirements of this chapter may be satisfied through the development of second dwelling units at a ratio of two-second dwelling units counted as one affordable housing unit. All second units counted toward meeting the affordable unit requirement shall be subject to the provisions of subsection K of this section, Continued Affordability.

3. The City Council's consideration of an alternative equivalent action shall follow the procedures outlined in subsection (G)(1)(a) of this section. An alternative equivalent action shall be considered on a case-by-case basis by the City Council and may be approved at the City Council's sole discretion, if the City Council determines that such alternative will further affordable housing opportunities in the City to an equal or greater extent than compliance with the express requirements of subsection A of this section.

D. In-Lieu Housing Fee.

1. For fractions of required affordable units for a residential development of fifteen or more units, an applicant may pay the in-lieu fee equivalent to one whole unit.

2. For a residential development of five to fourteen units and which is not, and has not been, part of a larger residential project, an applicant may propose to meet the requirements of subsection A of this section by submitting at the time of application for a discretionary approval or building permit, whichever comes first, a request to pay the in-lieu fee along with a report identifying:

a. All overriding conditions impacting the project that prevent the development from meeting the requirement to construct the affordable units;

b. Sufficient independent data, including appropriate financial information, that supports the developer's claim that it is not feasible to construct the required affordable units; and

c. A detailed analysis of why the concessions and incentives identified in subsection G of this section will not mitigate the identified overriding conditions that are preventing the construction of the affordable units.

3. The City Council's consideration of an in-lieu housing fee for a residential development of five to fourteen units shall follow the procedures outlined in subsection (G)(1)(a) of this section. In-lieu housing fees shall be considered on a case-by-case basis by the City Council and may be approved at the City Council's sole discretion, if the Council determines that there are overriding conditions impacting the project that prevent the developer of a residential development project from meeting the requirement to construct affordable units and that payment of the in-lieu fee will further affordable housing opportunities.

E. Time of Payment of In-Lieu Fee. Unless otherwise preempted by law, the housing in-lieu fee shall be paid prior to the issuance of a building permit.

F. Calculation of Housing In-Lieu Fee. The amount and calculation of the housing in-lieu fee shall be established by resolution of the City Council.

G. Affordable Housing Concessions or Incentives.

1. For residential development projects, which meet the requirements of subsection A of this section through the construction of affordable units, the City shall follow the procedures described below and provide concessions and/or incentives as described in LMC 18.31.020(G).

a. Within ninety days of an applicant submitting a written preliminary development proposal, the City Council shall review the proposal at a noticed public hearing and indicate conceptual approval or disapproval of the proposed development and any requests for additional affordable housing incentives, concessions or waivers or modification of development or zoning standards. The proposal shall describe and specify the number, type, location and size of the housing development, and identify any requests for density bonus, additional incentives, concessions, waivers or modification of development or zoning standards. The proposal shall provide an explanation of the applicant's opinion that the benefits requested of the Council are necessary to make construction feasible for the proposed development, including the affordable units. The preliminary development proposal must be submitted prior to any formal application for a discretionary approval (e.g., general plan amendment, rezoning, use permit, tentative subdivision or parcel map or other permit or entitlement).

Such preliminary approval or disapproval shall not bind the City Council but rather shall be subject to the discretion of the City Council to modify its preliminary recommendations based upon a full review of all pertinent project information, including any environmental impact report, presented at the public hearing on the application. An application for such a request shall be submitted to the Planning Director.

b. Complete applications for a residential development project, which include all required submittal documents and which include the construction of affordable units, shall be processed by all City departments before other residential land use applications regardless of the original submittal date. Complete applications which include all required submittal documents and which include affordable rental units shall be processed before applications including owner-occupied units.

c. Payment of all City-required fees on affordable units may be deferred for payment, but shall be made prior to, and as a condition of, release of utilities and issuance of a certificate of occupancy. Bonding, in a form approved by the City Attorney, may be required by the City as a condition of deferring payment.

2. The City Council may consider, on a case-by-case basis, in its sole discretion the provision of the following additional concessions or incentives identified in Government Code Section 65915 which are consistent with state law and the Housing Element of the City of Larkspur General Plan for projects which meet or exceed the requirements as specified in subsection A of this section:

a. An additional density bonus or other incentives of equal financial value (i.e., on a cost basis) subject to the City Council's review and approval.

b. Waiver or modification of City standards thereby directly reducing project costs while remaining consistent with the latest edition of the California Building Code. The developer shall be responsible for documenting that the waiver or modification is necessary for the feasibility of the residential development project and is consistent with all applicable provisions of the California Building Code.

c. Provision of direct financial assistance in the form of a loan or grant using trust fund or other appropriate available funds subject to the recommendation of the City Manager.

d. Deferral of payment of all City-required fees on market rate units, but payment shall be made prior to, and as a condition of, release of utilities and issuance of a certificate of occupancy.

H. Requirements for Rental Affordable Units.

1. One-half 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 one-half of the required affordable units shall be available at affordable rents to low-income households. Where the number of required affordable units is an odd number, the number of affordable units constructed for very low-income households may be one less than the number of affordable units construction for low-income households.

2. With respect to any particular rental residential project, the City Council may, upon the recommendation of the City Manager, forgive all or a portion of the affordability requirement set forth in subsection A of this section upon a showing by the applicant that imposition of such requirement on the residential project will cause undue hardship and that such residential project will contribute significantly to affordable housing opportunities in the City.

I. Requirements for Owner-Occupied Affordable Units. One-half 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 whose annual household income does not exceed one hundred twenty percent of median income. The remaining one-half of the required affordable units shall be available at affordable sales prices to households whose annual household income does not exceed eighty percent of median income. Where the number of required affordable units is an odd number, the number of units affordable to moderate income households may be one greater than the number affordable at or below eighty percent of median income.

J. Basic Requirements for Owner-Occupied and Rental Affordable Units. Affordable units shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the same residential project. Subject to the approval of the Planning Commission through the design review process, square footage of affordable units and interior features in affordable units are not required to 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 Commission, may be clustered within the residential project when this furthers affordable housing opportunities.

K. Continued Affordability.

1. Prior to the issuance of certificates of occupancy or approval of the final inspection 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 City Manager and consistent with the requirements of this chapter, shall be recorded against parcels having such affordable units and shall be effective in perpetuity, unless reduced by the City Council to a specific term to meet the requirements of a financing institution or subsidy program, with respect to each affordable unit.

2. The following shall apply during the affordability period for an affordable unit subject to this chapter:

a. 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 cost of substantial structural or permanent fixed improvements to the property, plus the cost of reasonable seller's broker fee as determined by the City Manager.

b. 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 or assign its right to purchase such affordable unit at the maximum price which could be charged to an eligible household.

3. 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.

If the City or its designee maintains a list of eligible households, households selected to occupy affordable units shall be selected first from that list to the extent provided in the regulatory agreement or resale restrictions.

4. For any affordable unit that is no longer restricted at the time of the sale, the seller is only entitled to the maximum sales price permitted as defined in subsection (K)(2)(a) of this section. The proceeds above and beyond that shall be placed back into the Housing Fund and used as defined in LMC 18.31.030(B).

5. If the City granted concessions at the time of a development, the City shall recapture its proportionate share of appreciation. For purposes of this subsection, the City's proportionate share of appreciation shall be equal to the discount given to make a unit affordable divided by the fair market

value of the unit at the time of the initial sale; such fair market value shall be documented through an appraisal of the property by a qualified appraiser and provided to the City by the developer. This amount shall be placed into the housing fund and used as defined in LMC 18.31.030(B).

L. Annual Monitoring and Transfer Fees.

1. For each rental affordable unit provided hereunder, the current owner may be required to pay an annual monitoring fee for the term of required affordability. Such fee shall be specified in the regulatory agreement(s) required hereunder.

2. For each owner-occupied affordable unit provided under this section, the current owner may be required to pay a transfer fee for any change of ownership during the term of required affordability. Such fee shall be specified in the resale restrictions required by subsection K of this section.

M. Discretionary Permit Requirements. Every discretionary permit for a residential development project of five or more units approved after the effective date of the ordinance codified in this chapter shall contain a condition detailing the method of compliance with this chapter. Every final and parcel map shall bear a note indicating compliance with the requirements of this section must be met prior to issuance of a building permit for each lot created by such map.

N. Professional Assistance for City Review and Determinations. Whenever an approval or determination is required, the Planning Director may, at the applicant's sole cost and expense, retain a suitably qualified independent professional consultant to evaluate the adequacy of the application to achieve the purposes of this chapter.

O. Requirements for Certificate of Occupancy/Final Inspection.

1. No temporary or permanent certificate of occupancy shall be issued, final inspection approved or release of utilities authorized for any new dwelling unit in a residential development project until the developer has satisfactorily completed the requirements hereunder, i.e., on-site construction of affordable units, alternative equivalent action(s) or payment of the housing in-lieu fee.

2. No temporary or permanent certificate of occupancy shall be issued, final inspection approved or release of utilities authorized for a dwelling unit described as exempt from the requirements of this chapter in subsection A of this section until the developer has made a showing acceptable to the City Manager that such an exemption is appropriate. (Ord. 941 § 1, 2005)

18.31.050 Enforcement Provisions.

A. It shall be unlawful, a public nuisance and a misdemeanor for any person to sell or rent an affordable unit at a price or rent exceeding the maximum allowed under this chapter or to a household not qualified under this chapter, and such person shall be subject to a fine of five hundred dollars (\$500.00) per month plus restitution of the amount charged that exceeded the maximum allowed under this chapter from the date of original noncompliance until the affordable unit is in compliance with this section. Fine monies collected that exceed the cost of enforcement shall be deposited in the housing fund.

B. The Larkspur City Attorney's Office or the Marin County District Attorney, as appropriate, shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing regulatory agreements and resale controls placed on affordable units by civil action, injunctive relief, and any other proceeding or method permitted by law.

C. The remedies provided for herein 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. (Ord. 941 § 1, 2005)

18.31.060 Adjustment.

A. A developer of any project subject to the requirements of 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.

B. 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.

C. Any such appeal shall be made in writing and filed with the City Clerk not later than ten calendar 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, the appeal shall be filed within ten calendar days after payment of the fees objected to.

D. 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 calendar 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.

E. No waiver shall be approved by the City Council for a new tentative subdivision or parcel map, use 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, use 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 the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement. (Ord. 941 § 1, 2005)

This page of the Larkspur Municipal Code is current through Ordinance 961, passed April 16, 2008.

Disclaimer: The City Clerk's Office has the official version of the Larkspur Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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