

18.05.0 AFFORDABLE HOUSING

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18.05.010 Purposes of article; findings. (2)

The City Council finds and determines:

- (a) The city has a goal to provide a range of housing for its local workers and has chosen to take action to ensure that affordable housing is constructed and maintained within the city of Davis.
- (b) Housing purchase prices in Davis are generally higher than the rest of the region, particularly Woodland and West Sacramento.
- (c) Rents in Davis have been rising and the majority of new apartments are four bedroom units which are not suitable for most families. Small, very-low income households have trouble finding affordable unassisted housing, and larger households of any income level have difficulty finding affordable units.
- (d) Federal and state funds for the construction of new affordable housing are limited.
- (e) In order to meet the city's fair share of the regional housing need for very low, low and moderate-income households, the city included implementing policies within the housing element of the general plan to provide for such housing.
- (f) General plan implementing policies require that, to the extent feasible, twenty-five percent of ownership units be affordable by very low income households, low income households and moderate income households. General plan policies also require that affordable ownership units include a means for sustained affordability, maintaining them as affordable units into the unforeseeable future.
- (g) General plan implementing policies also require that, to the extent feasible, rental housing developments with five to nineteen units shall provide fifteen percent of the units to low income households and ten percent to very low income households; and in rental housing developments with twenty or more units that twenty-five percent of the units be affordable to low income households and ten percent of the units be affordable to very low income households. General plan policies also require that affordable rental units remain affordable in perpetuity.

18.05.020 Definitions. (3)

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) **“Affordable housing”** means affordable ownership housing or affordable rental housing.
- (b) **“Affordable ownership housing”** is housing affordable, based upon mortgage payments or carrying charges paid by a member of a limited equity housing cooperative, to low, very low or moderate income households. No more than thirty-five percent of the targeted household income shall be applied to housing expenses, which shall include mortgage principal and interest, taxes, insurance, assessments, and homeowner fees, as applicable and adjusted for household size. In the case of the limited equity cooperative, the total monthly carrying charges for its members shall not exceed thirty-five percent, and the carrying charges shall include all monthly housing costs minus utilities.
- (c) **“Affordable rental housing”** is housing affordable, based upon monthly rent, to low, very low or

moderate income households, adjusted for household size. Affordable rental housing payments are approximately thirty percent of gross monthly target income less utilities.

(d) "**Community based nonprofit-controlled rental housing**" means rental housing owned and operated by an organization with 501(c)(3) status, that is either based in Yolo County, or has a Board of Directors that includes a minimum of 30% representation of Yolo County Residents.

(e) "**Community based mutual housing association**" means a nonprofit tax exempt corporation that may develop, own or manage housing units. Association membership includes nonresident and community members. Resident members shall constitute a majority of the shareholders of the corporation. Each member has one shareholder vote. The corporation is governed by an elected volunteer Board of Directors representative of the association membership. Members shall have no equity interest in the project. Residents pay a one-time membership fee to be used to defray the cost of constructing the housing units. This fee is refundable with nominal interest when residents leave the association. Residents must be members of the association, pay the membership fee and meet resident selection criteria established by the association.

(f) "**Complete environmental review**" means that the land has had all environmental reviews completed on the site to satisfy local requirements, state CEQA requirements, and the national NEPA requirements; resulting in no significant findings that could inhibit development on the site. Any reported findings on the site must be cleared prior to deeding the site for land dedication to the City.

(g) "**Density bonus**" means entitlement to build additional residential units above the maximum number of units permitted pursuant to existing general plan, applicable specific plan and zoning designations. Density bonus units may be constructed only in the development where the units of affordable housing are located. "City density bonus" means a bonus of units awarded to a developer pursuant to this Article. "State density bonus" means a bonus of units awarded to a developer pursuant to Government Code section 65915 et seq.

(h) "**Developer**" means the owner of record and his or her successors in interest.

(i) "**Development**" means one or more projects or groups of projects of residential units constructed in a contiguous area. A development need not be limited to an area within an individual parcel, or subdivision plat.

(j) "**Family**" means an individual or group of two or more persons occupying a dwelling unit and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent.

(k) "**Feasible**" means capable of being financed, demonstrating the required financing (if any) meets lenders investment standards with respect to the project's Loan to Value (LTV), Debt Coverage Ratio (DCR), and Return on Asset (ROA), based on the prevailing interest and discount rates supported in the required appraisal for a like property. Feasible projects should be sustainable projects, taking into account the cost of construction and ongoing maintenance of the project, in addition to the site's essential services.

(l) "**Ownership units**" means housing units which provide an ownership opportunity including, but not limited to, single-family units, condominiums, land trusts, and cooperatives, except in circumstances

where the unit is converted to rental use.

(m) "**Household**" means "family" as defined in this section. This article shall not apply to households in which any member is claimed as a dependent for federal income tax purposes by a person or persons residing outside of the household unit unless such person or persons who reside outside the household qualify as very low, low or moderate income persons or families.

(n) "**Limited equity housing cooperative**" means a housing cooperative organized pursuant to California Health and Safety Code section 33007.6 and Business and Professional Code section 11003.4. A limited equity housing cooperative is owned by a nonprofit corporation or nonprofit housing sponsor. Resident-owners own the cooperative as an undivided whole, rather than individual units, but each has the exclusive right to occupy a specific unit within the cooperative.

(o) "**Low income**" means a household earning a gross income of no greater than eighty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(p) "**Low target income**" means that the average income of residents of low income units will be sixty-five percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(q) "**Moderate income**" means a household earning a gross income of no greater than one hundred twenty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(r) "**Moderate target income**" means that the average income of residents of moderate income units will be one-hundred percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(s) "**Permanently affordable**" means affordable in perpetuity and subject to an agreement between the developer and the city to maintain affordability. Such agreement shall be recorded to the property.

(t) "**Rental units**" means housing units which provide a rental opportunity including, but not limited to, multifamily units (excluding condominiums and cooperatives), duplexes (two units on one lot), triplexes, or four-plexes on single-family residential zoned property. Single-family units may be converted to rental units for the purposes of this article.

(u) "**Resident controlled nonprofit housing corporation**" means a housing corporation established to manage for-sale or rental housing projects designated for very low, low or moderate income households in which the majority of households have formed a nonprofit housing corporation. Residents need not have equity interest in such projects.

(v) "**Target income levels**" means the income levels based on standards for very low, low and moderate income levels within Yolo County derived from the U.S. Department of Housing and Urban Development and adjusted for family size. These figures are provided to the city on a yearly basis.

(w) **"Self-help housing"** means mutual self-help housing constructed for very low, low, and moderate income families in which a group of prospective homebuyers shall provide labor to assist in the construction of their units. The intent of this program is to transform the hours of labor into equity ("sweat equity") to reduce the purchase price of the unit.

(x) **"Student housing cooperative"** means a nonprofit housing organization owned and/or controlled by students.

(y) **"Sustained affordability"** means that the affordable housing obligation being produced to meet the requirements of this ordinance is done so in a manner that maintains the affordability provided into the unforeseeable future, with minimal loss in affordability.

(z) **"Very low income"** means a household earning a gross income of no greater than fifty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(aa) **"Very Low target income"** means that the average income for residents of very low income unites will be forty percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(Ord. No. 1567, § 1 (part); Ord. No. 2199)

18.05.030 Applicability of article. (4)

This article is enacted pursuant to the general police power of the city and is for the purpose of providing affordable housing in Davis consistent with the general plan. (Ord. No. 1567, § 1 (part); Ord. No. 2199)

18.05.040 Provision of affordable housing. (5)

(a) **Affordable Housing Plan.** The developer shall submit, concurrently with or prior to the submission of an application for the first discretionary approval for a project, an application as provided by the city describing the proposed affordable housing plan, in accordance with this ordinance and the intended method for implementing such a program. A developer may submit an application under this ordinance at any time subject to staff, the planning commission, or the city council's discretion to deny the application on the sole basis of lack of timeliness. Any application resubmitted by a developer to amend a program after it has been approved by the city shall be deemed a new application for the project. Before any agreements between parties or transfer of land is made, all agreements and the affordable housing project's overall plan and budget shall be approved by the City, in order to ensure that the affordable housing project will be economically sustainable over time, in accordance with the project's required duration of affordability. This review will allow for updated construction cost changes at the time of construction, which will again require review and approval by staff. These reviews also provide the City opportunity to act as an active partner to projects where local funds are requested.

(b) **Approval Process of Affordable Housing Plans.** The approval process for affordable housing plans will include the following steps:

a. Submission of the affordable housing plan as part of the project application submitted to the Community Development Department. Staff shall then refer the affordable housing plan to the Social Services Commission.

b. The Social Services Commission will hold a duly noticed public hearing, where the plan shall be considered. The Commission will review the plan for compatibility with the following: the affordable housing ordinance as written in Sections 18.05.010-18.05.070 of the City Municipal Code, adopted city affordable housing goals, and currently identified city housing needs.

c. After motion for approval or denial is given by the Social Services Commission regarding the proposed affordable housing plan, it is then heard publicly before the Planning Commission and reviewed for their motion on the plan, if the planning entitlements requested by the project require this step. If the planning entitlements being requested do not require this step, then the Social Services Commission's decision on the affordable housing plan is final, but, as is true with decisions of the Planning Commission, can be appealed to the City Council through the city's appeal process as outlined in Section 40.35 of the City's Municipal Code.

d. If the project is requesting planning approvals that require a City Council hearing, the recommendations of both the Social Services Commission, as well as the Planning Commission shall be included in the report to the City Council.

(c) Building Permit Issuance. No building permit shall be issued for any new residential unit unless such construction has been approved in accordance with the standards and procedures provided for by this article. The location and type of proposed affordable housing in a development shall be disclosed in writing by each seller to each subsequent purchaser of lots or units within the development, until all the affordable housing units are completed.

(Ord. No. 1567, § 1 (part); Ord. No. 1728, § 3.)

(d) Competitive Contracting. In circumstances where local, state, or federal funds are being used to assist in the development of the project, an open bidding process shall be carried out that adequately addresses the requirements of all funding sources involved. In agreement with this requirement, the project developer shall be aware of regulations accompanying all funding sources used for the project, and shall comply with the regulations from pre-construction and throughout the life of the project. Copies of all contracts that are requested for viewing by the City shall be submitted in a timely manner. The City may request evidence of open procurement and compliance with any and all government funding regulations on a project at any time. If the City believes the project to be out of compliance with the intent of this article and/or the regulations of the project's funding sources, the City has the ability to sanction the project developers for their conduct, including fining the project or withdrawing funding.

(e) Development Agreement. The City shall use the development agreement of the project to ensure that the project developer adheres to the requirements and intent of this article by detailing within the agreement the sanctions involved if the developer does not comply with the requirements of this article during the construction process.

(f) Rounding Provisions. Where the total affordable units required by this ordinance call for a one-half affordable unit or greater portion, it shall require the provision of one full affordable unit (for example, a requirement of 1.5 shall actually require 2 units). The results of such rounding shall also be used in the calculation for in-lieu fee payments, where provided as an option.

(g)Buyer/Tenant Selection and Screening. Buyer/Tenant selection and screening shall be carried out by the developer, owner, City, or by the designated responsible party, at the sole expense of the developer. Included in the affordable housing plan submitted by the developer, shall be a proposed marketing plan with an estimated timeline of events, which must be approved by the City and shall adhere to the City's Buyer/Tenant Selection and Screening Guidelines.

The City of Davis will monitor the Buyer Selection and Screening Process through required monthly reports, and through the ability to review any and all files regarding the process at any time that city staff requests to do so. The City of Davis will possess the ability to halt any sale or break any lease of an affordable unit at its discretion, for reasons to include, but not restricted to, the following: if the buyer selection and screening process was not strictly adhered to, or if the buying household is found not to meet the guidelines of qualification, as specified in the guidelines.

(Ord. No. 1567, § 1 (part); Ord. No. 1728, § 3; Ord. No. 2199)

18.05.050 Ownership unit affordable housing standards. (6)

A developer of residential ownership developments consisting of five or more units shall provide in each development, to the extent feasible, an amount equivalent to twenty-five percent of the total units for very low, low and moderate income households, after the inclusion of the density bonus for the project. Depending on the total number of units in the development as provided in Section (a) below, some of the required affordable units may be rental units and some for sale units. Residential projects consisting of fewer than five market rate units will not be required to produce affordable units.

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 based on payments 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.

Ownership affordable units that are converted into rental units, meet the requirements of this section, pursuant to state law, if the rents meet the affordable housing standards for rental units in this article, and as adopted by the city.

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

(a) Standard Ownership Affordable Housing Requirements

All requirements listed under the respective category, as well as Section 18.05.040, must be adhered to and included within the project's affordable housing plan.

1.Projects with fewer than five units for purchase

a. No affordability requirements.

2.Projects totaling five to seventy-five units for purchase

- a. A number equivalent to twenty-five percent of the total units being developed, after the inclusion of the density bonus for the project, must be developed as affordable units, as directed in this section.
- b. The complete amount of required affordable units must be constructed on-site.
- c. The on-site construction shall be in conformance with all that is stated in Section (A), entitled On-Site Construction of Affordable Units for Purchase.

3. Projects totaling seventy-six to two-hundred units for purchase

- a. A number equivalent to twenty-five percent of the total units being developed, after the inclusion of the density bonus for the project, must be developed as affordable units, as directed in this section.
- b. The developer shall make 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 in its entirety.
- c. The land dedication shall be in conformance with all that is stated in Section (B), entitled Land Dedication.

4. Projects totaling two-hundred and one or greater units for purchase

- a. A number equivalent to twenty-five percent of the total units being developed, after the inclusions of the density bonus for the project, must be developed as affordable units, as directed in this section.
- b. Half of the affordable housing requirement for the project, a number equivalent to twelve and one-half percent of the total units being developed, shall be developed on-site by the developer, in conformance with all that is stated in Section (A), entitled On-Site Construction of Affordable Units for Purchase
- c. Half of the affordable housing requirement for the project, a number equivalent to twelve and one-half percent of the total units being developed, shall be developed through a land dedication(s) by the developer to the City of Davis, in conformance with all that is stated in Section (B), entitled Land Dedication.

5. 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 non-profits, 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 non-profits 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 18.05.010-18.05.070 of the City's 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/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 at either the Social Services Commission or the Planning Commission to direct the developer to do a land dedication to meet his/her affordability requirement, may be appealed to the City Council.

(A) On-Site Construction of Affordable Units for Purchase.

The units shall be constructed in conformance with all that required in this article.

(a) Density Bonus. A one-for-one city density bonus shall be awarded for construction of on-site affordable units.

(b) 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.

(c) Price of Units. The units will be affordable to moderate-income households, households with incomes ranging from 80% of Area Median Income to 120% Area Median Income, with the average affordability targeted at households with incomes at 100% of Area Median Income, the moderate target income.

The Community Development Department Director shall determine the maximum sales price for these units on an annual basis. The Community Development 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.

(d)Buyer Selection and Screening. Please refer to Section 18.05.040(g) for the guidelines of this section.

(e)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/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. (Ord. No. 1567, § 1 (part); Ord. No. 1651; § 1; Ord. No. 1728 §§ 4--7.)

(f)Sustained Affordability. Restrictions shall be placed on the affordable housing obligation fulfillment, 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:

1. 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 increase in Yolo County Area Median Income—3 %, plus an additional 0.75% percent as a credit for maintenance costs of the unit. This restricts the total appreciation of the unit to a maximum of 3.75%, compounded annually.
2. 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.

(g)Right of First Refusal. All affordable for-sale 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.

(h)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.

(B)Land Dedication.

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 one acre. 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.

(a)Density Bonus. A one-for-one city density bonus shall be awarded for land dedication on the basis of fifteen units per net acre.

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(b)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:

- (i) Resident controlled nonprofit housing corporation.
- (ii) Community based mutual housing association.
- (iii) Community based nonprofit controlled rental housing.
- (iv) Student housing cooperative.
- (v) Limited equity housing cooperative.
- (vi) Public housing
- (vii) Land trust
- (viii) Self-Help Housing
- (ix) Other forms of nonprofit housing containing a permanent affordability provision.

(c)Price of Units. The average affordable price for each size category of units on land dedication sites shall not exceed the low target income, 65 percent of median income. The maximum income level served shall not be greater than 80 percent of area median income. A variety of unit sizes must be offered to income groups at all levels within the targeted group. 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 65 percent of area median income.

(d)Buyer/Tenant Selection and Screening. Please refer to Section 18.05.040(g) for the guidelines of this section.

(e)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/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. (Ord. No. 1567, § 1 (part); Ord. No. 1651; § 1; Ord. No. 1728 §§ 4--7.)

(C)Options for Small Developments. Small developments of fifteen ownership units or fewer, and totaling no greater than 38 bedrooms in the project, that are located within the Core Area and are found to meet a specified community goal, can request to fulfill the twenty-five percent affordable housing requirement through one of the following options, as approved during the review process of the project's affordable housing plan:

(a)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 proforma (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.

(b)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. 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.

(c)In-lieu Fees. In the event that the developer cannot accommodate options (a) and (b) within the proposed project, 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. A payment plan may be approved by the Social Services Commission 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. No. 1567, § 1 (part); Ord. No. 1651; § 1; Ord. No. 1728 §§ 4--7; Ord. No. 2199)

18.05.060 Rental development affordable housing standards. (7)

A developer of multifamily rental developments containing twenty or more units shall provide, to the maximum extent feasible, at least twenty-five percent of the units affordable by low income households and at least ten percent of the units affordable by very low income households. A developer of multifamily rental developments containing between five and nineteen units, inclusive, shall provide, to the maximum extent feasible, fifteen percent of the units to low income households and ten percent to very low income households. Residential projects consisting of fewer than five market rate units will not be required to produce affordable units. Such housing shall be provided either by the construction of units on-site or by land dedication.

The approval process for Affordable Housing Plans will adhere to that which is required by Section

18.05.040 (b).

Affordable rental units shall rent to low income households at not more than thirty percent of eighty percent (thirty percent of eighty percent is twenty-four percent) of area median income, and to very low income households at not more than thirty percent of fifty percent of area median income, adjusted for family size.

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

(a) Standard Rental Affordable Housing Requirements

All requirements listed under the respective category must be adhered to and included within the project's affordable housing plan.

1. Projects with fewer than five units for rent

a. No affordability requirements

2. Projects totaling five to nineteen units for rent

a. A number equivalent to fifteen percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to low-income households, households with gross incomes at or below eighty-percent of Area Median Income for Yolo County.

b. A number equivalent to ten percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to very low-income households, households with gross incomes at or below fifty-percent of Area Median Income for Yolo County.

c. The complete number of required affordable units must be constructed on-site.

d. The on-site construction shall be in conformance with all that is stated in Section (A), entitled On-Site Construction of Affordable Units for Rent.

3. Projects totaling twenty or greater units for rent

a. A number equivalent to twenty-five percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to low-income households, households with gross incomes at or below eighty-percent of Area Median Income for Yolo County.

b. A number equivalent to ten percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to very low-income households, households with gross incomes at or below fifty-percent of Area Median Income for Yolo County.

c. This requirement may be fulfilled through either On-Site Construction as stated in Section (A) below or Land Dedication detailed in Section (B), as long as the minimum amount of land is provided to make the site economically feasible.

4. Project Individualized Programs for Rental Housing

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 non-profits, 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 non-profits 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 18.05.010-18.05.070 of the City's 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/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 at either the Social Services Commission or the Planning Commission to direct the developer to do a land dedication to meet his/her affordability requirement, may be appealed to the City Council.

(A) On-Site Construction of Affordable Units for Rent. A developer of a development containing twenty or more units may meet the rental affordable housing requirement by constructing twenty-five percent of the total number of units on-site to be permanently affordable to low income households and ten percent of the total number of units on-site to be permanently affordable to very low income households. A developer of a development containing between five and nineteen units, inclusive, may meet the rental affordable housing requirement by constructing fifteen percent of the total number of units on-site to be permanently affordable to low income households and ten percent of the total number of units on-site to be permanently affordable to very low income households.

(a)Criteria for On-Site Construction. Affordable housing units constructed on-site shall include a mix of unit sizes, dispersed throughout the entire development, as approved by the director of the department of community development, based on the local housing needs of unit sizes. Affordable housing units shall not be clustered together in any building, complex or area of the development. Affordable housing units constructed on-site shall be constructed using the same building materials and including equivalent amenities as the market rate units.

1.

(b)Affordability Agreement. In order to qualify as affordable units pursuant to this section, such units shall be maintained in perpetuity as affordable units. The developer shall enter into an agreement with the city to ensure the continued affordability of all affordable rental housing units in perpetuity. This agreement shall be recorded.

1.

(c)Density Bonus. A one-for-one city density bonus shall be awarded for the construction of on-site affordable units.

1.

(d)Annual Monitoring. Affordable units must be managed by the developer or his or her agent. Each developer shall submit an annual report to the city identifying which units are affordable units, the monthly rent, vacancy information for each affordable unit for the prior year, gross annual incomes for the households of each affordable unit during the prior year, and other information as required by city staff. This annual monitoring shall include the inspection of ten-percent of the on-site units. Inspection reports created by an acceptable third party and completed within the same city fiscal year will be accepted in-lieu of city staff performing the on-site inspection, for that given monitoring year.

1.

(e)Affordable Rents. Affordable rents shall be determined annually on a city-wide basis by city staff based upon the Area Median Income and Utility Allowances for Yolo County, as determined by the federal Department of Housing and Urban Development, the state Department of Housing and Community Development, and the Yolo County Housing Authority. If these agencies do not provide the information, the City of Davis will determine monthly rent amounts based on thirty-percent of the targeted household's gross monthly income.

1.

(f)Tenant Selection and Screening. Please refer to Section 18.05.040(g) for the guidelines of this section.

(B)Land Dedication. A developer may make an irrevocable offer of dedication to the city of sufficient land to meet the total affordable rental housing units required pursuant to this section.

(a)Credit. The density of development for the purpose of calculating the acreage to be dedicated under this section shall be 20 units per net acre for multifamily residential use.

1.

(b)Procedure; General Plan Consistency. The developer shall identify the land to be dedicated at the time the developer applies for a pre-zone or zoning amendment, but in no event later than the application for tentative subdivision map. Building permits shall not be issued prior to identification of land to be dedicated under this section. The proposed land use of such land must be consistent with the general plan. The city may approve, conditionally approve or reject such offer of dedication. If the city

rejects such offer of dedication, the developer shall be required to meet the affordable housing obligation by other means set forth in this section and identified by the city.

1.

(c)Characteristics and Minimum Size. 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 one acre.

1.

(d)Density Bonus. A one-for-one city density bonus shall be awarded for dedication under this section on the basis of twenty units per net acre.

1.

(e)Housing on Dedicated Land. Housing built on land dedicated 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 housing types listed in section 18.05.050(B)(b) of this article.

(C)Options for Small Developments. Small developments of fifteen rental units or fewer, and totaling no greater than 38 bedrooms in the project, that are located within the Core Area and are found to meet a specified community goal, can request to fulfill the twenty-five percent affordable housing requirement through one of the following options, as approved during the review process of the project's affordable housing plan:

(a)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 proforma (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.

(b)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. The exact split of the combination shall be determined during the review process for the project's affordable housing plan, based on the developer's stated ability to provide affordable units on-site.

(c)In-lieu Fees. In the event that the developer cannot accommodate options (a) and (b) within the proposed project, 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. A payment plan may be approved by the Social Services Commission 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. No. 1567, § 1 (part); Ord. No. 1651, § 2; Ord. No. 1801, §; Ord. No. 2199)

18.05.070 Fees. (8)

The city council may, by resolution, establish fees and deposits for processing of applications as required by this article. (Ord. No. 1651, § 3; Ord. No. 2199)

18.05.080 Exemptions from Affordable Housing Requirements. (9)

(a) Residential projects consisting of fewer than five units will not be required to produce affordable units.

(b) The requirements of this Article may be adjusted or waived if the Developer demonstrates to the satisfaction of the City Council that there is not 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.

To receive an adjustment or waiver, the Developer must request it when applying for first approval of the Residential Project. The matter shall be considered before the City Council within thirty days. In making the finding or determination, the City Council may assume the following: (1) the Developer is subject to the inclusionary housing requirements in this Article; (2) availability of any incentives, affordable financing, or subsidies; and (3) the most economical affordable housing product in terms of construction, design, location, and tenure. For purposes of a taking determination, the Developer has the burden of providing economic and financial documentation and other evidence necessary to establish that application of this Article would constitute a taking of the property without just compensation.

If it is determined that the application of the provisions in this Article would constitute a taking, the inclusionary requirements for the Residential Project shall be modified to reduce the inclusionary housing obligations to the extent and only to the extent necessary to avoid a taking. If it is determined that no taking would occur by application of this Article, the requirements of the Article remain applicable and no approvals for the Residential Project shall be issued unless the Developer has executed an Affordable Housing Plan pursuant to the requirements of this Article.

18.06.0 MIDDLE INCOME HOUSING

18.06.0 MIDDLE INCOME HOUSING

18.06.010 Purpose and findings. (2)

The purpose of this article is to implement a General Plan policy to require developments with 26 or more residential units for purchase to provide units that are affordable to middle income households.

The City Council hereby finds as follows:

1. The State of California Government code sections 65580 and 65589.5 state the following findings and goals for housing:

- a. The availability of decent housing and a suitable living environment for every Californian is a vital statewide goal. The attainment of this goal requires efforts to accommodate the housing needs of Californians of all economic levels.
- b. Local governments have a responsibility to use the powers vested in them to provide for the housing needs of all economic segments of the community considering economic, environmental, and fiscal factors and community goals set forth in the general plan. Each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal.
- c. California housing has become the most expensive in the nation. Among the consequences are discrimination against low income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.
- d. The premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. It is the policy of the state that development should be guided away from prime agricultural lands and that jurisdictions should encourage in-filling existing urban areas to the maximum extent practicable.

2. The establishment of a middle income housing ordinance by the City of Davis is consistent with the state legislature's housing goals and intent in that:

- a. The city of Davis is interested in providing housing that is affordable to its local workforce as well as other underserved households. A study of middle income housing needs, impacts, and options completed for the City of Davis found that the Davis housing market is not providing adequate ownership housing opportunities for middle income households. Middle income households cannot afford to purchase even the least expensive market rate housing being developed and cannot qualify for affordable housing units provided for low and moderate income households.
- b. The city of Davis is using its vested powers to provide for the housing needs for all economic segments of the community and the local workforce in particular.
- c. Public funds for the construction of middle income housing units are not available.
- d. The City Council has considered the community goals set forth in the general plan and the economic factors related to a middle income housing requirement, including impact on development feasibility. The study of middle income housing needs, impacts and options found that the requirement for middle income units would involve reduced opportunity profits for the housing developer but would not

require a construction subsidy.

e. The City Council has considered the potential environmental effects from the middle income ordinance project and finds that the project would not have a significant effect on the environment or a cumulatively considerable environmental effect in that the project. The project will not affect the amounts or allowable densities of residential development in the General Plan. The project would have cumulatively beneficial effect by providing housing opportunities for the local workforce. Workforce housing would reduce traffic congestion and air pollution by Davis workers who otherwise would live outside Davis and commute longer distances to work. City Council approves Negative Declaration #03-05 for this project.

f. The City Council finds that the middle income housing requirement project would not discriminate against protected classes including minorities, disabled, elderly and families with children. The effect of the project would be to divert housing production that most likely would have been affordable to higher income households and instead require developers to restrict the sales of those housing units to households qualifying as “middle income.” Discrimination based on income is acceptable when it serves a public purpose such as facilitating the ability of households to afford decent, safe, and sanitary housing that otherwise could not. The data in a study of middle income housing needs, impacts and options shows that:

(1) Shifting some of the housing supply from the above middle income level to middle income level through a middle income inclusionary requirement would most likely not have a significant impact on non-white households, households with disabled persons, and households with children because there are more households of these categories in the middle income level than the above-middle level in Davis, Yolo County, and the Sacramento / Yolo CMSA; and

(2) There is a slightly higher concentration of elderly households in the \$100,000 and above income categories than in the \$60,000 to \$99,999 income range which closely resembles the “middle” income range. This could mean that if the City implements a program to require middle income units, there would be a lower proportion of elderly households who would qualify for the housing versus the proportion of elderly households in the higher income categories who would be able to afford more expensive housing. The higher income elderly households, however, would generally be able to find decent housing compared to lower income households.

g. The projects will not change the city’s existing housing programs and requirements for very low, low and moderate income households.

h. The project will provide greater housing opportunities for middle income households as the Davis housing market has not been providing adequate ownership housing opportunities for middle income households.

i. The city of Davis is attempting to provide middle income housing to support the community’s growth in employment by providing employee housing, retain a balance of jobs and housing, provide mobility, and preserve air quality. The city of Davis is attempting to avoid urban sprawl and excessive commuting.

j. The city of Davis is attempting to balance housing programs with agricultural land preservation programs which purchase conservation easements, including mitigation requirements for the conversion of agricultural land by urban development.

3. The establishment of a middle income housing ordinance by the City of Davis is consistent with the city’s general plan policies which call for a mix of housing types that meet a variety of needs. These policies include:

- a. Policy LU A.2: Require a mix of housing types, densities, prices and rents, and designs in each new development area.
- b. Policy HOUSING 1.1: Encourage a variety of housing types that meet the housing needs of an economically and socially diverse Davis.
- c. Policy HOUSING 4.2 (new): Provide affordable housing opportunities for the local workforce in the Davis area.
- d. Standard HOUSING 4.2a (new): A development with 26 or more residential units for purchase shall provide units which are affordable to middle income households. Middle income households consist of households earning a gross income of no greater than 180 percent of the median income for Yolo County adjusted for household size. The number of middle income units shall be equivalent to 10% for projects totaling 26 to 35 ownership units, 15% for projects totaling 30 to 49 ownership units, and 20% for projects totaling 50 or more ownership units.
- e. Standard HOUSING 4.2b (new): Units built under the middle income requirement shall be made affordable to households with gross incomes of 120 percent to 180 percent of the median income for Yolo County, with an average affordability for households at 140 percent of the median income for Yolo County.
- f. Policy HOUSING 4.3 (new): Promote a linkage between new ownership housing and the local workforce.
- g. Action HOUSING 4.3a (new): Implement an incentive system for the local workforce, such as a lottery, as part of the city's buyer selection process for low/moderate income and middle income affordable ownership units. The system shall provide the highest number of lottery tickets to households with a member of the local workforce.

4. The public purposes served by providing housing opportunities for middle income households and the local workforce include:

- a. Helping the city and school district better serve the public with vital services;
- b. Helping businesses by facilitating greater employee productivity and morale;
- c. Enhancing recruitment and retention efforts, and increasing service levels;
- d. Reducing traffic congestion and air pollution by people who otherwise would live outside of Davis and commute longer distances to work;
- e. Improving the quality of life for Davis employees by bringing them closer to their place of work.

(Ord. No. 2234, Added 01/10/2006)

18.06.020 Definitions. (3)

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- 1. "Density bonus" means entitlement to build additional residential units above the maximum number of units permitted pursuant to existing general plan, applicable specific plan, and zoning designations. Density bonus units are granted and may be constructed only in developments where units of affordable housing built under the city's low-moderate income ordinance are located.

2. "Developer" means the owner of record and his or her successors in interest.
3. "Development" means one or more projects or groups of projects that include residential units constructed in a contiguous area. A development need not be limited to an area within an individual parcel, or subdivision plat.
4. "Exempt condominiums" are residential ownership units in a condominium development that is predominantly composed of stacked air space units not having separate ownership parcels. Townhouse or single family developments are not considered "exempt condominiums" under this definition, even if they are structured as condominium units.
5. "Family" means an individual or group of two or more persons occupying a dwelling unit and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or housing.
6. "Feasible" means capable of being financed, demonstrating the required financing (if any) meets lenders investment standards with respect to the project's Loan to Value (LTV), Debt Coverage Ratio (DCR), and Return on Asset (ROA), based on the prevailing interest and discount rates supported in the required appraisal for a like property. Feasible projects should be sustainable projects, taking into account the cost of construction and ongoing maintenance of the project, in addition to the site's essential services.
7. "Household" means "family" as defined in this section. This definition shall not apply to households in which any member is claimed as a dependent for federal income tax purposes by a person or persons residing outside of the household unit unless such person or persons who reside outside the household qualify as very low, low, moderate or middle income persons or families.
8. "Middle income" means a household earning a gross income of no greater than one hundred eighty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.
9. "Middle income ownership units" are ownership housing units at prices affordable to middle income households based on the requirements of this article.
10. "Moderate income" means a household earning a gross income of no greater than one hundred twenty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.
11. "Middle target income" means that the average pricing of middle income units will be affordable to households at one hundred forty percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.
12. "Ownership units" means housing units that can be sold individually and function on their own utilities, while providing an ownership opportunity. Ownership units would include, but are not limited to, single-family units, condominiums, and land trusts, except in circumstances where the unit is

converted to rental use.

13. "Target income levels" means the income levels required to be served by middle income units produced under this ordinance, based on the set standards for median income levels within Yolo County annually derived from the U.S. Department of Housing and Urban Development, adjusted for household size.

(Ord. No. 2234, Added 01/10/2006)

18.06.030 Applicability of article. (4)

This article is enacted pursuant to the general police power of the city and is for the purpose of providing middle income housing in Davis consistent with the general plan. This article shall apply to all projects consisting of newly constructed ownership units totaling twenty-six units or greater. (Resolution No. 05-27A)

(Ord. No. 2234, Added 01/10/2006)

18.06.040 Process for provision of middle income housing. (5)

1. Middle income housing plan.

The developer shall submit, concurrently with or prior to the submission of an application for the first discretionary approval for a project, an application as provided by the city describing the proposed middle income housing plan, in accordance with this ordinance, as well as the affordable housing plan required by the city's low-moderate affordable housing ordinance, that includes the intended method for implementing the project's middle income and affordable housing requirements. A developer may submit an application under this ordinance at any time subject to the planning commission or city council's discretion to deny the application on the sole basis of lack of timeliness. Any application resubmitted by a developer to amend a middle income housing plan after it has been approved by the city shall be deemed a new application for the project. Before any final agreements between parties or transfer of land is made, the project's middle income housing plan shall be approved with other required development entitlements such as general plan amendment or zoning approvals. The middle income housing plan shall adhere to the requirements of this ordinance and affordable housing plan shall adhere to the requirements of the low-moderate affordable housing ordinance. Both shall meet the housing needs of the city and its residents. No contracts shall inhibit the city's ability to make changes to any middle income housing plan in order to improve the plan and its provision of middle income housing units.

2. Approval process of middle income housing plans.

The approval process for middle income housing plans will include the following steps:

- a. Submission of the middle income housing plan as part of the project application submitted to the Community Development Department. Staff shall then refer the middle income housing plan to the Social Services Commission.
- b. The Social Services Commission will hold a duly noticed public hearing, where the plan shall be considered. The Commission will review the plan for compatibility with this article, adopted city affordable housing goals, and current city housing needs.
- c. After a recommendation is given by the Social Services Commission regarding the proposed middle

income housing plan, it is then heard at a public hearing before the Planning Commission. If the project is requesting planning approvals that do not require a City Council hearing, then the Planning Commission's decision is final, but can be appealed to the City Council.

d. If the project is requesting planning approvals that require a City Council hearing, the recommendations of both the Social Services Commission and the Planning Commission shall be included in the report to the City Council.

3. Building permit issuance.

No building permit shall be issued for any new residential ownership unit unless such construction has been approved in accordance with the standards and procedures provided for by this article. The location and type of proposed middle income housing in a development shall be disclosed in writing by each seller to each subsequent purchaser of lots or units within the development, until all of the middle income housing units are completed.

4. Rounding provisions.

Where the total middle income units required by this ordinance call for a one-half middle income unit or greater portion, it shall require the provision of one full middle income unit (for example, a requirement of 1.5 shall actually require 2 units).

5. Buyer selection and screening.

Buyer selection and screening shall be carried out by the developer, owner, City, or by the designated responsible party, at the sole expense of the developer. Included in the middle income housing plan submitted by the developer, shall be a proposed marketing plan with an estimated timeline of events, which must be approved by the City and shall adhere to the City of Davis Buyer/Tenant Selection and Screening Guidelines.

The City of Davis will monitor the Buyer Selection and Screening Process through required monthly reports, and through the ability to review any and all files regarding the process at any time that city staff requests to do so.

The City of Davis will possess the ability to halt any sale of a middle income unit at its discretion, for reasons to include, but not restricted to, the following: if the buyer selection and screening process was not strictly adhered to, or if the buying household is found not to meet the guidelines of qualification, as specified in the guidelines.

(Ord. No. 2234, Added 01/10/2006)

18.06.050 Standard middle income housing requirements. (6)

A developer of a residential ownership development consisting of twenty-six or greater units shall provide, to the extent feasible, units offered to middle income households as required in this section. All required middle income units must be constructed on-site and sold as middle income ownership units, as described in this section. Ownership projects consisting of fewer than twenty-six units are not required to provide middle income units.

The required middle income housing units shall be constructed on the development project site in compliance with the requirements in this section and the process requirements in Section 18.06.040.

The project's middle income housing plan shall comply with these requirements.

1. **Project percentage requirements.**

To the maximum extent feasible, each developer must meet the middle income housing requirement as it pertains to the project, as set forth below:

- a. Projects with fewer than twenty-six units for purchase. No middle income affordability requirements.
- b. Projects totaling twenty-six to thirty-five units for purchase. A number equivalent to ten percent of the project's total ownership units being developed, including market rate units, low-moderate affordable units, and any density bonus units resulting from the low-moderate affordability requirement, must be developed as middle income units, as directed in this section.
- c. Projects totaling thirty-six to forty-nine units for purchase. A number equivalent to fifteen percent of the project's total ownership units being developed, including market rate units, low-moderate affordable units, and any density bonus units resulting from the low-moderate affordability requirement, must be developed as middle income units, as directed in this section.
- d. Projects totaling fifty units or greater units for purchase. A number equivalent to twenty percent of the project's total ownership units being developed, including market rate units, low-moderate affordable units, and any density bonus units resulting from the low-moderate affordability requirement, must be developed as middle income units, as directed in this section.
- e. Projects with exempt condominiums. A development project with 75% or more of its total residential units proposed to be "exempt condominiums" (as defined in Section 18.06.020) shall be exempt from the project percentage requirements in this section. The intent of this exemption is to encourage the construction of such projects because of their contributions to the community in terms of infill development, the production of housing options, and inherent housing affordability.

2. **Density bonus.**

No density bonus shall be awarded for the construction of middle income units.

3. **Unit types.**

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 Middle Income Housing Plan through the appropriate review process. Smaller and larger unit sizes may be provided as an option, based on local housing needs and project character, as approved during the middle income housing plan review process.

Middle income units shall reflect differences from low-moderate income units to reflect the different prices. Such differences may include the size of the house and garage, features, materials, and interior finish. The differences shall be described as part of the Middle Income Housing Plan and made part of the design review plans for the housing units.

4. **Unit prices.**

Middle income units shall be affordable to middle income households with incomes equal to or less than 180% of Yolo County area median income (AMI), adjusted for household size. The middle target income shall be households with incomes at 140% of AMI, adjusted for household size.

Middle income units shall be provided with a range of prices that are affordable to households with incomes between 120% and 180% of AMI. Prices shall be distributed in affordability among the following income brackets: (1) up to 140% of AMI; (2) over 140% and up to 160% of AMI; and (3) over 160% and up to 180% of AMI. A range of prices is required but the average price shall be affordable to a household with an income at 140% of AMI.

The prices of middle income housing shall be based on the following percentages of targeted gross household income applied to housing expenses: no more than 35.0% of household income shall be used for units priced for household incomes up to 140% AMI; no more than 37.5% of household income shall be used for units priced for household incomes over 140% and up to 160% of AMI; and no more than 40.0% of household income shall be used for units priced for household incomes over 160% and up to 180% of AMI. Household expenses shall include mortgage principal and interest, taxes, insurance, assessments, and homeowner association fees, as applicable. Percentages allowed for the qualifying of the mortgage loan shall be determined by the lender or lenders chosen by the income-qualified household.

The Housing Programs Manager shall determine the maximum sales price for these units on an annual basis. The Housing Programs Manager 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. These prices shall be reviewed annually for adoption by the City Council.

5. Incentive system.

The middle income housing units created by this article shall be subject to Article 18.07, Incentive System for the Local Workforce.

6. Co-signers not permitted.

No co-signers shall be permitted in the sale of middle income ownership units in order to ensure that households within the target income group are served by the middle income units that this ordinance produces.

7. Owner-occupancy restrictions.

All person(s) who purchase and own a designated middle income unit pursuant to this article shall occupy that unit as his/her/their principal personal residence for as long as he/she/they own(s) the middle income unit. Such occupancy shall commence within no greater than six months following completion of the purchase. All purchases and occupancy of the unit shall comply with the provisions of Article 18.04, Owner Occupancy.

8. Long-term affordability.

In order to retain units built under the city's middle income housing requirement as below-market units into the future, one of the following restrictions shall be adhered to:

a. Appreciation capped at five percent per year. The middle income unit is restricted to appreciate at a maximum of five percent each year, compounded annually. This amount is based on the average increase in Yolo County Area Median Income of 3.0 %, a 0.75% credit for maintenance costs of the unit, and an additional equity return of 1.25% to the owner of the middle income unit.

b. Alternative proposal. Any other program that proves its ability to provide for long-term

affordability, as approved by the Social Services Commission, Planning Commission, and City Council, as required by the individual project's planning entitlements. Proposing an alternative method for long-term affordability must be justified based on current market trends and/or other prevailing circumstances.

9. Right of first refusal. All middle income ownership units 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 or transfer. 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 administrative fee to be taken from the real estate transaction in order for the City to pay for the costs of carrying out the Right of First Refusal.

10. Resale report. The owners of all middle income ownership units shall be required to clear all city resale reports completed on these units prior to the close of escrow on the resale of each unit. The findings of the city resale inspection that are required to be addressed cannot be transferred to the household purchasing the middle income unit unless the costs of reconciling those items are taken out of the maximum sales price and accepted by the buyer.

(Ord. No. 2234, Added 01/10/2006)

18.06.060 Project individualized program. (7)

The developer may meet the city's middle income 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 middle income affordability requirements. The middle income housing units must, at a minimum, meet the same income targets specified in the standard middle income housing requirements.

1. 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.
2. 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.
3. 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.

The Project Individualized Program is intended to be reviewed thoroughly and scrutinized in public forums, allowing for input from the public, other developers, staff, and at a minimum, the Social Services Commission. The public hearing at the Social Services Commission shall be noticed widely. This public hearing shall scrutinize the project based on the following criteria:

1. Long-term affordability of the middle income units.
2. Community need of the project type based on recent needs assessments and recent projects completed.
3. Uniqueness/innovation of the proposed project.
4. Overall benefits and drawbacks of the project.

5. Project's compliance with the standard middle income housing requirements.

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 make changes to 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/her middle income housing requirement based on the standard requirements of Section 18.06.050 of the Municipal Code.

(Ord. No. 2234, Added 01/10/2006)

18.06.070 Fees. (8)

The City Council may, by resolution, establish fees and deposits for processing of applications as required by this article. (Ord. No. 1651, § 3.)

(Ord. No. 2234, Added 01/10/2006)

18.06.080 Exemptions and modifications from middle income housing requirements. (9)

Residential projects consisting of fewer than twenty-six units are not required to produce middle income units.

The requirements of this Ordinance may be adjusted or waived if the Developer demonstrates to the satisfaction of the City Council that there is not a reasonable relationship between the impact of a proposed residential project and the requirements of this Ordinance, or that applying the requirement of this Ordinance would take property in violation of the United States or California Constitutions.

1. Proposed middle income housing plan

In order for an exemption or modification to be considered by City Council prior to construction, the Developer must request such exemption / modification with the first application for approval of the residential project and the middle income housing plan. The matter shall be considered before the City Council at a public hearing. In making the finding or determination, the City Council may consider the following:

- a. The Developer is subject to the inclusionary housing requirements in this Ordinance.
- b. The Council is able to provide incentives.
- c. The Developer may build the most economical middle income housing product in terms of construction, design, location, and tenure. For the purposes of a taking determination, the Developer has the burden to provide economic and financial documentation and other evidence necessary to prove that the application of this Ordinance would constitute a taking of the property without just compensation.

If it is determined that the application of the provisions in this Ordinance would constitute a taking or that there is not a reasonable relationship between the impact of the proposed project and the requirements of the Ordinance, the inclusionary requirements for the Residential Project shall be modified to reduce the inclusionary housing obligations to the extent and only to the extent necessary to avoid a taking or unreasonable relationship. If it is determined that no taking would occur by application of this Ordinance, the requirements of the Ordinance remain applicable and no approvals

for the residential project shall be issued unless the Developer has executed a Middle Income Housing Plan pursuant to the requirements of this Ordinance and approved by City Council.

2. Approved middle income housing plan

Should the Developer seek an exemption or modification after a middle income housing plan is approved (such as during construction or after construction of the project), the Developer must request an exemption / modification to the approved middle income housing plan. The matter shall be considered before the City Council in the same manner as an exemption / modification for a proposed middle income housing plan. The Developer shall have the additional burden of demonstrating how conditions have changed since the approval of the middle income housing plan that justifies the exemption / modification. The Developer must demonstrate to the satisfaction of the City Council that the middle income units cannot be sold subject to the provisions of the middle income housing plan and that specific exemptions or modifications are needed.

(Ord. No. 2234, Added 01/10/2006)