

Sub-Title 23C GENERAL PROVISIONS APPLICABLE IN ALL DISTRICTS

Chapter 23C.12 INCLUSIONARY HOUSING REQUIREMENTS*

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Section 23C.12.100 Fees

*Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by Ordinance 6,920-N.S., adopted on May 23, 2006.

Section 23C.12.010 Purpose

The purpose of this chapter is to promote achievement of the City Housing Element goals for developing affordable housing for Households with incomes below the median, as defined in this chapter, or, in the case of Limited Equity Cooperatives, households with incomes below 120% of the median income by requiring the inclusion of affordable Dwelling Units in specified proposed developments, hereinafter referred to as projects. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.030 General Inclusionary Requirement: 20% of Units

A. Any project subject to this chapter is required to include at least 20% of the total number of Dwelling Units within the project as Inclusionary Units, except that Limited Equity Cooperatives are required to include at least 51% of their units as Inclusionary Units.

B. In applying the percentages above, any decimal fraction above a whole number of Dwelling Units shall be paid as an in-lieu fee.

C. For the purpose of determining the median income levels for Households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.050 State of California Density Bonus Requirements

A. The City shall grant a density increase of at least 25% over the otherwise allowable maximum residential density permitted by this Ordinance and the General Plan in effect when the application for the development was determined to be complete, and at least one of the concessions or incentives set forth in Government Code Section 65915(h); unless the decision maker makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Government Code Section 65915(c); or the City shall provide other incentives of equivalent financial value based on the land cost per Dwelling Unit; if an applicant agrees, or proposes, to construct at least one of the following three alternatives to comply with Density Bonus requirements:

1. Twenty percent of the total units of a housing development for lower income Households, as defined in Health and Safety Code Section 50079.5; or
2. Ten percent of the total units of a housing development for very low income Households, as defined in Health and Safety Code Section 50105; or
3. Fifty percent of the total Dwelling Units of a housing development for qualifying residents, as defined in Civil Code Section 51.3.

B. For purposes of this chapter, the Density Bonus shall not be included when determining the number of housing units which is equal to 10% or 20% of the total. The Density Bonus shall apply to housing developments consisting of five or more Dwelling Units.

C. The use of a Density Bonus is preferred over other types of concessions or incentives. Incentives may include, but are not limited to, fee deferments and waivers, granting of Variances, relaxation of otherwise applicable Permit conditions and provision of government benefits.

D. If the Density Bonus or equivalent incentive granted is above 25%, the applicant shall agree to a cost certification process. (Ord. 6848-NS § 3 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.060 Inclusionary Unit Requirements for Rental Housing Projects

- A. All Inclusionary Units shall be occupied by Low, Lower or Very Low Income Households.
- B. The maximum rental price for Inclusionary Units shall be affordable, as set forth in Section E below, to an appropriate-sized Household whose income is 81% of the Oakland PMSA median.
- C. In projects requiring more than one Inclusionary Unit, at least 50% of those units shall be rented at a price that is affordable to Low or Lower Income Households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program. When there is an uneven number of Inclusionary Units, the majority of units shall be priced to be affordable to a Household at 50% of median income if subsidies are available. If no rental subsidies are available, all Inclusionary Unit prices shall be affordable to Households at 81% income of the Oakland PMSA median.
- D. If an applicant agrees to provide 10% Lower Income Inclusionary Units, the rental price for such units shall be affordable to a Household with income that is 60% of the Oakland PMSA median.
- E. A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a Household's Gross Income.
1. Gross Household Income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program;
 2. For purposes of calculating rent, appropriate Household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter.
- F. Dwelling Units designated as Inclusionary Units shall remain in conformance with the regulations of this section for the life of the building.
- G. The City or its designee shall screen applicants for the Inclusionary Units and refer eligible Households of the appropriate Household size for the unit. For purposes of occupancy, the appropriate Household size standards used by the Housing Authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used. The applicant or owner shall retain final discretion in the selection of the eligible Households referred by the City.
- H. The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability of the Inclusionary Units by eligible Households. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.070 Inclusionary Unit Requirements for Ownership Projects*

A. Inclusionary Units in ownership projects shall be sold as set forth below:

1. Inclusionary Units in ownership projects shall be sold at a price that is affordable to an appropriate-sized Household whose income is no more than 80% of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation;
2. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing vouchers, and who are known to be interested in participating in the Section 8 homeownership program, or other equivalent program(s) of the City of Berkeley, which are in effect at the time said units are offered for sale by the developer.

B. The applicant for a project other than a Limited Equity housing Cooperative shall be required to give right-of-first-refusal to purchase any or all new Inclusionary Units to the City or a City-designated agency or organization for a period of not less than 60 days as evidenced by issuance of a Certificate of Occupancy.

C. Should the City choose not to exercise its right-of-first-refusal, it shall provide the applicant or owner with a purchaser or with a list of eligible purchasers within a period of not less than 60 days. If the list is not provided, the applicant may select a Low Income purchaser of his or her choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this chapter. The City shall maintain a list of eligible Low Income Households and review the assets and incomes of prospective purchasers of the Inclusionary Units on a project by project basis and refer potential purchasers to the applicant or owner.

1. All purchasers of Inclusionary Units shall be first-time home buyers from Low, Lower or Very Low Income Households. Purchasers shall also be required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a Low, Lower or Very Low Income Household at a rent affordable by such Households;
2. Eligible City Residents will have first preference for Inclusionary Units; second preference will be given to eligible persons employed in the City. Other preferences and priorities may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals;

3. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of Inclusionary Units as specified in this chapter and shall provide purchasers with a Declaration of Restrictions applicable to ownership of Inclusionary Units as specified in this chapter;
 4. Purchasers of Inclusionary Units in Limited Equity Cooperatives at time of first occupancy shall be first time home buyers with Gross Incomes no greater than 120 percent of the Oakland PMSA median. Subsequent purchasers of Inclusionary Units in Limited Equity Cooperatives shall be first time home buyers whose yearly Gross Income is no more than 44 percent of the cost of a unit at the time of sale, provided that such income shall be no more than 110 percent of the Oakland PMSA median.
- D. All Inclusionary Units developed under this chapter except for those in Limited Equity Cooperatives shall be subject to the resale restrictions set forth below.
1. Home ownership Inclusionary Units offered for sale or sold under the requirements of this chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchasers from the date of the owner's notification to the City of intent to sell. The resale price of the unit shall not exceed the original price and customary closing costs, except to allow for the lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA or of the increase as measured in household income guidelines published annually by the U.S. Department of Housing and Urban Development (or its successor agencies) for the Oakland PMSA;
 2. This resale formula shall supercede and replace the earlier resale formula in deed restrictions executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006. The City of Berkeley, or its designee, shall notify each such owner of this change to the resale formula contained in their deed restriction within 60 days of adoption of this section. All other terms and conditions of these deed restrictions shall remain in effect;
 3. If the City does not act on its right-of-first-refusal, the same procedure for new Inclusionary Units shall be used for selection of a purchaser.
- E. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary consideration be allowed, other than customary real estate commissions if the services of a licensed real estate agent are employed.
- F. The City or its designee may monitor resale of Inclusionary Units in Limited Equity Cooperatives. The City or its designee shall monitor the resale of ownership Inclusionary Units. The owners of any Inclusionary Units shall attach, lawfully reference in the Grant Deed conveying title of any such inclusionary ownership unit,

and record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this chapter. Violators of any of the terms thereof may be prosecuted by the City. (Ord. 6920-NS 1-2 (part), 2006; Ord. 6478-NS 4 (part), 1999)

*Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by Ordinance 6,920-N.S., adopted on May 23, 2006.

Section 23C.12.080 Special Requirements for Avenues Plan Area

A. The City Council finds and determines that:

1. The Avenues Plan process identified a number of regional and Berkeley-specific barriers to housing development;
2. Among the Berkeley-specific barriers were high land prices; lengthy, difficult and uncertain permit processes; and insufficient financing, especially for affordable housing projects;
3. The Avenues Plan area represents a core area of the City where it is particularly appropriate to encourage housing development because of the area's generally good access to workplaces, transit service, senior services and retail stores;
4. The policy to encourage housing in this area is reflected in a number of documents, including, but not limited to, the City's Housing Element of the Master Plan, the Concept Plan for the General Plan revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan and the University Avenue statement of planning of goals;
5. Despite the City's support for housing in this area, new housing development here has been limited and this has hindered revitalization of the area;
6. As part of a multi-pronged experimental strategy to create incentives to encourage housing development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set forth in this section is appropriate;
7. These changes will also assist the buyer of below market rate Inclusionary Units, by allowing him/her to gain greater appreciation on his or her investments (market conditions permitting), making the investment more similar to conventional home ownership, while retaining the long term affordability of Inclusionary Units;

8. The changes will also encourage the construction of larger, family-sized units rather than the smaller units which have generally been built in multi-family developments;

9. These changes in inclusionary zoning will be followed by mechanisms to make more financing available and changes in zoning standards and permit processes;

10. The success of these changes will be reviewed annually, until the five year time period of the Avenues Plan experiment expires July 1, 2000.

B. This section applies on the streets and the addresses listed in the Table below. The area of applicability consists of the entire C-2 District and portions of the C-1, C-SA, C-W, C-N, R-2A, R-3 and R-4 Districts as indicated in the Table. Within this area, the provisions of this section supersede any inconsistent provisions of this chapter.

Table 23C.12.080
Avenues Plan Area: Street and Address Range

<u>Street</u>	<u>Addresses</u>
Acton	1940-2100
Addison	841-1145 odd, 1846 up
Adeline	All
Alcatraz Avenue	1700-1937
Allston Way	1901-1999 odd, 2000 up
Ashby Avenue	1830-2117, 2118-2198 even
Bancroft Way	2000-2300
Berkeley Square	All
Berkeley Way	1200-1800 even only, 1800-1920, 1920-2000 even only, 2000 up
Blake	1800-2100
Bonar	2000-2099
Bonita	1900-1950 even, 1950-1999
Browning	portion of West Campus only

California	1950-2009
Carleton	2000-2117
Center	All
Channing Way	1800-1850 even, 2000-2200, 2200-2300 odd
Cowper	All
Chestnut	1910-1950 even, 1950 up
Curtis	1900-2100, portion BUSD
Delaware	1041-1112, 2000-2200 even
Derby	2000-2113
Dover	All
Durant Avenue	2000-2300
Dwight Way	1800-1850 even, 1850-2200
Ellis	3124-3320 odd
Emerson	2000-2111
Essex	1901-2106
Fairview	1750 up
Fulton	2200-2400, 2400-2606 even
Grant	1800-1900 odd, 1900-2050, 2501-2599 odd
Harold Way	All
Harmon	1750 up
Harper	2901-3123 odd
Haste	1900-1998 even, 2000-2200
Hearst	1032-1200, 1800-2000 even, 2000-2200
Henry	1900 up
Jefferson Avenue	2000-2050
King	3221 up, odd

Kittredge	All
Martin Luther King Jr. Way	1900-2050, 2051-2199 odd, 2400-2450 even, 2450-2600, 2900 up
McGee Avenue	1900-2050
McKinley Avenue	2400-2500 odd
Milvia	1800-1950 odd, 1950-2199, 2200-2450 odd, 2450-2550, 2550-2900 odd only
Newbury	All
Oregon	2000-2122
Otis	All
Oxford	1800-2200
Parker	1800-1998 even, 2000-2200
Prince	1830-2105
Russell	1820-2000 even, 2000-2117
Sacramento	1900-2000, 2050-2100 even
San Pablo Avenue	1800-2199
Shattuck Avenue	1800 up
Shattuck Square	All
Stuart	2100-2107
Tremont	All
University Avenue	840 up
Walnut	1800 up
West	1950-1999
Whitney	All
Woolsey	1750-2110
6th	1916-2099
7th	1912-2099

8th	1910-2099
9th	1910-2099
10th	1908-2099
62nd	1700 up
63rd	1700 up

C. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in consultation with other relevant Commissions, shall re-examine its effectiveness. At that time the Commission may initiate modifications to, or an extension of, this section.

D. For purposes of this section, the following definitions apply:

1. Project means the total number of housing units planned to be built on a single lot or on a grouping of contiguous, commonly owned or controlled lots, regardless of whether those units are all built simultaneously;

2. Affordable family-sized unit means a unit which:

a. Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or more;

b. Contains at least two lawful bedrooms;

c. Contains at least as many bathrooms as the corresponding two bedroom market rate units; and

d. Is sold at a price that is affordable to an appropriate sized Household whose income is no more than 80 percent of the metropolitan area median as reported by the Department of Housing and Urban Development (HUD).

E. Except as provided in this chapter, the number of Inclusionary Units required are as set forth in the following table:

Total Number of Units Built	Number of Inclusionary Units Required
10-14	1
15-19	2

Each additional multiple of 5 units	1 additional
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F. For every five units which the applicant can demonstrate with bona fide sales documents have been sold at a price at or below that affordable to an appropriate sized Household with an income of 100 percent of metropolitan area median, the applicant shall be released of the obligation to provide one Inclusionary Unit.

G. For every ten affordable family-sized units, the applicant shall be released of the obligation to provide one Inclusionary Unit sold at a price at or below that affordable to an appropriate sized Household with an income of 100 percent of metropolitan area median.

H. Within the area of applicability for that portion of a project wherein both the Inclusionary and the non-inclusionary Units contain at least as many bathrooms as the corresponding two bedroom market rate units, only ten percent of units are required to be Inclusionary.

I. The first Inclusionary Unit in projects with units for sale shall be sold at a price that is affordable to an appropriate sized Household whose income is no more than 80 percent of the Oakland PMSA median as reported by HUD. Except as otherwise provided in Section 23C.12.080.D.2.d above, the second Inclusionary Unit shall be sold at a price that is affordable to an appropriate sized Household whose income is no more than 100 percent of the PMSA median and subsequent Inclusionary Units shall be sold alternately at these price levels.

J. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year housing cost (including homeowners' association dues, if any) for a Household of appropriate size with an income at the targeted level shall not exceed 33 percent of income. This cost shall be calculated assuming that the buyer makes a ten percent down payment, which shall not be considered a portion of the cost. The housing cost shall be calculated for each project at the time the condominium association budget is approved by the Department of Real Estate and shall not be changed subsequent to that time for that project, regardless of future changes in cost.

K. The resale price of Inclusionary Units within the Avenues Plan Area may increase at the rate of increase of the Consumer Price Index for All Urban Consumers (CPI-U) applicable to the metropolitan area. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.090 Administrative Regulations*

A. The City Manager or his/her designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross

rents and sale prices, requiring guarantees, entering into recorded agreements with applicants and taking other appropriate steps necessary to assure that the required low income and very low income Dwelling Units are provided and occupied by Low Income Households. (Ord. 6920-NS 3 (part), 2006: Ord. 6478-NS 4 (part), 1999)

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Section 23C.12.100 Fees

The City Council, by resolution, may establish fees for the administration of this chapter. (Ord. 6887-NS 1, 2005)