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Chapter 21.85 INCLUSIONARY HOUSING

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21.85.010 Purpose and intent.

The purpose and intent of this chapter is as follows:

A. It is an objective of the city, as established by the housing element of the city's general plan, to ensure that all residential development, including all master planned and specific planned communities and all residential subdivisions provide a range of housing opportunities for all identifiable economic segments of the population, including households of lower and moderate income. It is also the policy of the city to:

1. Require that a minimum of fifteen percent of all approved residential development be restricted to and affordable to lower-income households; subject to adjustment based on the granting of an inclusionary credit;
2. Require that for those developments which provide ten or more units affordable to lower-income households, at least ten percent of the lower-income units shall have three or more bedrooms;
3. Under certain conditions, allow alternatives to on-site construction as a means of providing affordable units; and
4. In specific cases, allow inclusionary requirements to be satisfied through the payment of an in-lieu fee as an alternative to requiring inclusionary units to be constructed.

B. It is the purpose of this chapter to ensure the implementation of the city objective and policy stated in subsection A.

C. Nothing in this chapter is intended to create a mandatory duty on the part of the city or its employees under the Government Tort Claims Act and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter. (Ord. NS-794 § 2, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.020 Definitions.

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

A. "Affordable housing" means housing for which the allowable housing expenses paid by a qualifying household shall not exceed a specified fraction of the county median income, adjusted for household size, as follows:

1. Extremely low-income, rental or for-sale units: the product of thirty percent times thirty percent of the county median income, adjusted for household size;
2. Very low-income, rental and for-sale units: the product of thirty percent times fifty percent of the county median income, adjusted for household size;
3. Low-income, for-sale units: the product of thirty percent times seventy percent of the county median income, adjusted for household size; and
4. Low-income, rental units: the product of thirty percent times sixty percent of the county median income, adjusted for household size.

B. "Affordable housing agreement" means a legally binding agreement between a developer and the city to ensure that the inclusionary requirements of this chapter are satisfied. The agreement establishes, among other things, the number of required inclusionary units, the unit sizes, location, affordability tenure, terms and conditions of

affordability and unit production schedule.

C. "Allowable housing expense" means the total monthly or annual recurring expenses required of a household to obtain shelter. For a for-sale unit, allowable housing expenses include loan principal and interest at the time of initial purchase by the homebuyer, allowances for property and mortgage insurance, property taxes, homeowners' association dues and a reasonable allowance for utilities as defined by the Code of Federal Regulations (24CFR982). For a rental unit, allowable housing expenses include rent and a utility allowance as established and adopted by the city of Carlsbad housing authority, as well as all monthly payments made by the tenant to the lessor in connection with use and occupancy of a housing unit and land and facilities associated therewith, including any separately charged fees, utility charges, or service charges assessed by the lessor and payable by the tenant.

D. "Affordable housing policy team" shall consist of the community development director, planning director, housing and redevelopment director, administrative services director/finance director and a representative of the city attorney's office.

E. "Combined inclusionary housing project" means separate residential development sites which are linked by a contractual relationship such that some or all of the inclusionary units which are associated with one development site are produced and operated at a separate development site or sites.

F. "Conversion" means the change of status of a dwelling unit from a purchased unit to a rental unit or vice versa.

G. "Density bonus" shall have the same meaning as defined in Section 21.86.020(A)(7) of this title.

H. "Extremely low-income household" means those households whose gross income is equal to or less than thirty percent of the median income for San Diego County as determined by the U.S. Department of Housing and Urban Development.

I. "Financial assistance" means assistance to include, but not be limited to, the subsidization of fees, infrastructure, land costs, or construction costs, the use of redevelopment set-aside funds, community development block grant (CDBG) funds, or the provision of other direct financial aid in the form of cash transfer payments or other monetary compensation, by the city of Carlsbad.

J. "Growth management control point" shall have the same meaning as provided in Chapter 21.90, Section 21.90.045 of this title.

K. "Incentives or concessions" shall have the same meaning as defined in Section 21.86.020(A)(7) of this title.

L. "Inclusionary credit" means a reduction in the inclusionary housing requirement granted in return for the provision of certain desired types of affordable housing or related amenities as determined by the city council.

M. "Inclusionary housing project" means a new residential development or conversion of existing residential buildings which has at least fifteen percent of the total units reserved and made affordable to lower-income households as required by this chapter.

N. "Inclusionary unit" means a dwelling unit that will be offered for rent or sale exclusively to and which shall be affordable to lower-income households, as required by this chapter.

O. "Income" means any monetary benefits that qualify as income in accordance with the criteria and procedures used by the city of Carlsbad housing and redevelopment

department for the acceptance of applications and recertifications for the tenant based rental assistance program, or its successor.

P. "Low-income household" means those households whose gross income is more than fifty percent but does not exceed eighty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.

Q. "Lower-income household" means low-income, very low-income and extremely low-income households, whose gross income does not exceed eighty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.

R. "Market-rate unit" means a dwelling unit where the rental rate or sales price is not restricted either by this chapter or by requirements imposed through other local, state, or federal affordable housing programs.

S. "Offsets" means concessions or assistance to include, but not be limited to, direct financial assistance, density increases, standards modifications or any other financial, land use, or regulatory concession which would result in an identifiable cost reduction enabling the provision of affordable housing.

T. "Residential development" means any new residential construction of rental or for-sale units; or development revisions, including those with and without a master plan or specific plan, planned unit developments, site development plans, mobile home developments and conversions of apartments to condominiums, as well as dwelling units for which the cost of shelter is included in a recurring payment for expenses, whether or not an initial lump sum fee is also required.

U. "Target income level" means the income standards for extremely low, very low and low-income levels within San Diego County as determined annually by the U.S. Department of Housing and Urban Development, and adjusted for family size.

V. "Total residential units" means the total units approved by the final decision-making authority. Total residential units are composed of both market-rate units and inclusionary units.

W. "Very low-income household" means a household earning a gross income equal to fifty percent or less of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development. (Ord. NS-794 § 3, 2006: Ord. NS-535 § 1 (part), 2000)

21.85.020

21.85.030 Inclusionary housing requirement.

The inclusionary housing requirements of this chapter shall apply as follows:

A. This chapter shall apply to all residential market-rate dwelling units resulting from new construction of rental and "for-sale" projects, as well as the conversion of apartments to condominiums.

B. For any residential development or development revision of seven or more units, not less than fifteen percent of the total units approved shall be constructed and restricted both as to occupancy and affordability to lower-income households.

C. For those developments which are required to provide ten or more units affordable to lower-income households, at least ten percent of the lower-income units shall have three

or more bedrooms.

D. This chapter shall not apply to the following:

1. Existing residences which are altered, improved, restored, repaired, expanded or extended, provided that the number of units is not increased, except that this chapter shall pertain to the subdivision of land for the conversion of apartments to condominiums;
 2. Conversion of a mobile home park pursuant to Section 21.37.120 of the code;
 3. The construction of a new residential structure which replaces a residential structure that was destroyed or demolished within two years prior to the application for a building permit for the new residential structure, provided that the number of residential units is not increased from the number of residential units of the previously destroyed or demolished residential structure;
 4. Any residential unit which is accessory as defined in Section 21.04.020 of this code; or
 5. Second dwelling units not constructed to fulfill inclusionary housing requirements and developed in accordance with Section 21.10.015 of this code;
 6. Any project or portion of a project which is a commercial living unit as defined in Section 21.04.093 of this code; and
 7. Those residential units which have obtained affordable housing approvals prior to the effective date of the ordinance codified in this chapter, as set forth in Section 21.85.160 of this chapter. (Ord. NS-535 § 1 (part), 2000)
- 21.85.030

21.85.035 New master plans or specific plans.

New master plans and specific plans shall submit an inclusionary housing plan as follows:

A. All master plans and specific plans approved on or after the effective date of the ordinance codified in this chapter are required by this chapter to provide an inclusionary housing plan within the master plan or specific plan document. This inclusionary housing plan will include appropriate text, maps, tables, or figures to establish the basic framework for implementing the requirements of this chapter. It shall establish, as a minimum, but not be limited to, the following:

1. The number of market-rate units in the master plan or specific plan;
2. The number of required inclusionary units for lower-income households over the entire master plan or specific plan;
3. The designated sites for the location of the inclusionary units, including but not limited to any sites for locating off-site inclusionary housing projects or combined inclusionary housing projects;
4. A general provision stipulating that an affordable housing agreement shall be made a condition of all future discretionary permits for development within the master or specific plan area such as tentative maps, parcel maps, planned unit developments and site development plans. The provision shall establish that all relevant terms and conditions of any affordable housing agreement shall be filed and recorded as a restriction on the project as a whole and those individual lots, units or projects which are designated as inclusionary units. The affordable housing agreement shall be consistent with Section 21.85.140 of this chapter.

B. The location and phasing of inclusionary dwelling units may be modified as a minor

amendment to the master plan pursuant to Section 21.38.120 of this title if the city council authorizes such modifications when approving the master plan.

C. All existing master plans or specific plans proposed for major amendment, pursuant to Section 21.38.120 of this code, shall incorporate into the amended master plan or specific plan document an inclusionary housing plan, consistent with this section of this chapter. (Ord. NS-535 § 1 (part), 2000)

21.85.040 Affordable housing standards.

The affordable housing standards are as follows:

A. All residential developments are subject to and must satisfy the inclusionary housing requirements of this chapter, notwithstanding a developer's request to process a residential development under other program requirements, laws or regulations, including but not limited to Chapter 21.86 (Residential Density Bonus) of this code. If an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of Chapter 21.86 (Residential Density Bonus), those affordable dwelling units that qualify a residential development for a density bonus are in addition to, and do not count toward satisfying, the inclusionary housing requirements of this chapter.

B. Whenever reasonably possible, inclusionary units should be built on the residential development project site.

C. The required inclusionary units shall be constructed concurrently with market-rate units unless both the final decision-making authority of the city and developer agree within the affordable housing agreement to an alternative schedule for development.

D. Inclusionary rental units shall remain restricted and affordable to the designated income group for fifty-five years. In addition to the income of a targeted group, limitations on assets may also be used as a factor in determining eligibility for rental or for-sale units. Notwithstanding anything to the contrary in this chapter, no inclusionary unit shall be rented for an amount which exceeds ninety percent of the actual rent charged for a comparable market unit in the same development, if any.

E. After the initial sale of the inclusionary for-sale units at a price affordable to the target income level group, inclusionary for-sale units shall remain affordable to subsequent income eligible buyers pursuant to a resale restriction with a term of thirty years or for-sale units may be sold at a market price to other than targeted households provided that the sale shall result in the recapture by the city or its designee of a financial interest in the units equal to the amount of subsidy necessary to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the city shall be used in assisting other eligible households with home purchases at affordable prices. To the extent possible, projects using for-sale units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs including secondary market requirements.

F. Inclusionary units should be located on sites that are in proximity to or will provide access to employment opportunities, urban services, or major roads or other transportation and commuter rail facilities and that are compatible with adjacent land uses.

G. The design of the inclusionary units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished

quality.

H. Inclusionary projects shall provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demand priorities of the city.

I. No building permit shall be issued, nor any development approval granted for a development which does not meet the requirements of this chapter. No inclusionary unit shall be rented or sold except in accordance with this chapter. (Ord. NS-794 § 4, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.040

21.85.050 Calculating the required number of inclusionary units.

Subject to adjustments for an inclusionary credit, the required number of lower-income inclusionary units shall be fifteen percent of the total residential units, approved by the final decision-making authority. If the inclusionary units are to be provided within an off-site combined or other project, the required number of lower-income inclusionary units shall be fifteen percent of the total residential units to be provided both on-site and/or off-site. Subject to the maximum density allowed per the growth management control point or per specific authorization granted by the planning commission or city council, fractional units for both market rate and inclusionary units of 0.5 will be rounded up to a whole unit. If the rounding calculation results in a total residential unit count which exceeds the maximum allowed, neither the market rate nor the inclusionary unit count will be increased to the next whole number.

Example 1: Total residential units = fifteen percent inclusionary units plus eighty-five percent market-rate units. If the final decision-making authority approves one hundred total residential units, then the inclusionary requirement equals fifteen percent of the “total” or fifteen units ($100 \times .15 = 15$). The allowable market-rate units would be eighty-five percent of the “total” or eighty-five units.

Example 2: If the inclusionary units are to be provided off-site, the total number of inclusionary units shall be calculated according to the total number of market-rate units approved by the final decision-making authority. If one hundred market-rate units are approved, then this total is divided by .85 which provides a total residential unit count ($100 \div .85 = 117$). The fifteen percent requirement is applied to this “total” (one hundred seventeen units) which equals the inclusionary unit requirement ($117 \times .15 = 17.6$ units). (Ord. NS-794 § 5, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.060 Inclusionary credit adjustment.

Certain types of affordable housing are relatively more desirable in satisfying the city’s state-mandated affordable housing requirement as well as the city’s housing element goals, objectives and policies, and these may change over time.

To assist the city in providing this housing, developers may receive additional (more than one unit) credit for each of such units provided, thereby reducing the total inclusionary housing requirement to less than fifteen percent of all residential units approved. A schedule of inclusionary housing credit specifying how credit may be earned shall be adopted by the city council and made available to developers subject to this chapter.

(Ord. NS-794 § 6, 2006; Ord. NS-535 § 1 (part), 2000)
21.85.060

21.85.070 Alternatives to construction of inclusionary units.

Notwithstanding any contrary provisions of this chapter, at the sole discretion of the city council, the city may determine that an alternative to the construction of new inclusionary units is acceptable.

A. The city council may approve alternatives to the construction of new inclusionary units where the proposed alternative supports specific housing element policies and goals and assists the city in meeting its state housing requirements. Such determination shall be based on findings that new construction would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, developer capability, and financial subsidies available.

Alternatives may include, but not be limited to, acquisition and rehabilitation of affordable units, conversion of existing market units to affordable units, construction of special needs housing projects or programs (shelters, transitional housing, etc.), and the construction of second dwelling units.

B. Second dwelling units constructed to satisfy an inclusionary housing requirement shall be rent restricted to affordable rental rates, and renters shall be income-qualified, as specified in the applicable affordable housing agreement. In no event shall a developer be allowed to construct more than a total of fifteen second dwelling units in any given development, master plan, or specific plan, to satisfy an inclusionary requirement.

C. Contribution to a special needs housing project or program may also be an acceptable alternative based upon such findings. The requisite contribution shall be calculated in the same manner as an in-lieu fee per Section 21.85.110. (Ord. NS-535 § 1 (part), 2000)

21.85.080 Combined inclusionary housing projects.

An affordable housing requirement may be satisfied with off-site construction as follows:

A. When it can be demonstrated by a developer that the goals of this chapter and the city's housing element would be better served by allowing some or all of the inclusionary units associated with one residential project site to be produced and operated at an alternative site or sites, the resulting linked inclusionary project site(s) is a combined inclusionary housing project.

B. It is at the sole discretion of the city council to authorize the residential site(s) which form a combined inclusionary housing project. Such decision shall be based on findings that the combined project represents a more effective and feasible means of implementing this chapter and the goals of the city's housing element. Factors to be weighed in this determination include: the feasibility of the on-site option considering project size, site constraints, competition from other projects, difficulty in integrating due to significant price and product type disparity, and lack of capacity of the on-site development entity to deliver affordable housing. Also to be considered are whether the off-site option offers greater feasibility and cost effectiveness, particularly regarding potential local public assistance and the city's affordable housing financial assistance policy, location advantages such as proximity to jobs, schools, transportation, and services, diminished

impact on other existing developments, capacity of the development entity to deliver the project, and satisfaction of multiple developer obligations that would be difficult to satisfy with multiple projects.

C. All agreements between parties to form a combined inclusionary housing project shall be made a part of the affordable housing agreement required for the site(s), which affordable housing agreement(s) shall be approved by council.

D. Location of the combined inclusionary housing project is limited to sites within the same city quadrant in which the market-rate units are located, or sites which are contiguous to the quadrant in which the market-rate units are proposed. (Ord. NS-535 § 1 (part), 2000)

21.85.080

21.85.090 Creation of inclusionary units not required.

Inclusionary units created which exceed the final requirement for a project may, subject to city council approval in the affordable housing agreement, be utilized by the developer to satisfy other inclusionary requirements for which it is obligated or market the units to other developers as a combined project subject to the requirements of Section 21.85.080. (Ord. NS-535 § 1 (part), 2000)

21.85.100 Offsets to the cost of affordable housing development.

The city shall consider making offsets available to developers when necessary to enable residential projects to provide a preferable product type or affordability in excess of the requirements of this chapter. Offsets will be offered by the city to the extent that resources and programs for this purpose are available to the city and approved for such use by the city council, and to the extent that the residential development, with the use of offsets, assists in achieving the city's housing goals. To the degree that the city makes available programs to provide offsets, developers may make application for such programs. Evaluation of requests for offsets shall be based on the effectiveness of the offsets in achieving a preferable product type and/or affordability objectives as set forth within the housing element; the capability of the development team; the reasonableness of development costs and justification of subsidy needs; and the extent to which other resources are used to leverage the requested offsets. Nothing in this chapter establishes, directly or through implication, a right to receive any offsets from the city or any other party or agency to enable the developer to meet the obligations established by this chapter. Any offsets approved by the city council and the housing affordability to be achieved by use of those offsets shall be set out within the affordable housing agreement pursuant to Section 21.85.140 of this chapter or, at the city's discretion in a subsequent document. Furthermore, developers are encouraged to utilize local, state or federal assistance, when available, to meet the affordability standards set forth in Sections 21.85.030 and 21.85.040 of this chapter. (Ord. NS-794 § 7, 2006: Ord. NS-535 § 1 (part), 2000)

21.85.110 In-lieu fees.

Payment of a fee in lieu of construction of affordable units may be appropriate in the following circumstances:

A. For any residential development or development revision of less than seven units, the inclusionary requirements may be satisfied through the payment to the city of an in-lieu fee.

B. The in-lieu fee to be paid for each market-rate dwelling unit shall be fifteen percent of the subsidy needed to make affordable to a lower-income household one newly constructed, typical attached-housing unit. This subsidy shall be based upon the city council's determination of the average subsidy that would be required to make affordable typical, new two-bedroom/one bath and three-bedroom/two-bath for-sale units and rental units, each with an assumed affordability tenure of at least fifty-five years.

C. The dollar amount and method of payment of the in-lieu fees shall be fixed by a schedule adopted, from time to time, by resolution of the city council. Said fee shall be assessed against the market-rate lots/units of a development.

D. All in-lieu fees collected hereunder shall be deposited in a housing trust fund. Said fund shall be administered by the city and shall be used only for the purpose of providing funding assistance for the provision of affordable housing and reasonable costs of administration consistent with the policies and programs contained in the housing element of the general plan.

E. At the discretion of the city council, where a developer is authorized to pay a fee in lieu of development, an irrevocable dedication of land or other non-monetary contribution of a value not less than the sum of the otherwise required in-lieu fee may be accepted as an alternative to paying the in-lieu fee if it is determined that the non-monetary contribution will be effectual in furthering the goals and policies of the housing element and this chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an agent mutually agreed upon by the city and the developer. Costs associated with the appraisal shall be borne by the developer.

F. Where a developer is authorized to pay a fee in lieu of development of affordable housing units, any approvals shall be conditioned upon a requirement to pay the in-lieu fee in an amount established by resolution of the city council in effect at the time of payment.

G. As an alternative to paying an in-lieu fee(s), inclusionary housing requirements may be satisfied either through a combined inclusionary housing project, pursuant to Section 21.85.080 of this chapter or new construction of inclusionary units subject to approval of the final decision-making authority. (Ord. NS-535 § 1 (part), 2000)

21.85.110

21.85.120 Collection of fees.

All fees collected under this chapter shall be deposited into a housing trust fund and shall be expended only for the affordable housing needs of lower-income households, and reasonable costs of administration consistent with the purpose of this chapter. (Ord. NS-535 § 1 (part), 2000)

21.85.130 Preliminary project application and review process.

The preliminary project application/review process shall be as follows:

A. A developer of a residential development not subject to a master plan or specific plan, proposing an inclusionary housing project shall have an approved site development plan prior to execution of an affordable housing agreement for the project. The developer may submit a preliminary application to the housing and redevelopment director prior to the submittal of any formal applications for such housing development. The preliminary application shall include the following information if applicable:

1. A brief description of the proposal including the number of inclusionary units proposed;
2. The zoning, general plan designations and assessors parcel number(s) of the project site;
3. A site plan, drawn to scale, which includes: building footprints, driveway and parking layout, building elevations, existing contours and proposed grading; and
4. A letter identifying what specific offsets and/or adjustments are being requested of the city. Justification for each request should also be included.

B. Within thirty days of receipt of the preliminary application by the planning director for projects not requesting offsets or inclusionary credit adjustments, or ninety days for projects requesting offsets or inclusionary credit adjustments, the department shall provide to an applicant, a letter which identifies project issues of concern, the offsets and inclusionary credit adjustments that the community development director can support when making a recommendation to the final decision-making authority, and the procedures for compliance with this chapter. The applicant shall also be provided with a copy of this chapter and related policies, the pertinent sections of the California codes to which reference is made in this chapter and all required application forms. (Ord. NS-794 § 8, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.140 Affordable housing agreement as a condition of development.

This chapter requires the following:

A. Developers subject to this chapter shall demonstrate compliance with this chapter by executing an affordable housing agreement prepared by the city housing and redevelopment director and submitted to the developer for execution. Agreements which conform to the requirements of this section and which do not involve requests for offsets and/or an inclusionary credit, other than those permitted by right, if any, shall be reviewed by the affordable housing policy team and approved by the community development director or his designee. Agreements which involve requests for offsets and/or an inclusionary credit, other than those permitted by right, shall require the recommendation of the housing commission and action by the city council as the final decision-maker. Following the approval and execution by all parties, the affordable housing agreement with approved site development plan shall be recorded against the entire development, including market-rate lots/units and the relevant terms and conditions there from filed and subsequently recorded as a separate deed restriction or regulatory agreement on the affordable project individual lots or units of property which are designated for the location of affordable units. The approval and execution of the affordable housing agreement shall take place prior to final map approval and shall be recorded upon final map recordation or, where a map is not being processed, prior to the

issuance of building permits for such lots/units. The affordable housing agreement may require that more specific project and/or unit restrictions be recorded at a future time. The affordable housing agreement shall bind all future owners and successors in interest for the term of years specified therein.

B. An affordable housing agreement, for which the inclusionary housing requirement will be satisfied through new construction of inclusionary units, either on-site or off-site, shall establish, but not be limited to, the following:

1. The number of inclusionary dwelling units proposed, with specific calculations detailing the application of any inclusionary credit adjustment;
2. The unit square footage, and number of bedrooms;
3. The proposed location of the inclusionary units;
4. Amenities and services provided, such as daycare, after school programs, transportation, job training/employment services and recreation;
5. Level and tenure of affordability for inclusionary units;
6. Schedule for production of dwelling units;
7. Approved offsets provided by the city;
8. Where applicable, requirements for other documents to be approved by the city, such as marketing, leasing and management plans; financial assistance/loan documents; resale agreements; and monitoring and compliance plans;
9. Where applicable, identification of the affordable housing developer and agreements specifying their role and relationship to the project.

C. An affordable housing agreement, for which the inclusionary housing requirement will be satisfied through payment to the city of any in-lieu contributions other than fee monies, such as land dedication, shall include the method of determination, schedule and value of total in-lieu contributions.

D. An affordable housing agreement will not be required for projects which will be satisfying their inclusionary housing requirement through payment to the city of an in-lieu fee. (Ord. NS-794 §§ 9, 10, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.140

21.85.145 Agreement processing fee.

The city council may establish by resolution, fees to be paid by the developer at the time of preliminary project application to defray the city's cost of preparing and/or reviewing all inclusionary housing agreements. (Ord. NS-535 § 1 (part), 2000)

21.85.150 Agreement amendments.

Any amendment to an affordable housing agreement shall be processed in the same manner as an original application for approval, except as authorized in Section 21.85.035(B). Amendments to affordable housing agreements initially approved prior to the effective date of the ordinance codified in this chapter shall be entitled to consideration under the ordinance provisions superseded by the ordinance codified in this chapter. (Ord. NS-535 § 1 (part), 2000)

21.85.155 Expiration of affordability tenure.

The city or its designee shall have a one-time first right of refusal to purchase any project containing affordable units offered for sale at the end of the minimum tenure of affordability for rental projects. The first right of refusal to purchase the rental project shall be submitted in writing to the housing and redevelopment director. Within ninety days of its receipt, the city shall indicate its intent to exercise the first right of refusal for the purpose of providing affordable housing. (Ord. NS-535 § 1 (part), 2000)
21.85.155

21.85.160 Pre-existing approvals.

Any residential developments for which a site development plan for the affordable housing component of the development was approved prior to the effective date of the ordinance codified in this chapter shall be subject to the ordinance in effect at the time of the approval. (Ord. NS-535 § 1 (part), 2000)

21.85.170 Enforcement.

Enforcement provisions are as follows:

A. The provisions of this chapter shall apply to all developers and their agents, successors and assigns proposing a residential development governed by this chapter. No building permit or occupancy permit shall be issued, nor any entitlement granted, for a project which is not exempt and does not meet the requirements of this chapter. All inclusionary units shall be rented or owned in accordance with this chapter.

B. The city may institute any appropriate legal actions or proceedings necessary to ensure compliance with this chapter, including but not limited to actions to revoke, deny or suspend any permit or development approval.

C. Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the city's housing trust fund. (Ord. NS-535 § 1 (part), 2000)

21.85.180 Savings clause.

All code provisions, ordinances, and parts of ordinances in conflict with the provisions of this chapter are repealed. The provisions of this chapter, insofar as they are substantially the same as existing code provisions relating to the same subject matter shall be construed as restatements and continuations thereof and not as new enactments. With respect, however, to violations, rights accrued, liabilities accrued, or appeals taken, prior to the effective date of the ordinance codified in this chapter, under any chapter, ordinance, or part of an ordinance shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceedings, with respect to any such violation, right, liability or appeal. (Ord. NS-535 § 1 (part), 2000)

21.85.190 Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other

persons not similarly situated or to other circumstances shall not be affected thereby.
(Ord. NS-535 § 1 (part), 2000)