

ARTICLE XIII. INCLUSIONARY HOUSING

Sec. 122-1050. Purpose and Intent.

The purpose of this article is to facilitate the development and availability of housing affordable to a broad range of households with varying income levels within the City. It is intended in part to implement State policy declaring that local governments have a responsibility to exercise their powers to facilitate the development of housing necessary to adequately provide for the housing needs of all economic segments of the community. It is also intended to implement the Housing Element of the Concord General Plan which analyzes the need to provide additional housing for persons of very low, low and moderate income and identifies the possible adoption of an inclusionary housing program as an implementing program. The goal of this article is to have a minimum percentage of very low, low and/or moderate income housing units included within new residential developments.

(Ord. No. 04-3)

Sec. 122-1051. Definitions.

For purposes of this article, the following definitions shall apply:

(Ord. No. 04-3)

Affordable Ownership Cost. A sale price that results in a monthly housing cost (including mortgage principal and interest, property taxes, utilities, property insurance and homeowners association fees, if any) that does not exceed one-twelfth of 30% of the maximum annual income for a household of the applicable income level (Very Low, Low or Moderate Income).

(Ord. No. 04-3)

Affordable Rent. Monthly rent (including utility costs based on utility allowances determined annually by the Contra Costa Housing Authority) that does not exceed one-twelfth of 30% of the maximum annual income for a household of the applicable income level (Very Low, Low or Moderate Income).

(Ord. No. 04-3)

Area Median Income. The median income, adjusted for household size, in the Oakland Metropolitan Statistical Area (which includes Contra Costa County), established pursuant to Health and Safety Code Section 50093(c).

(Ord. No. 04-3)

Density Bonus. Permission to build additional residential units above the maximum number of units otherwise allowed pursuant to the General Plan and Zoning Ordinance.

(Ord. No. 04-3)

Inclusionary Housing Agreement. A recorded agreement that has been reviewed and approved by the City Attorney and Housing Manager delineating the specific requirements that a particular developer will meet to fulfill the City's inclusionary housing requirements pursuant to this article.

(Ord. No. 04-3)

Inclusionary Unit. A dwelling unit that has a sales price or rent which is restricted under the requirements of this article.

(Ord. No. 04-3)

Low Income Household. A household whose combined annual income does not exceed the qualifying limit of 80% of Area Median Income, adjusted for household size, for "lower income households" established pursuant to Health and Safety Code Section 50079.5.

(Ord. No. 04-3)

Low Income Ownership Unit. An ownership dwelling unit that is offered for purchase at an Affordable Ownership Cost only to a Low Income Household.

(Ord. No. 04-3)

Low Income Rental Unit. A rental dwelling unit that is offered for rent at an Affordable Rent only to a Low Income Household.

(Ord. No. 04-3)

Market Rate Unit. A dwelling unit that is not legally restricted in terms of price or rent.

(Ord. No. 04-3)

Moderate Income Household. A household whose combined annual income does not exceed the qualifying limit of 120% of Area Median Income, adjusted for household size, for "persons and families of low or moderate income" established pursuant to Health and Safety Code Section 50093.

(Ord. No. 04-3)

Moderate Income Ownership Unit. An ownership dwelling unit that is offered for purchase at an Affordable Ownership Cost only to a Moderate Income Household.
Moderate Income Rental Unit. A rental dwelling unit that is offered for rent at an Affordable Rent only to a Moderate Income Household.

(Ord. No. 04-3)

Ownership Project. A development project containing single-family detached dwelling units or multi-family dwelling units (e.g., condominiums, townhouses or duets) that will be offered for sale, not for rent.

(Ord. No. 04-3)

Rental Project. A development project containing single- family detached dwelling units or multi-family dwelling units (e.g., apartments, condominiums, townhouses, or duets) that will be offered for rent, not for sale.

(Ord. No. 04-3)

Residential Development Project. Any development project that includes the construction of one or more dwelling units, including exclusively residential and mixed-use projects.

(Ord. No. 04-3)

Very Low Income Household. A household whose combined annual income does not exceed the qualifying limit of 50% of Area Median Income, adjusted for household size, for "very low income households" established pursuant to Health and Safety Code Section 50105.

(Ord. No. 04-3)

Very Low Income Ownership Unit. An ownership dwelling unit that is offered for purchase at an Affordable Ownership Cost only to a Very Low Income Household.

(Ord. No. 04-3)

Very Low Income Rental Unit. A rental dwelling that is offered for rent at an Affordable Rent only to a Very Low Income Household.

(Ord. No. 04-3)

Sec. 122-1052. Requirement to Provide Inclusionary Units or Pay In-lieu Fee.

(a) Requirement. All Residential Development Projects shall either include the number of Inclusionary Units required under Section 122-1053 or, if eligible, pay the in-lieu fee determined pursuant to Section 122-1054. As required pursuant to Government Code Section 65589.8, the developer of an Ownership Project may satisfy all or a portion of this requirement by constructing rental housing at the affordability levels set forth in Section 122-1054 for Rental Projects. Similarly, the developer of a Rental Project may satisfy all or a portion of this requirement by constructing for-sale housing at the affordability levels set forth in Section 122-1054 for Ownership Projects. Except as permitted under Section 122- 1059, all required Inclusionary Units shall be provided on

the same site as the Market Rate Units included within the Residential Development Project. No application for a General Plan Amendment, rezoning, tentative subdivision map, parcel map, preliminary development plan, use permit, design review, hillside development plan, or building permit for a Residential Development Project shall be approved, nor shall any such Residential Development Project be constructed or occupied, without compliance with this article.

(Ord. No. 04-3)

(b) Exemptions. This article shall not apply to the following: (i) a Residential Development Project consisting solely of the construction of one to four single-family dwelling units, or (ii) the reconstruction of any dwelling units that were destroyed by a fire, flood, earthquake, or other act of nature.

(Ord. No. 04-3)

(c) Redevelopment Projects. The City Council or Redevelopment Agency may approve a reduction or waiver of the requirements of this article for projects located within the Redevelopment Project Area which: (i) are the subject of a disposition and development agreement, owner participation agreement, acquisition agreement, or other contractual arrangement with the Redevelopment Agency, and (ii) are receiving assistance from the Redevelopment Agency, such as relocation of occupants, acquisition and disposition of land for site assemblage, use of eminent domain, write-down of land costs, fee waivers, or other forms of direct Agency assistance. Any developer requesting such a reduction or waiver must submit a pro forma and such other financial analysis sufficient to support a determination that the reduction or waiver is necessary to ensure the economic feasibility of the Residential Development Project. Consistent with its responsibilities under the Public Records Act, the City shall take reasonable steps to protect the confidentiality of any proprietary financial information submitted by the developer.

(Ord. No. 04-3)

Sec. 122-1053. Required Number of Inclusionary Units.

(a) Basic Requirement. The required number of Inclusionary Units to be provided for a Residential Development Project shall vary, depending upon the total number of dwelling units in the project and the income category for the Inclusionary Units being provided. Within the parameters set forth in the table below, the developer may choose which income category of Inclusionary Units to provide.

(Ord. No. 04-3)

(b) Required Percentage of Affordable Units

Project Size and Type	Inclusionary Requirement
Rental Projects	Either 10% at low income, or 6% at very low income

Ownership Projects	Either 10% at moderate income, or 6% at low income
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(Ord. No. 04-3)

(c) Fractional Units. When the application of the percentages set forth above results in a number that includes a fractional unit, the fraction shall be rounded up to the next whole number if the fraction is .7 or more. If the result includes a fraction below .7, the developer shall have the option of either rounding up to the next whole number and providing an additional Inclusionary Unit, or paying an in-lieu fee as provided in Section 122-1054.

(Ord. No. 04-3)

(d) Blended Income Levels for Inclusionary Units. A developer may request that the development project include Inclusionary Units affordable to a mix of income levels (Very Low, Low and Moderate), instead of a single income level. Authority to approve a particular mix of income levels shall rest with the final City decision-making body for the underlying application.

(Ord. No. 04-3)

(e) Projects of Five (5) to Nine (9) Units. The developer of a Residential Development Project containing from five (5) to nine (9) units, inclusive, shall have the option of either providing one Inclusionary Unit or paying an in-lieu fee as provided in Section 122-1054.

(Ord. No. 04-3)

Sec. 122-1054. In-lieu Fees.

(a) Amount. As provided in Section 122-1053 (c) and (d), a fee may be paid in-lieu of providing Inclusionary Units either for a Residential Development Project which contains less than twenty (20) acres in gross land area or for fractional units. The fee shall be set by resolution of the City Council in an amount sufficient to pay the proportionate cost of providing Inclusionary Units elsewhere within the City. All fee revenues shall be deposited in a restricted fund earmarked for housing projects affordable to Very Low, Low and/or Moderate Income Households.

(Ord. No. 04-3)

(b) Timing of Payment. In-lieu fees shall be paid prior to issuance of building permits for the Residential Development Project or as otherwise provided in the conditions of approval.

(Ord. No. 04-3)

Sec. 122-1055. Duration of Restrictions.

The sale price for ownership of Inclusionary Units shall be restricted for a period of forty-five (45) years pursuant to an Inclusionary Housing Agreement recorded against the property. The monthly rent for rental Inclusionary Units shall be restricted for a period of fifty-five (55) years pursuant to an Inclusionary Housing Agreement recorded against the property.

(Ord. No. 04-3)

Sec. 122-1056. Inclusionary Housing Agreements.

The conditions of approval attached to discretionary approvals for all Residential Development Projects subject to a requirement to provide Inclusionary Units pursuant to this article shall require the developer to enter into an Inclusionary Housing Agreement to be recorded against the property in order to ensure implementation of the requirements of this article. The form and contents of the Inclusionary Housing Agreement shall be subject to approval by the City Attorney in consultation with the Housing Manager.

(Ord. No. 04-3)

Sec. 122-1057. Development Incentives.

The City may grant one or more of the following affordable housing development incentives in order to mitigate the financial impact of this article's requirements on a particular Residential Development Project:

(Ord. No. 04-3)

(a) A Density Bonus authorized pursuant to the City's residential Density Bonus ordinance (commencing with Section 122-331).

(Ord. No. 04-3)

(b) Provision of housing set-aside funds, tax exempt financing, or other financial assistance as approved by the City Council or Redevelopment Agency.

(Ord. No. 04-3)

(c) Modification of zoning or development standards. Authority to act on a request for these development incentives shall rest with the final City decision-making body regarding the underlying application. In addition, the City Manager or designee may authorize expedited processing of a development application and/or deferral of development fees. The terms and payment schedule for any deferred development fees shall be subject to the approval of the City Manager or designee. Fees shall not be waived, reduced or allowed to be paid any later than occupancy of the first dwelling unit in the Residential Development Project.

(Ord. No. 04-3)

Sec. 122-1058. Compliance Monitoring Fees.

The City Council, by resolution, may establish compliance monitoring fees to recover the City's actual, reasonable costs incurred for ongoing implementation of this article. For Inclusionary Units in Ownership Projects, the fee shall be payable at the time of each sale or transfer during the term of the applicable Inclusionary Housing Agreement. For Inclusionary Units in Rental Projects, the property owner shall pay an annual fee each year during the term of the applicable Inclusionary Housing Agreement.

(Ord. No. 04-3)

Sec. 122-1059. Off-Site Alternatives.

As a complete or partial alternative to the provision of on-site Inclusionary Units pursuant to this article, the developer of a Residential Development Project may propose a plan for providing affordable housing units at an off-site location within the City of Concord, as follows:

(Ord. No. 04-3)

(a) Acquire existing unrestricted multi-family units located elsewhere within the City and rehabilitate those dwelling units. At least two (2) rehabilitated dwelling units shall be provided for each Inclusionary Unit required pursuant to this article.

(Ord. No. 04-3)

(b) Construct new residential dwelling units. At least two (2) new dwelling units shall be provided for each Inclusionary Unit required pursuant to this article.

(Ord. No. 04-3)

The developer may partner with a nonprofit affordable housing provider in order to meet its Inclusionary Housing obligations through one of the alternatives set forth in this section. Any new or rehabilitated dwelling units shall be regulated pursuant to an Inclusionary Housing Agreement between the developer and the City or Redevelopment Agency pursuant to Section 122-1056. All Inclusionary Units must be rehabilitated or constructed and occupied prior to or concurrently with the Market Rate Units for the related Residential Development Project. For phased Residential Development Projects, the Inclusionary Units may be constructed and occupied in proportion to the number of dwelling units in each phase of the project. Authority to act on the off-site alternative proposal shall rest with the final City decision-making body regarding the underlying application.

(Ord. No. 04-3)

Sec. 122-1060. Design Standards and Construction Timing.

The following design standards shall apply to all Inclusionary Units constructed pursuant to this article:

(Ord. No. 04-3)

(a) Inclusionary Units shall be dispersed throughout the Residential Development Project and shall have access to all on-site amenities which are available to Market Rate Units.

(Ord. No. 04-3)

(b) The construction quality and exterior design of Inclusionary Units shall be comparable to the Market Rate Units. However, Inclusionary Units may be smaller in size, developed on smaller lots, and/or have alternative interior finishes.

(Ord. No. 04-3)

(c) The average number of bedrooms for all Inclusionary Units must be equivalent to the average number of bedrooms for Market Rate Units within the same Residential Development Project.

(Ord. No. 04-3)

(d) All Inclusionary Units must be constructed and occupied prior to or concurrently with the Market Rate Units within the same Residential Development Project. For phased Residential Development Projects, the Inclusionary Units may be constructed and occupied in proportion to the number of dwelling units in each phase of the project.

(Ord. No. 04-3)

Sec. 122-1061. Waivers or Adjustments.

The City may adjust or waive the requirements of this article if the applicant for approval of a Residential Development Project demonstrates that strict application of this article would effect a taking of private property without just compensation or otherwise constitute a violation of the United States Constitution, California Constitution or other applicable Federal or State laws. Any person requesting a waiver or adjustment must submit a written request not later than fifteen (15) days before the first public hearing on any discretionary approval for the Residential Development Project, accompanied by such additional information as may be deemed necessary by the City to make a determination regarding the request. If no discretionary approval is required or the action complained of occurs after the first public hearing on such approval, then the request shall be filed within ten (10) days after the challenged action. Authority to act on the request for a waiver or adjustment shall rest with the final City decision-making body regarding the underlying application.

(Ord. No. 04-3)

Sec. 122-1062. Allocation Priority.

In the event that there exists a greater number of qualified persons than the number of available Inclusionary Units for any Residential Development Project subject to this article, then first priority for allocating available Inclusionary Units shall be given to qualified purchasers or renters who live or work within the City of Concord.

(Ord. No. 04-3)

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