

Chapter 17.50 AFFORDABLE HOUSING

Sections:

- [17.50.010](#) Findings.
- [17.50.020](#) Authority.
- [17.50.030](#) Definitions.
- [17.50.040](#) Affordable housing requirement.
- [17.50.050](#) Procedures for provision of affordable housing.
- [17.50.060](#) Standards for affordable housing units.
- [17.50.070](#) Duration of affordability restrictions.
- [17.50.080](#) Occupancy requirements.
- [17.50.090](#) Priority.
- [17.50.100](#) Housing trust fund.
- [17.50.110](#) Fees.
- [17.50.120](#) Violation.
- [17.50.130](#) Severability.

17.50.010 Findings.

A. The public welfare requires the city to take action to ensure that affordable housing is constructed and maintained within the city.

B. Housing purchase prices in the city have risen significantly in recent years and continue to rise.

C. Rents in the city have been rising and the majority of apartments are one- or two-bedroom units which are not suitable for families. Small, low-income households have difficulty finding affordable unassisted housing and larger households of any income level have difficulty finding affordable units.

D. Federal funds for the construction of new affordable housing units are limited or are no longer available, and state funds are limited.

E. To meet the city's share of the regional housing need for very low, lower, and moderate income households, the city included implementing policies and programs in the housing element of its general plan to provide for such housing.

F. The general plan programs require the city to consider adoption of an inclusionary housing ordinance to require that between 10 and 15 percent of all housing units in any new development be available for persons and households of low or moderate income. (Ord. 495 § 1, 2005)

17.50.020 Authority.

This chapter is enacted pursuant to the general police power of the city set forth in Article XI, Section 7 of the California Constitution and is for the purpose of providing affordable housing in Escalon consistent with state law and the city's general plan. The requirements of this chapter are the city's minimum requirements for affordable housing. Nothing in this chapter shall be construed to limit the city's authority to impose additional affordable housing requirements to the extent permitted by law or to negotiate in a development agreement or other instrument the provision of additional affordable housing. (Ord. 495 § 1, 2005)

17.50.030 Definitions.

A. "Affordable housing cost" means affordable housing cost as set forth in Health and Safety Code Section 50052.5 as amended.

B. "Affordable rent" means affordable rent as set forth in Health and Safety Code Section 50053 as amended.

C. "Density bonus" means an entitlement to build dwelling units in excess of the maximum number of units otherwise allowable or to exceed the maximum floor area ratio otherwise specified

in this title.

D. "Developer" means the owner of any real property upon which a residential project is to be constructed or developed.

E. "Development agreement" means an agreement between a developer and the city entered into pursuant to Government Code Section 65864 et seq. and in accordance with the City of Escalon procedures and requirements for consideration of development agreements as amended.

F. "Feasible" means that even with the construction of inclusionary units pursuant to this chapter, the residential project as a whole remains reasonably capable of being built and marketed given the conditions prevailing at the time of approval of the residential project. The determination as to whether a project is feasible is to be made, in all cases, by the city council in its sole and absolute discretion.

G. "For-sale units" means those dwelling units developed as part of a residential project that the developer intends will be offered for individual sale or that could be offered for individual sale, including but not limited to single-family detached homes, duplex units, condominiums, and cooperatives.

H. "Housing trust fund" means a separate fund administered by the city into which the in-lieu fees are deposited.

I. "Incentive" means one of the incentives the city council may authorize pursuant to EMC [17.50.060](#)

if it determines that it is infeasible to provide inclusionary units within the residential project.

J. "Inclusionary units" or "affordable housing units" means those dwelling units developed pursuant to an inclusionary housing agreement to satisfy the requirements of this chapter, including for-sale inclusionary units available at an affordable housing cost and multifamily rental inclusionary units available at an affordable rent.

K. "Inclusionary housing agreement" or "agreement" means the agreement described in EMC [17.50.050](#)(B) between the developer of a residential project and the city detailing how the provisions of this chapter will be implemented.

L. "Low and moderate income" has the same meaning as that set forth in Health and Safety Code Section 50093 as amended.

M. "Lower income" has the same meaning as that set forth in Health and Safety Code Section 50079.5 as amended.

N. "Moderate income" has the same meaning as that set forth in Health and Safety Code Section 50093 as amended.

O. "Multifamily rental units" means those multifamily dwelling units constructed or developed as part of a residential project that the developer intends will be offered for lease or rent or that are customarily offered for lease or rent.

P. "Residential project" means any project involving the construction of one or more dwelling units at one location and requiring the issuance of a building permit, or the creation of one or more residential lots at one location, including in the aggregate all dwelling units or residential lots for which building permits or discretionary approvals have been applied for from or granted by the city within the preceding 36 months.

Q. "Very low-income" has the same meaning as that set forth in Health and Safety Code Section 50105 as amended. (Ord. 495 § 1, 2005)

17.50.040 Affordable housing requirement.

All developers engaging in a residential project shall be required to provide affordable housing, dedicate land, or pay in-lieu fees pursuant to this chapter.

A. For all residential projects that do not require a tentative and final map or a parcel map, the developer shall be permitted to pay an in-lieu fee to satisfy the requirements of this chapter and shall not be required to enter into an inclusionary housing agreement. All in-lieu fees shall be paid prior to issuance of any building permits for the residential project.

B. For all residential projects that require a tentative and final map or a parcel map, the developer shall enter into an inclusionary housing agreement and provide affordable housing units pursuant to this chapter, unless the city council makes a finding of infeasibility. The inclusionary housing agreement shall be executed and recorded pursuant to this chapter as a condition of approval for any tentative or parcel map. (Ord. 495 § 1, 2005)

17.50.050 Procedures for provision of affordable housing.

A. Compliance. No building permit shall be issued and no use permit, development agreement, final parcel or subdivision map, or agreement with the city approved, in connection with any residential project located within the city unless the city manager or his or her designee confirms in writing that either:

1. The residential project does not require a tentative and final map or a parcel map, and the developer has paid, in full, the in-lieu fees required by this chapter and any resolutions adopted hereunder;

2. The developer and the city have executed an inclusionary housing agreement, which agreement has been approved by the city council and recorded by the developer with the county recorder; or

3. The developer has requested in writing a determination of infeasibility, the city council has determined that it is not feasible to require the developer to provide inclusionary units within the residential project, and the developer and the city have executed an inclusionary housing agreement, which agreement has been approved by the city council and provides that the developer will either dedicate land or pay in-lieu fees pursuant to this chapter.

B. Inclusionary Housing Agreements. Inclusionary housing agreements shall be in a form acceptable to the city, shall require compliance with all applicable terms and conditions of this chapter, and shall include the following:

1. If the developer is required to construct inclusionary units, the agreement shall indicate: the household income groups targeted; the number, location, tenure of affordability, size and construction schedule of all inclusionary units; and any other information required by the city relating to the obligations imposed by this chapter.

2. If the developer is permitted to dedicate land for the development of inclusionary units in satisfaction of part or all of its affordable housing requirement, the agreement shall identify the site of the dedicated land and shall provide for the implementation of such dedication in a manner deemed appropriate and timely by the city.

3. If the developer is permitted to pay an in-lieu fee in satisfaction of part or all of its affordable housing requirement, the agreement shall specify the amount of the fee and the method of payment. No building permit shall be issued until the developer provides written proof of the payment of all in-lieu fees.

4. If the city council has approved one or more incentives, the agreement shall specify the incentives the city will grant.

C. Feasibility.

1. Full compliance with this chapter shall be presumed to be feasible unless the city council expressly determines otherwise in accordance with this section. Any developer seeking a determination of infeasibility shall file with the city clerk a written request for such a determination no later than the date on which the developer files its application for its first discretionary approval by the city or the time of application for a building permit, whichever is earlier.

2. All such requests shall be accompanied by a description of the project, a detailed explanation why it is infeasible to provide inclusionary units within the residential project, and any other information the city manager or his or her designee deems necessary or relevant to enable the city council to make a reasoned determination. Failure to provide such information with the original request for a determination of infeasibility shall be deemed a waiver by the developer of any right to dispute feasibility.

3. Upon receiving a written request for a determination of infeasibility, the city clerk shall transmit the request to the city manager to determine whether it complies with this section. The city council may make a determination of feasibility or infeasibility. If the city council makes a determination of infeasibility, it shall specify which of the alternatives set forth in EMC [17.50.060\(B\)](#) shall apply to the project. (Ord. 495 § 1, 2005)

17.50.060 Standards for affordable housing units.

A. Standard Requirements. Except as otherwise expressly provided in this chapter, all developers of residential projects requiring a tentative and final map or a parcel map shall comply with the following:

1. Number of Inclusionary Units. Ten to 15 percent of all new for-sale units and of all new multifamily rental units in any residential project shall be available to very low, lower, and moderate income households at an affordable housing cost or affordable rent. Subject to the approval of the city council, the city manager shall determine the percentage of units in the residential development that shall be available to very low, lower, and moderate income households.

2. Mix of Very Low, Lower, and Moderate Income Units. Unless the city expressly and in writing permits otherwise, the developer shall provide very low, lower, and moderate income inclusionary units in equal numbers in the residential project and in each phase of the residential project, if applicable. For residential projects of 10 or fewer units, the developer may choose to pay an in-lieu fee rather than construct the required number of inclusionary units. Subject to the approval of the city council, the city manager may permit a developer to pay an in-lieu fee for any fractional amount.

3. Location of Inclusionary Units. Unless the inclusionary housing agreement provides otherwise, all inclusionary units shall be built on the site of the residential project.

4. Timing of Development. Inclusionary units constructed within a residential project and within phases of a residential project shall be constructed concurrently with or prior to the construction of market rate units within the residential project or phase thereof. For any project involving more than one phase, the developer shall include a proportional number of inclusionary units in each phase of the project.

5. Exterior Appearance. Inclusionary units shall from the exterior be visibly indistinguishable from market rate units and shall be dispersed throughout the residential project in a manner set forth in the inclusionary housing agreement.

6. Lot Size. Unless the city and the developer agree otherwise in the inclusionary housing agreement, inclusionary units shall be on lots with a total area equal to or greater than the median lot size in the residential project.

7. Development Standards. Inclusionary units shall comply with all applicable development standards except as specifically provided in the inclusionary housing agreement, a development agreement, or the conditions of approval for the residential project.

B. Alternatives to Development of Inclusionary Units. To the extent the city council determines that full compliance with this chapter is infeasible, the city council may permit the developer to meet all or a portion of its obligations through one or more of the following alternatives:

1. Land Dedication.

a. A developer may make an irrevocable offer to dedicate land within the residential project to the city or a nonprofit developer of affordable housing approved by the city. The land offered for dedication shall have a value, as established by an independent appraisal performed by an appraiser selected or approved by the city, which equals or exceeds the product of the number of inclusionary units for which the developer proposes to substitute dedicated land multiplied by the per unit in-lieu fees in effect at the time of the offer to dedicate.

b. The developer must identify the land to be dedicated at the earliest possible date, but in no event later than the date on which the developer files its application for its first discretionary approval by the city or the time of application for a building permit, whichever is earlier. The land offered as a substitute for multifamily rental inclusionary units shall be suitable for development of multifamily rental units, and land offered as a substitute for for-sale inclusionary units shall be suitable for development of for-sale units. Development of such units shall be consistent with the city's general plan designation applicable to the land offered for dedication.

c. The city council may approve, conditionally approve, or reject any such offer of dedication. If the city rejects the offer, the developer shall be required to meet the obligations of this chapter by other means set forth in this chapter.

2. In-Lieu Fees.

a. The developer may meet its obligations under this section through the payment of in-lieu fees if the developer demonstrates to the city council's satisfaction that, due to special circumstances pertaining to the physical characteristics and location of the residential project, development of inclusionary units or the dedication of land is not feasible and would cause undue hardship.

b. The city council shall, by resolution reviewed annually, adopt a schedule of per unit in-lieu fees. The schedule shall reflect the total estimated cost to the city of developing the

inclusionary units otherwise required by this section. In-lieu fees paid pursuant to this section shall be deposited into the housing trust fund.

c. In-lieu fees shall be paid in full prior to the issuance of the first building permit for the residential project. In-lieu fees shall be calculated based on the schedule in effect at the time of the first application for a building permit in connection with the residential project.

3. Incentives. The city council may grant one or more of the following incentives to assist a developer with its provision of inclusionary units pursuant to this chapter.

a. Density Bonus. If a residential project does not qualify for a density bonus pursuant to Chapter [17.48](#)

EMC, the developer may request that the city council grant a density bonus to assist the developer with the provision of inclusionary units for very low and lower income households.

b. Fee Waiver. A developer may request a partial or full waiver of any city processing fees related to planning, public works, and/or building permits.

c. Waiver of Development Standards. A developer may request a waiver or modification of city development standards.

d. Financial Assistance. A developer may request that the city provide assistance in obtaining federal, state, or local financing and/or subsidies that may be available to promote or assist in the development of affordable housing. (Ord. 495 § 1, 2005)

17.50.070 Duration of affordability restrictions.

All inclusionary units shall remain affordable for a period of not less than 50 years, and the deeds for all inclusionary units shall include such restrictions. The inclusionary housing agreement to be recorded by the developer shall require such affordability restrictions. In addition, for each inclusionary unit the purchaser shall, prior to the initial sale of the unit, execute and record a regulatory agreement in a form to be provided by the city. (Ord. 495 § 1, 2005)

17.50.080 Occupancy requirements.

A. For-Sale Inclusionary Units. Any person who purchases a for-sale inclusionary unit shall occupy that unit as his or her principal residence. The purchaser shall comply with all the terms and conditions contained within the covenants set forth in the inclusionary housing agreement restricting the affordability and resale of the unit. Failure by the purchaser to maintain eligibility of the inclusionary unit for homeowner's property tax exemption shall create a conclusive presumption that the inclusionary unit is not the primary place of residence of the purchaser and shall be a violation of this chapter.

B. Multifamily Rental Inclusionary Units. Any person who rents a multifamily rental inclusionary unit shall occupy that unit as his or her principal residence and shall report any changes in income immediately to the owner of the unit. (Ord. 495 § 1, 2005)

17.50.090 Priority.

A. The allocation of available affordable housing units to eligible persons shall be determined by the city pursuant to this section.

B. The city shall maintain a waiting list of eligible persons wishing to purchase an affordable housing unit. To be placed on the waiting list, an applicant must submit to the city clerk an application which shall include at least the following information:

1. The name of each member of the household applying for an affordable housing unit;
2. The applicant's current address and telephone number;
3. The dates each member of the household has resided in the city;
4. The name and address of the employer, if any, for each member of the household; and
5. The job title for each member of the household currently employed as a full-time police officer, firefighter, or EMTP within the city, if applicable.

C. Applicants shall at all times bear the burden of demonstrating that they qualify for very low, lower, or moderate income housing and, if applicable, that one or more members of the household currently live in the city and have lived in the city for the past two years, have lived in the city for five of the last 10 years, currently work in the city, and/or currently work as a full-time police officer, firefighter, or EMTP in the city. The city manager or his or her designee may, at any time, request that an applicant provide evidence in this regard. Failure to provide such evidence within a

reasonable time shall result in disqualification from the waiting list for a period of one year.

D. Applicant eligibility screening shall be required through a city-approved lender certification process or by the developer in a manner approved in writing by the city manager. Applicants who are not deemed eligible for inclusionary housing units shall be removed from the waiting list.

E. In allocating available affordable housing units, the city shall give priority to those individuals who currently live within the city and have lived in the city for the past two years, have lived in the city for five of the last 10 years, currently work within the city, and/or currently work as a full-time police officer, firefighter, or EMTP in the city.

F. Each time an affordable housing unit becomes available, the city shall consult the waiting list to determine if there are any applicants who qualify for one or more of these four priority groups.

1. If there are applicants on the waiting list who qualify for one or more priority groups, the city shall compile a list of those priority applicants and assign each applicant one or more tickets for a lottery. Each applicant shall receive one ticket for each of the following categories that apply:

a. One or more members of the household currently live within the city and have lived within the city for the past two years;

b. One or more members of the household have lived in the city for five of the last 10 years;

c. One or more members of the household currently work within the city; and

d. One or more members of the household currently work as a full-time police officer, firefighter, or EMTP within the city.

2. If there are no applicants on the waiting list who qualify for one or more priority groups, the city shall conduct a lottery among all applicants on the waiting list, with each applicant receiving one ticket for the lottery. (Ord. 495 § 1, 2005)

17.50.100 Housing trust fund.

Moneys deposited in the housing trust fund, including any accrued interest thereon, shall be expended exclusively for the development of new or substantially rehabilitated dwelling units that are available at an affordable housing cost or an affordable rent to households of very low, lower, and moderate income and that are subject to the deed-restriction requirements set forth in EMC [17.50.070](#). (Ord. 495 § 1, 2005)

17.50.110 Fees.

The city council may, by resolution, establish reasonable fees and deposits for the processing of applications and the administration of this chapter. (Ord. 495 § 1, 2005)

17.50.120 Violation.

Any person who violates or fails to comply with any provision or requirement of this chapter shall be deemed guilty of an infraction or a misdemeanor and shall be subject to the provisions of EMC [8.20.250](#). (Ord. 495 § 1, 2005)

17.50.130 Severability.

If any section, subsection, sentence, clause, or phrase of this division is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this division. The council declares that it would have adopted this division, including every section, subsection, sentence, clause, and phrase, irrespective of whether one or more sections, subsections, sentences, clauses, or phrases is held invalid. (Ord. 495 § 1, 2005)