

Fort Bragg IH Ordinance

Chapter 18.32 - Inclusionary Housing Requirements

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18.32.010 - Purpose

This Chapter requires the development and availability of affordable housing by ensuring the addition of affordable housing units to the City=s housing stock in proportion with the overall increase in new housing units.

1. This Chapter establishes standards and procedures to implement the inclusionary housing requirements identified in [Section 18.32.050](#) (Inclusionary Housing Requirements), below.
2. This Chapter offers incentives identified in [Section 18.32.090](#) (Inclusionary Housing Incentives), below for the development of affordable housing units.

18.32.020 - Definitions

The specialized and technical terms and phrases used in this Chapter are defined in [Article 10](#) (Glossary), under "Affordable and Inclusionary Housing Requirements."

18.32.030 - Applicability and Exempt Projects

1. **Applicability.** The requirements of this Chapter apply to all housing developments proposed with five or more dwelling units, except as noted in Subsection B.
 1. Compliance with the requirements of this Chapter shall be verified by the review authority prior to, or as part of the approval of the Use Permit,

Minor Use Permit, and/or Tentative Map for the housing development, as applicable.

2. Each inclusionary dwelling unit required by this Chapter shall be sold or rented in compliance with this Chapter.
2. **Exempt projects.** The following residential projects are exempt from the inclusionary housing requirements of this Chapter.
 1. **Project with prior approval.** A residential project that has obtained:
 - a. Discretionary approval (e.g., a Coastal Development Permit, Use Permit, Design Review, Planned Development Permit, or Variance, approval) before the effective date of this Chapter;
 - b. A Building Permit before the effective date of this Chapter; or
 - c. A Certificate of Occupancy before the effective date of this Chapter.
 2. **Exempt by State law.** A residential project that is exempt from this Chapter by State law.
 3. **Project with vested rights.** A residential project for which the City has entered into a development agreement before the effective date of this chapter, or which otherwise demonstrates a vested right to proceed without complying with this chapter.
 4. **Involuntarily damaged or destroyed dwelling unit.** Any dwelling unit that is damaged or destroyed by fire or natural catastrophe so long as the square footage and use of the replacement or repaired structure remains the same.

18.32.040 - Inclusionary Housing Trust Fund

1. **Inclusionary Housing Trust Fund established.** There is hereby established the City of Fort Bragg Inclusionary Housing Trust Fund (the "Housing Fund"). Separate accounts within the Housing Fund may be created as necessary to avoid commingling as required by law, or as deemed appropriate to further the purposes of the Fund.
2. **Use of funds.** The City's use of the Housing Fund shall comply with the following requirements.
 1. Monies deposited in the Housing Fund along with any interest earnings shall be used solely to increase and improve the supply of housing affordable to households of very low, low, and moderate income, including:
 - a. The acquisition of property and property rights;
 - b. The cost of construction including costs associated with planning, administration, and design, actual building or installation, and any other costs associated with the construction or financing of affordable housing;
 - c. Reimbursement to the City for costs if funds were advanced by the City from other sources; and

- d. Reimbursement of developers or property owners who have been required or allowed to install facilities that are beyond that which can be attributed to a specific development.
2. To the maximum extent possible, all monies should be used to provide for additional affordable housing and services.
3. Monies may also be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the establishment and/or administration of the Housing Fund and reasonable expenses for administering the process of calculating, collecting, and accounting for inclusionary fees and any deferred City fees authorized by this Chapter.
4. No portion of the Housing Fund may be diverted to other purposes by way of loan or otherwise.

18.32.050 - Inclusionary Housing Requirements

1. **Number of units required.** At least 15 percent of all new dwelling units in a residential development shall be affordable units, which shall be constructed and completed at the same time as the associated market rate units. If the calculation of the required number of units results in fractions of affordable units, including fractions resulting from construction of less than seven dwelling units, the developer may elect to construct the next higher whole number of affordable units, perform an alternative equivalent action approved by the Council in compliance with [Section 18.32.060](#) (Alternative Equivalent Action), or pay an in-lieu fee in compliance with [Section 18.32.070](#) (Inclusionary Housing In Lieu Fee), for the fraction.
2. **Timing of construction.** All inclusionary dwelling units within a residential project shall be constructed concurrent with, or before, the construction of the market rate dwelling units. If the City approves a phased project, the required inclusionary dwelling units shall be provided within each phase of the residential project, with their number in proportion to the total number of units in the phase in relation to the total number of units in the project.

18.32.060 - Alternative Equivalent Action

A developer of a residential project may comply with the requirements of [Subsection 18.32.050.A](#) (Number of units required), above by an alternative equivalent action, approved by the Council in compliance with this Section.

1. **Scope of alternative proposals.** A proposal for an alternative equivalent action may include: the dedication of vacant land; the construction of inclusionary units on another site; or the acquisition and enforcement of required rental/sales price restrictions on existing standard dwelling units in compliance with this Chapter.
2. **Content of proposal.** A proposal for an equivalent action shall show how the alternative action proposed will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of

- [Subsection 18.32.050.A](#) (Number of units required), or payment of the appropriate in lieu housing fee identified [Section 18.32.070](#) (Inclusionary Housing In Lieu Fee).
3. **Review and approval.** A proposal for an alternative equivalent action shall require Use Permit approval in compliance with [Section 18.71.060](#), except that the review authority shall be the Council, with a recommendation by the Commission. Review and approval may occur concurrent with project approval by the Council, if the Council is the final review authority for the project.
 4. **Criteria for approval.**
 1. **Single-family project.** A proposal for a single-family residential project shall be approved by the Council if the Council first determines that the alternative action will further affordable housing opportunities in the City to an equal or greater extent than payment of the housing in lieu fee.
 2. **Multi-family project.** A proposal for a multi-family project may be approved at the Council's sole discretion, if the Council first determines that the alternative action will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of [Subsection 18.32.050 A](#). (Number of units required).

18.32.070 - Inclusionary Housing In Lieu Fee

The payment of a fee in-lieu of providing required inclusionary units may be approved in compliance with the following requirements.

1. **Single-family project.** A developer of a single-family housing development may comply with the requirements of [Subsection 18.32.050 A](#). (Number of units required), by payment of an in-lieu fee.
2. **Multi-family project.** A developer of a multi-family housing project may propose to meet the requirements of [Subsection 18.32.050.A](#) (Number of units required), by submitting the following with the application for either the discretionary permit for the project or the first Building Permit for the project whichever occurs first:
 1. A request to pay the in lieu fee along with a report identifying all overriding conditions impacting the project that prevent the developer from constructing the inclusionary units;
 2. Sufficient independent data, including appropriate financial information, that supports the developer's claim that it is not feasible to construct the required inclusionary units; and
 3. A detailed analysis of why the incentives identified in [Section 18.32.090](#) (Inclusionary Housing Incentives), cannot avoid the circumstances identified by the developer that prevent the construction of the inclusionary units.
3. **Review and approval of in-lieu fee request.**
 1. **Review of proposal, and recommendation.** The Director and the City Manager shall review all requests and prepare a recommendation for the Council.

2. **Findings required for Council approval.** Each request shall be considered on a case-by-case basis by the Council and may be approved if the Council first finds that there are overriding conditions impacting the project that prevent the developer of a multi-family project from constructing the required inclusionary units, and that payment of the in-lieu fee will further affordable housing opportunities.
4. **Timing of payment.** An approved in-lieu fee shall be paid before the issuance of the first Building Permit for the project, or upon execution of the City's secured agreement recorded against the property, prior to the first Final Building Inspection for a structure within the project. The City Manager is hereby authorized to execute the agreement on behalf of the City.
5. **Calculation of in-lieu fee.** The inclusionary housing in lieu fee shall be a percentage of the projected construction costs of market-rate dwelling units. The amount and calculation of the in lieu fee shall be established by the City's Fee Schedule.
 1. **Construction costs defined.** For the purpose of this Chapter, "construction costs" shall mean the estimated cost per foot of construction, as established by the Building Official for use in setting regulatory and Building Permit fees, multiplied by the total floor area in square feet to be constructed for each dwelling unit, minus the floor area of a garage.
 2. **Calculation of fee for attached units.** For attached single-family residential and rental-residential development projects, construction costs shall be calculated separately for each dwelling unit and the appropriate fee paid for each unit within the residential project.
 3. **Method of payment.** Payment of a required in-lieu fee may be either in cash, or upon a recommendation of the Director and City Manager and approval of the Council, by an alternative that will provide the City with a value equal to or greater than the amount of the required in-lieu fee.

18.32.080 - Requirements for Inclusionary Units

1. **Rental units.**
 1. **Affordability requirements.**
 - a. One-half of the inclusionary units that are required to be constructed along with rental market-rate units shall be available at affordable rents to very low-income households, and the remaining one-half of the inclusionary units shall be available at affordable rents to low-income households with the first priority for rental being to "essential public service employees" within the City as defined in [Article 10](#) (Glossary), who meet income eligibility requirements.
 - b. Where the number of required inclusionary units is an odd number, the number of units constructed for very low-income households may be one less than the number of units constructed for low-income households.

2. **Waiver of affordability requirements.** With respect to any particular rental project, the Council may, upon the recommendation of the Director, waive all or a portion of the affordability requirements identified in [Subsection 18.32.050 A](#). (Number of Units Required), above to the extent necessary to avoid a hardship or taking, upon a showing by the applicant that imposition of the requirement on the residential project will cause undue hardship or legal taking under the California or United States constitutions, and that the residential project will contribute significantly to affordable housing opportunities in the City.
2. **Units for sale.**
 1. **Affordability requirements.**
 - a. One-half of the inclusionary units that are required to be constructed in connection with the construction of market-rate units intended for owner-occupancy shall be available at sales prices affordable to households whose annual household income does not exceed 100 percent of median income.
 - b. If one-half of the inclusionary units required at a sales price not exceeding 100 percent of median income are available at sales prices affordable to households whose annual household income does not exceed 80 percent of median income, the developer shall be entitled to a density bonus of five percent for the proposed residential development.
 2. **Alternative financial incentives.** As an alternative to receiving a density bonus of five percent, a developer request from the City another incentive of a financial value equal to the density bonus. Each request shall be considered on a case-by-case basis by the Council, and may be approved if the Council first determines that the alternative incentive will further affordable housing opportunities.
 3. **Affordable sales price requirements.**
 - a. The remaining one-half of the required affordable inclusionary units shall be available at sales prices affordable to moderate-income households with priority given to essential public service employees within the City as defined in [Article 10](#) (Glossary), who meet all other income eligibility requirements.
 - b. Where the number of required inclusionary units is an odd number, the number of units affordable to moderate income households may be one greater than the number affordable at or below 100 percent of median income.
3. **Location within project, relationship to non-inclusionary units.** Required inclusionary units shall be:
 1. Dispersed throughout the residential project or, subject to the approval of the Director, may be clustered within the project if the Director determines clustering will increase affordable housing opportunities.
 2. Proportional, in number, bedroom number and size, and location, to the market rate dwelling units, except that the Director may determine that the interior floor area and interior finish features of the units do not need to be

the same as, or equivalent to market-rate units in the same project, so long as they are of good quality and consistent with contemporary standards for new housing.

4. **Continued affordability.**

1. **Restrictions to ensure continued affordability.**

- a. **Inclusionary housing agreements required.** Before the issuance of Certificates of Occupancy or approval of the final inspection for the inclusionary units, inclusionary housing agreements and, if the inclusionary units are for sale, resale restrictions, deed restrictions and/or other documents, all of which shall be acceptable to the Director and consistent with the requirements of this Chapter, shall be recorded against parcels having the inclusionary units.
- b. **Minimum time for continued affordability.** Each required inclusionary unit shall be reserved for very low to moderate income households in the ratios required by Subsections A. and B. at the applicable affordable housing cost for a minimum of 30 years in the case of units for sale; and for a minimum of 40 years in the case of rental units, except where the Council approves an alternative restriction that it determines will be equally effective in achieving the affordable housing goals and objectives of the Housing Element.

2. **Resale restrictions to ensure continued affordability.**

- a. The maximum sales price for the resale of an inclusionary unit for sale shall not exceed the seller's purchase price, adjusted for the percentage increase in median income since the seller's purchase, plus the value of substantial structural or permanent fixed improvements to the property, plus the cost of reasonable seller's broker fee, as determined by the Director. For purposes of this Subparagraph, median income shall be calculated based upon the presumed occupancy levels used to determine the affordable sales price.
- b. The resale restrictions shall provide that, before offering an inclusionary unit for sale, the seller shall provide written notice to the Director, by certified mail, of their intent to sell. The City or its designee shall be granted an option to purchase the unit for sale, with a maximum of 30 days to exercise the option, and a maximum of 60 days to conclude the purchase, in addition to the time for exercising the option, at the maximum price which could be charged to an eligible household.

3. **Eligibility of renters and purchasers.**

- a. No household shall be allowed to occupy an inclusionary rental unit, or purchase an inclusionary unit for sale, unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by an inclusionary housing agreement or resale restrictions.

- b. If the City or its designee maintains a list of eligible households, households selected to occupy the inclusionary units shall be selected first from that list to the extent provided in the inclusionary housing agreement or resale restrictions.
5. **Annual monitoring and transfer fees.**
 1. **Rental units.** For each rental inclusionary unit, the current owner may be required to pay an annual monitoring fee for the term of required affordability. The fee shall be specified in the required inclusionary housing agreement.
 2. **Units for sale.** For each inclusionary unit for sale, the current owner may be required to pay a transfer fee for any change of ownership during the term of required affordability.
6. **Discretionary permit and map requirements for projects subject to this chapter.**
 1. **Discretionary permits.** Each discretionary permit for a residential project that is subject to this Chapter approved after the effective date of this Chapter shall contain a condition detailing the method of compliance with this Chapter.
 2. **Final or Parcel Maps.** Each Final and Parcel Map shall bear a note indicating that compliance with the requirements of this Chapter shall be met before issuance of a Building Permit for each parcel created by the map.
7. **Requirements for Certificate of Occupancy or Final Building Inspection.** A temporary or permanent Certificate of Occupancy shall not be issued, a Final Building Inspection approved, or release of utilities authorized for any new dwelling unit in a residential project until:
 1. The developer has satisfactorily completed the requirements of this Chapter, (e.g., on-site construction of affordable units, alternative equivalent actions or payment of the inclusionary housing in lieu fee); or
 2. The developer has demonstrated to the satisfaction of the Director that an exemption as described in [Subsection 18.32.030.B](#) is appropriate.

18.32.090 - Inclusionary Housing Incentives

1. **Process for describing incentives.** A residential development that complies with the inclusionary housing requirements in [Subsection 18.32.050.A](#) (Number of units required), through the actual construction of inclusionary units, shall be entitled to the following procedures and incentives.
 1. **Conceptual preliminary approval of incentives.**
 - a. Within 90 days of submittal by a developer of a written preliminary conceptual development proposal before the submittal of any formal application for a General Plan amendment, rezoning, Use Permit, Tentative Map, or other permit or entitlement describing and specifying the location, number, size, and type of the housing development, identifying any requests for density bonus, incentives, modifications, or waivers of development or

zoning standards, necessary to make construction feasible for the proposed development, including the inclusionary units, the Council shall review the preliminary development proposal at a public hearing and indicate conceptual preliminary approval or disapproval of the proposed development and any requests for inclusionary housing incentives, modifications, or waivers of development or zoning standards.

- b. Preliminary approval or disapproval shall not bind the Council but rather shall be subject to the discretion of the Council to modify its preliminary recommendations based upon a full review of all pertinent project information, including any CEQA analysis, presented at the public hearing on the subject application.

2. **Priority processing of applications.**

- a. The City's processing of an application for a project that includes the construction of inclusionary units shall be expedited by each City department involved with the application.
- b. An application for a project that includes the construction of inclusionary rental units shall be processed before applications including inclusionary owner-occupied units.

3. **Deferral of fees.** The City shall defer the requirement for payment of all City-required fees for inclusionary units until the issuance of the first Certificate of Occupancy or Final Building Inspection for the residential development, except that fees for Building Permits and plan check will not be deferred.

2. **Additional incentives.** The Council may consider, on a case-by-case basis, approving the following incentives which are consistent with the Housing Element of the General Plan for residential development projects that meet the inclusionary housing requirements specified in [Subsection 18.32.050 A.](#), above.

1. **Density bonus or other incentives.** A density bonus or other incentives of equal financial value subject to the Council's review and approval.
2. **Waiver or modification of City standards.** Waiver or modification of City site development standards that reduces total project costs while being consistent with required Building Code standards (e.g., site coverage, off-street parking requirements, reduced parcel sizes, and/or setback requirements). The developer shall be responsible for documenting that the waiver or modification is necessary for the feasibility of the residential development project and is consistent with required Building Code standards.
3. **Direct financial assistance.** Provision of direct financial assistance in the form of a loan or grant using the Inclusionary Housing Trust Fund or other appropriate available funds subject to the recommendation of the Director.

18.32.100 - Inclusionary Housing Plan and Housing Agreement

1. **Inclusionary Housing Plan.** The applicant for a residential project that is subject to this Chapter shall submit an Inclusionary Housing Plan detailing how the

provisions of this Chapter will be implemented for the proposed residential development project. The Inclusionary Housing Plan shall be considered and acted upon by the review authority at the same time as the residential development that is the subject of the plan.

2. **Inclusionary Housing Agreement.** The applicant shall also execute and cause to be recorded an Inclusionary Housing Agreement to implement the provisions of the Inclusionary Housing Plan, except where compliance with this Chapter is through [Sections 18.32.060](#) (Alternative Equivalent Action), or [18.32.070](#) (Inclusionary Housing In Lieu Fee).
 1. The agreement shall be reviewed, and approved by the City Manager and City Attorney if in compliance with the Inclusionary Housing Plan.
 2. The agreement shall be recorded in the office of the County Recorder prior to the issuance of the first Building Permit for the residential development.
3. **Effect of plan and agreement.** After the approval of an Inclusionary Housing Plan and the recording of an Inclusionary Housing Agreement, each inclusionary housing unit shall be constructed as required, and shall be sold or rented, and maintained as an affordable unit, in compliance with the plan and agreement.

18.32.110 - Enforcement of Inclusionary Housing Requirements

1. **Enforcement by City Attorney.** The City Attorney shall enforce the provisions of this Chapter and all implementing regulatory agreements and resale controls placed on the inclusionary units by civil action, injunctive relief, and any other proceeding or method allowed by law.
2. **Remedies cumulative not exclusive.** The remedies available to the City shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.
3. **Recovery of costs.** In any action to enforce this Chapter, or an Inclusionary Housing Agreement recorded in compliance with this Chapter, the City shall be entitled to recover its reasonable attorney's fees and related costs.