

ARTICLE 17

INCLUSIONARY HOUSING ORDINANCE

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ARTICLE 17

INCLUSIONARY HOUSING ORDINANCE

SEC. 10-17.100 GENERAL PROVISIONS

SEC. 10-17.105 TITLE. This title shall be known and may be cited and referred to as the “Hayward Inclusionary Housing Ordinance.”

SEC. 10-17.110 PURPOSE. The purpose of this Article is to:

- a. Enhance the public welfare by ensuring that future Residential Development Projects contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Hayward.
- b. Increase the productions of residential units in Hayward that are affordable to very low, low-and moderate-income households.
- c. Ensure that units affordable to very low, low- and moderate-income households are distributed throughout the City’s various neighborhoods.
- d. Comply with the requirements of Health and Safety Code section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

SEC. 10-17.120 FINDINGS. The City Council finds and determines that lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of the City of Hayward. The housing problem affects a broad range of income groups, including many who would not need public assistance or intervention in the housing market if they lived outside of the San Francisco Bay Area.

- a. According to the 2000 U.S. Census, about 40% of Hayward tenant households (8,669 households) pay more than 30% of their income for rent.
- b. Only 22% of the population of Alameda County can afford to buy a home here, significantly below the national average of 57%.
- c. According to the 2000 U.S. Census, approximately 32% of tenant households pay more than 35% of household income for rent. Forty percent of tenants pay more than 30% of household income for rent.
- d. Because all forms of housing are expensive to build, rent and buy, a variety of housing programs and resources are required to help meet the need for affordable housing.
- e. The California Legislature has required each local government agency to develop a comprehensive, long-term general plan establishing policies for future development. As specified in the Government Code section 654300, 65302 (c), and 65583 (c), the

plan must (i): encourage the development of a variety of types of housing for all income levels, including multifamily rental housing; “ [and] (ii) [assist] “ in the development of adequate housing to meet the needs of low-and moderate-income households.”

- f. The City will be limited in its ability to contribute to the attainment of State housing goals and top maintain a thriving mixed-income community without additional affordable housing.
- g. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. At the same time new housing contributes to the demand for goods and services in the City, increasing local service employment at wage levels that do not often permit employees to afford housing in the City. Providing the affordable units require by this ordinance will help to ensure that part of the City’s remaining developable land is used to provide affordable housing.

SEC. 10-17.125 DEFINITIONS. As used in this Article, each of the following terms is defined as follows:

- a. “Affordable Unit” is defined as an ownership or rental housing unit whose price is set at an “affordable housing cost” as defined in this Article.
- b. Affordable Housing Cost,” “Affordable Ownership Housing Costs” and “Affordable Rental Housing Costs” are defined as the percentage of gross income a household spends on housing costs for a given income group as defined in California Health and Safety Code (Section 50052 through 50053).
- c. “Applicant” is defined as any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seek real residential property development permits or approvals from the City of Hayward.
- d. “Area Median Income (AMI)” is defined as the median income for the Oakland Primary Metropolitan Statistical Area (PMSA) as defined annually by the U.S. Department of Housing and Urban Development (HUD) and adopted by the California Department of Housing and Community Development (HCD). Income groupings that are subdivisions of AMI, such as Very Low, Low, Lower and Moderate-Income households, are also defined and published by HUD and adopted by HCD.
- e. “Dwelling unit” is defined as a dwelling designed and intended for residential occupancy by one household.
- f. “Household Income” is defined as the gross annual household income adjusted for household size and includes the income of all wage earners, elderly or disabled family members and any other sources of household income.
- g. “Housing costs” are defined for:

- (1) Ownership units, as the monthly mortgage principal and interest, property taxes, homeowner's insurance, and homeowner/condominium association fees (where applicable); and,
 - (2) Rental units, the monthly rent plus utility allowance, as defined by the Alameda County Housing Authority.
- h. "Mixed-Use Development Project" is defined as a project that may include a mix of commercial, office, industrial or residential uses.
- i. "Presumed Occupancy Levels" shall be used to establish the maximum household income to set rent levels and sales prices and are defined as:
- (1) One person for a studio unit;
 - (2) Two people for a one bedroom unit;
 - (3) Three people for a two bedroom unit; and
 - (4) One additional person for each additional bedroom thereafter.
- j. "Resale controls and/or rent restrictions" are defined as the restrictions, set forth by the City or by state and/or federal law, by which the rents on affordable units are limited to ensure that the unit remains affordable to very-low-, low- or moderate-income households, as applicable, for a term of no less than 45 years. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3 (f) (2). With respect to rental units, such rent restrictions shall generally be in the form of a regulatory agreement recorded against the applicable property. With respect to owner occupied units, such resale controls shall generally be in the form of resale restrictions, deeds of trust and/or other similar documents recorded against the applicable property.
- k. "Residential Development Project" is defined as detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units. This definition also includes contiguous or non-contiguous parcels that have one or more applications filed within a twenty-four month period and which are under the same ownership.

SEC. 10-17.200 RESIDENTIAL DEVELOPMENT.

SEC. 10-17.205 UNIT THRESHOLD FOR AFFORDABLE PROJECTS AND PERCENTAGE OF AFFORDABLE UNITS. All Residential Development Projects consisting of 20 (twenty) or more dwelling units designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective date of the Article, shall maintain a percentage of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this Article. The foregoing requirement shall be applied no more than once to an approved development,

regardless of changes in the character or ownership of the development, provided the total number of units does not change.

At least 15% of the dwelling units of the Residential Development Project shall be set aside as Affordable Units. Where the calculation of the inclusionary requirement results in a fraction of a unit, such fraction shall be rounded to the next whole number and that resulting unit shall be subject to the affordability requirements of this Article. If a change in the subdivision design or site plan results in a change in the total number of units, the number of Affordable Units required will be recalculated to coincide with the final approved project.

For purposes of calculating the number of Affordable Units, any additional units authorized as a density bonus under California Government Code Section 65915 (b)(1) or (b)(2) will not be counted in determining the required number of Affordable Units.

SEC. 10-17.210 AFFORDABILITY LEVELS AND INCOME GROUPS. All units provided pursuant to the requirements of this Article shall be made affordable to very-, low- and moderate- income households pursuant to the minimum distributions described in the following table:

Rental Residential Development Projects

15% of the Units in any Rental Residential Development must be Affordable Units and be reserved for:	Percentage of Affordable Units	Percentage of Median Income Level Used to Determine Housing Costs	Percent of Income Used to Determine Affordable Housing Costs
Very Low-Income Occupants	50%	50% of median	30%
Low-Income Occupants	50%	60% of median	30%
Moderate Income-Occupants			

In applying these percentage allocations to Residential Development Project and mixed-use projects with rental units, any fraction of a unit shall be rounded to the next whole number unit and that unit shall be subject to the affordability requirements for very low-income occupants. If the federal or state funds are utilized in a residential rental project, requiring that all of the affordable units be set-aside fir very low-income households, then those households can be substituted for the low-income households shown in the chart above.

Owner-Occupied Residential Development Projects

15% of the Units in any owner-occupied Residential Development must be Affordable Units and be reserved for:	Percentage of Affordable Units	Percentage of Median Income Level Used to Determine Housing Costs	Percent of Income Used to Determine Affordable Housing Costs
Very Low-Income Occupants			
Low-Income Occupants			
Moderate-Income Occupants	100%	110%	35%

In applying these percentage allocations to ownership type developments, any fraction of a unit shall be rounded to a whole unit. If a development is built on a condominium map, but the units

are placed on the rental market rather than being sold, then the provisions for rental units shall apply. Subsequently, if the units are sold as ownership housing, then the ownership housing provisions of this Article apply.

SEC. 10-17.215 DESIGN, DISTRIBUTION AND TIMING OF AFFORDABLE UNITS. The Affordable Units shall be integrated with Residential Development Project as a whole and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. Specifically:

- a. Rental Residential Development Projects: All Affordable Units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction, or materials. All Affordable Units shall be reasonably dispersed throughout the project.
- b. Owner-occupied Residential Development Projects : When Affordable Units are required in owner-occupied Residential Development Projects, the units should be integrated with the project as a whole. Affordable Units may be smaller in aggregate size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. The number of bedrooms must be the same as those in the market-rate units, except that if the market-rate units provide more than four bedrooms, the Affordable Units need not provide more than four bedrooms.
- c. No building permits will be issued for market-rate units until permits for all Affordable Units have been obtained, unless Affordable Units are to be constructed in phases pursuant to a plan approved by City Council.
- d. Market-rate units will not be inspected for occupancy until all Affordable Units have been constructed, unless Affordable Units are to be constructed in phases pursuant to a plan approved by City Council.

SEC. 10-17.220 DURATION OF AFFORDABILITY REQUIREMENT. Affordable Units produced under this Article must be legally restricted to occupancy by households of the income levels for which the units were designated for a minimum of 45 years.

SEC. 10-17.300 COMPLIANCE PROCEDURES.

SEC. 10-17.305 GENERAL. The provisions of this Article shall apply to all agents, successors and assignees of an Applicant, developer, builder or property owner proposing a Residential Development Project governed by this Article. No tentative map, use permit, special development permit or occupancy permit shall be issued for any Residential Development Project unless exempt from or in compliance with the terms of this Article.

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval.

SEC. 10-17.310 INCLUSIONARY HOUSING PLAN. The Applicant must submit an Inclusionary Housing Plan (IHP) which will be treated as part of the development application. In accordance with the Permit Streamlining Act, and subject to the time limits thereof, the Planning

Director shall determine whether the IHP is complete. If the IHP is incomplete, the IHP will be returned to the Applicant with a list of the deficiencies or the information required. No application for a site plan review, tentative map, or building permit to which this Article applies shall be finalized until the IHP is deemed complete by the Planning Director. At any time during the review process, the Planning Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determining the consistency of the proposed IHP with the requirements of this Article.

The IHP must be submitted at time of application and include:

- a. The location, structure (attached, semi-attached, or detached), proposed tenure (for-sale or rental), and size of the proposed market-rate, commercial space and/or Affordable Units and the basis for calculating the number of Affordable Units;
- b. A floor or site plan depicting the location of the Affordable Units;
- c. The income levels to which each Affordable Unit will be made affordable;
- d. The documents that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and rights of first refusal and other documents;
- e. For phased Residential Development Projects, a phasing plan that provides for the timely development of the number of Affordable Units proportionate to each proposed phase of development as required by this Article;
- f. A description of any incentives that are requested by the Applicant;
- g. Any alternative means proposed for the Residential Development Project along with information necessary to support the findings required for approval of such alternatives;
- h. A marketing plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Units; and
- i. Any other information reasonably requested by the Planning Director to assist with evaluation of the IHP under the standards of this Article.

Inclusionary Housing Plans that meet all of the requirements of this Article shall be approved by the Planning Director. An Inclusionary Housing Plan that requests a waiver of any of the requirements set forth in this Article requires approval of City Council.

SEC. 10-17.315 INCLUSIONARY HOUSING AGREEMENT. The form of the Inclusionary Housing Agreement (IHA) will vary, depending on the manner in which the provisions of this Article are satisfied for a particular development. An IHA must include, at minimum, the following:

- a. Description of the development, including whether the Affordable Units will be rented or owner-occupied;

- b. The number, size and location of Very Low-, Low- or Moderate-Income Units;
- c. Inclusionary incentives by the City (if any), including the nature and amount of any local public funding;
- d. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
- e. The Marketing Plan for sale or rental of the Affordable Units;
- f. Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident households for income eligibility; and
- g. Any additional obligations relevant to the compliance with this Article.

The form of the IHA resale and rental restrictions, deeds of trust, rights of first refusal and other documents authorized by this subsection must be approved by the City Manager or his or her designee prior to being executed with respect to any Residential Development Project.

Approval of an IHA and implementation of an approved IHA is a condition of any tentative map or building permit for any Residential Development Project for which this Article applies.

SEC. 10-17.400 EXEMPTIONS. The requirements of this Article do not apply to the following:

- a. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature, provided that the reconstruction of the site does not increase the number of residential units by more than five.
- b. Development agreements, as originally approved, that have been adopted and executed by the City Council prior to the effective date of the Article. This exemption shall not apply to modifications of existing developments agreements.

SEC. 10-17.500 AFFORDABLE UNIT IN-LIEU FEE. The primary purpose of this Article is to increase the supply of Affordable Housing Units throughout the City. Affordable Units shall be integrated within Residential Development Projects as much as possible. In Residential Development Projects consisting solely of for-sale units, the Applicant may request a waiver of the requirement to build Affordable Units in exchange for the payment of an Affordable Unit In-Lieu Fee.

The Applicant shall furnish a report identifying all overriding conditions impacting the for-sale Residential Development Project that prevent the Applicant from meeting the requirement to construct the Affordable Units and provide sufficient independent data, including appropriate financial information, to support the Applicant's claim that it is not feasible to construct the required Affordable Units. A detailed analysis of why the various concessions and incentives identified cannot mitigate the identified conditions that are preventing the Applicant from constructing the Affordable Units. The Planning Director shall review all such requests and prepare a recommendation for the City Council.

Such requests shall be considered on a case-by-case basis by the City Council and may be approved, at the City Council sole discretion, if the City Council determines that there are overriding conditions impacting the project that prevent the Applicant from meeting the requirement to construct Affordable Units and that payment of the in-lieu fee will further housing opportunities.

The amount of the Affordable Unit In-Lieu Fee shall be established by resolution of the City Council. The In-Lieu Fee amount will be reviewed annually, or as needed, and adjusted as necessary and appropriate, at the City Council's discretion. At a minimum, the fee shall be sufficient to construct one unit of affordable housing.

Fees shall be paid prior to issuance of the first building permit for the Residential Development Project or secured at that time by an approved letter of credit. No Certificate of Occupancy will be issued for any dwelling unit in that Residential Development Project unless the fees required under this Article have been paid in full.

The In-Lieu Fee shall be placed in an Affordable Housing Trust Fund and used to develop affordable housing units.

SEC. 10-17.600 DEVELOPMENT INCENTIVES AND ALTERNATIVES. This Article confers economic and land use benefits for Applicants of Residential Development Projects that meet the requirements of this Article, as set forth below.

- a. **Density Bonus.** The City Council, upon request, may approve an increase in the number of units per acre permitted in a proposed Residential Development Project governed by this Article, when such an increase in density is consistent with state density bonus law as set forth in Section 65915 of the State Government Code. In calculating the number of affordable units required by this Article, any additional units authorized as a density bonus pursuant to state law shall not be counted as part of the residential project.
- b. **Off-Site Construction.** City policy is that Affordable Units must be integrated within Residential Development Projects as much as possible. Where Affordable Units are required, an Applicant may instead construct units not physically contiguous to the development (off-site) if the City Council determines that:
 - (1) Off-site construction will further affordable housing opportunities in the City to a greater extent than construction of the required units as part of the proposed residential project;
 - (2) A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
 - (3) The off-site units are at least equal in size and amenities to Affordable Units which would be allowed in the project, or any comparative deficiency in size or amenities is compensated for by additional units, larger units or affordability to households with lower incomes; and
 - (4) If the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project

area, for every one unit that is required to be built in the original location, two units shall be developed in the off-site location.

- c. Modified Development Standards to Increase Density.
 - (1) In a residential project which contains single family detached homes, Affordable Units may be attached dwelling units rather detached homes. In a residential project that includes attached multi-story dwelling units, Affordable Units may contain only one story;
 - (2) When a Residential Development Project is on a major transportation route, the Applicant may request that City Council reduce the number of parking spaces required for the development based on the assumption that some households will take public transportation to their jobs. This will allow for increased density within the development.
- d. Combination of Alternatives. The City Council may choose to accept any combination of on-site construction, off-site construction, in-lieu fees and land dedication that at least equal the cost of providing the Affordable Units on-site as would otherwise be required by this Article.
- e. Expedited Processing. Expedited processing of development approvals and permits will be available for Residential Development Projects with Affordable Units.
- f. Technical and Financial Assistance. Upon request, information shall be provided to developers, builders or property owners regarding design guidelines and financial subsidy programs for Residential Development Projects.

SEC. 10-17.700 IMPLEMENTING THE REGULATORY AGREEMENT OR DEED RESTRICTION.

SEC. 10-17.705 TERM OF AGREEMENT. Prior to the issuance of a Certificate of Occupancy, a regulatory agreement shall be recorded against parcels having Affordable Units and shall be effective for a term of at least 45 years. This term shall begin on the date on which the Certificate of Occupancy is issued.

SEC. 10-17.710 RIGHT OF FIRST REFUSAL FOR OWNER-OCCUPIED UNITS. It is the responsibility of the seller of a Dwelling Unit, subject to the affordability terms of this Article, to select a purchaser that meets the income requirements of this Article. Information regarding potential purchasers who may meet the income criteria may be obtained from the City of Hayward First-Time Homebuyer Program staff or from similar programs offered by other municipalities, lenders or local housing organizations. The resale restrictions shall provide that in the event of the sale of a unit subject to the requirements of this Article, if the seller is unable to find an eligible and qualified purchaser, the City shall have the right to purchase said unit at the price that could be charged to an income-eligible purchaser.

SEC. 10-17.715 RECORDING OF AGREEMENT. An approved Inclusionary Housing Agreement must be recorded against owner-occupied Affordable Units and Residential Development Projects containing rental Affordable Units. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents acceptable to the City Manager or his

designee must also be recorded against owner-occupied Affordable Units. In cases where the requirements of this Article are satisfied through the development of Off-Site Units, the Inclusionary Housing Agreement must simultaneously be recorded against the Residential Development Project site and the property where the off-site units are to be developed.

SEC. 10-17.800 ELIGIBILITY FOR AFFORDABLE UNITS.

SEC. 10-17.805 SELECTION CRITERIA. No household shall be permitted to occupy an Affordable Unit unless the City Manager or his designee has first approved the household's income eligibility. Income-eligible occupants of Affordable Units will be qualified on the basis of household income adjusted for household size in accordance with California Health and Safety Code 50052 and 50053, or any successor statute. The developer, property owner or property manager shall use an equitable selection method established in compliance with the terms of this Article and approved by the City Manager or his designee. If qualified, persons shall be selected for occupancy of an Affordable Unit governed by this Article based on the following criteria:

- a. First Priority: Persons who live or work within the City of Hayward.
- b. Second Priority: All other eligible households.

SEC. 10-17.810 CONFLICT OF INTEREST. The following individuals are ineligible to purchase or rent an Affordable Unit: City employees and officials (and their immediate family members) who have policy-making authority or influence regarding City housing programs and do not qualify as having a remote interest as provided by California Government Code; the Applicant and its officers and employees (and their immediate family members); and the Owner and its officers and employees (and their immediate family members).

SEC. 10-17.815 OCCUPANCY. Any household who occupies an Affordable Rental Unit or purchases an Affordable Ownership Unit must occupy that unit as a principal residence. Should the household cease to occupy that unit as their primary residence then the household will be in default of their affordable housing agreement or lease.

SEC. 10-17.820 OWNER-OCCUPIED UNITS. The initial and subsequent sales prices of the Affordable Unit must be set at the Affordable Ownership Housing Cost for one, two, three or four bedroom units, as appropriate.

- a. Transfer of Restrictions. When the ownership of an owner-occupied Affordable Unit is transferred, prior to the expiration of the 45-year affordability period, each new owner must sign an Inclusionary Housing Agreement to complete the 45-year term.
- b. Resale. The maximum sales price permitted on resale of an Affordable Unit designated for owner-occupancy shall be the lower of (1) fair market value or (2) the seller's lawful purchase price, increased by the lesser of (i) the rate of increase of Area Median Income during the seller's ownership or (ii) the rate at which the consumer price index increased during the seller's ownership. To the extent authorized in any resale restrictions or operative Inclusionary Housing Agreement, seller may recover, at time of sale, the value of capital improvements made by the seller (for which there are receipts) and the seller's necessary and usual costs of sale. The City Manager or his designee may authorize an increase in the maximum allowable sales price to achieve such recovery. Capital improvements are limited to

new construction on the house or property. Repairs of any type, including but not limited to roofs, bathrooms and kitchens, are not considered capital improvements.

- c. Changes in Title. Title to the Affordable Unit may change due to changes in circumstance, including death, marriage and dissolution of marriage. If the owners are joint tenants with right of survivorship, upon the death of one of the owners, title to the property may transfer to the surviving owner without respect to the income-eligibility of the household.

If the owners are tenants-in-common, upon the death of a sole owner, all owners or one of the owners, inheritance of the Affordable Unit by a non-income-eligible child, stepchild or other party is not allowed. The Affordable Unit should be sold as soon as feasible; however, there will be a one year compassion period between the death and the time when the Affordable Unit must be sold to an income-eligible household.

Except as otherwise provided by this section, if a change in title is occasioned by events, such as a marriage or dissolution of a marriage and subsequent remarriage, that change the financial situation of the household so that it is above moderate income, then the property must be sold to an income-eligible household within one year.

SEC. 10-17.825 RENTAL UNITS. Affordable Rental Units shall be offered to eligible households at an Affordable Rental Housing Cost. The owner of rental Affordable Units shall certify each tenant's Household Income to the City Manager or his designee at the time of initial rental and annually thereafter. The owner must obtain and review documents that demonstrate the prospective tenant's Household Income, such as income tax returns or W-4's for the previous calendar year, and submit such information on a form approved by the City Manager. The City Manager or his designee will review all income verifications and documents that substantiate the prospective tenant household's total income to determine their completeness and accuracy. No tenant may move into an Affordable Unit prior to authorization by the City Manager or his designee.

SEC. 10-17.830 MARKETING PLAN. Owners may fill vacant units by selecting income-eligible households in accordance with the approved Marketing Plan contained in the Inclusionary Housing Agreement.

SEC. 10-17.835 COMPLIANCE REPORTS. The owner shall submit quarterly compliance reports summarizing the occupancy of each Affordable Unit. Annually, the owner shall re-certify the tenant for income-eligibility and submit an annual report. The forms and format used will be the same as for the Tax Exempt Multifamily Mortgage Bond Program or its successor.

SEC. 10-17.840 SUBSEQUENT RENTAL TO INCOME-ELIGIBLE TENANT.

The owner shall apply the same rental terms and conditions to tenants of Affordable Units as are applied to all other tenants, except as required to comply with this Article (e.g., rent levels, occupancy restrictions and income requirements) or with other applicable government subsidy programs. Discrimination against persons receiving housing assistance is prohibited.

SEC. 10-17.845 CHANGES IN TENANT INCOME. If, after moving into an Affordable Unit, a tenant's Household Income exceeds the limit for that unit, the tenant household may remain in the unit as long as his or her household income does not exceed 140 percent of the

income limit. Once the tenant's income exceeds 140 percent of the income limit, the following shall apply:

- a. If the tenant's income does not exceed the income limits of other Affordable Units in the Residential Development Project, the owner may, at the owner's option, allow the tenant to remain in the original unit and re-designate the unit as affordable to households of a higher income level, as long as the next vacant unit is re-designated for the income category previously applicable to the tenant's household. Otherwise, the tenant shall be given one year's notice to vacate the unit. If, during the year, an Affordable Unit becomes available and the tenant meets the income eligibility for that unit, the owner shall allow the tenant to apply for that unit.
- b. If there are no dwelling units designated for a higher income category within the Residential Development Project that may be substituted for the original unit, the tenant shall be given one year's notice to vacate the unit. If, within that year, another unit in the Residential Development Project is vacated, the owner may, at the owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market-rate and designate the newly vacated unit as an Affordable Unit at the income-level previously applicable to the unit converted to market rate. The newly vacated unit must be comparable in size (for example, number of bedrooms, bathrooms, square footage, etc.) as the original unit.

SEC. 10-17.900 ADJUSTMENTS AND WAIVERS. If the Applicant demonstrates to the City Council that there is not a reasonable relationship between the impact of a proposed Residential Development Project and the requirements of this Article, or that applying the requirement of this Article would take property in violation of the United States or California Constitutions, the requirements of this Article may be adjusted or waived.

SEC. 10-17.905 TIMING. To receive an adjustment or waiver, the Applicant must make a showing of necessity and demonstrate the lack of reasonable relationship or taking of property when making application for the Residential Development Project, and/or as part of any appeal that the City provides as part of the process for the first approval.

SEC. 10-17.910 CONSIDERATIONS. In making a determination on an application to adjust or waive the requirements of this Article, the City Council may assume each of the following when applicable: (i) that the Applicant is subject to the inclusionary housing requirement or in-lieu fee; (ii) the extent to which the Applicant will benefit from inclusionary incentives; (iii) that the Applicant will be obligated to provide the most economical Affordable Units feasible in terms of construction, design, location and tenure; and (iv) that the Applicant is likely obtain other housing subsidies where such funds are reasonably available.

SEC. 10-17.915 MODIFICATION OF PLAN. If the City Council determines that the application of the provisions of this Article lacks a reasonable relationship between the impact of a proposed residential project and the requirements of this Article, or that applying the requirement of this Article would take property in violation of the United States or California Constitutions, the Inclusionary Housing Plan shall be modified, adjusted or waived to reduce the obligations under this Article to the extent necessary to avoid an unconstitutional result. If the City Council determines no violation of the United States or California Constitutions would occur through application of this Article, the requirements of this Article remain applicable.

SEC. 10-17.1000 AFFORDABLE HOUSING TRUST FUND.

SEC. 10-17.1005 TRUST FUND. There is hereby established a separate Affordable Housing Trust Fund ("Fund"). This Fund shall receive all In-Lieu Fees and may also receive monies from other sources.

SEC. 10-17.1010 PURPOSE, LIMITATIONS AND ADMINISTRATION. Monies deposited in the Fund must be used to increase and improve the supply of housing affordable to Moderate-, Low-, and Very Low-Income households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Article.

The Fund shall be administered by the City Manager or his designee who shall develop procedures to implement the purposes of the Fund consistent with the requirements of this Article and any adopted budget of the City.