

Chapter 11.81 INCLUSIONARY HOUSING

11.81.010 Purpose and intent.

11.81.020 Definitions.

11.81.030 Inclusionary housing requirement.

11.81.040 Affordable housing standards.

11.81.050 Calculating the required number of affordable units.

11.81.060 Incentive credit adjustment to the inclusionary requirement.

11.81.070 Combined inclusionary housing projects.

11.81.080 Creation of affordable units not required.

11.81.090 Incentives to the cost of affordable housing development.

11.81.100 In-lieu fees.

11.81.110 Housing Trust Fund.

11.81.120 Preliminary project application and review process.

11.81.130 New specific plans.

11.81.140 Affordable housing agreement as a condition of development.

11.81.150 Agreement processing fee.

11.81.160 Agreement amendments.

11.81.170 Expiration of affordability tenure.

11.81.180 Enforcement.

11.81.190 Separability of provisions.

11.81.010 Purpose and intent.

In enacting this chapter, the City Council finds and determines as follows:

A. It is an objective of the City to ensure that all residential development in the City's redevelopment project areas provide a range of housing opportunities for all identifiable economic segments of the population, including households of very low, lower and moderate income.

B. It is also the policy of the City to:

1. Require that a minimum of 15 percent of all approved residential development in the City's redevelopment project areas be restricted to and affordable to very low-, lower- and moderate-income households;
2. Require that a minimum of 40 percent of the foregoing units be restricted to and affordable to very low-income households;
3. Under certain conditions, allow alternatives to on-site construction as a means of providing affordable units for very low-income households; and
4. In specific cases, allow inclusionary requirements to be satisfied through the payment of an in-lieu fee as an alternative to requiring affordable units to be constructed. (Ord. 05-866 § 1 (part))

11.81.020 Definitions.

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

Affordable housing cost means housing for which the monthly housing costs paid by a qualifying household shall not exceed a specified fraction of the San Bernardino County median income, adjusted for household size, for the following classes of housing:

1. Extremely low-income, rental or for-sale units: 30 percent times 30 percent of the San Bernardino County median income for a household size appropriate to the unit.
2. Very low-income, rental and for-sale units: 30 percent times 50 percent of the San Bernardino County median income for a household size appropriate to the unit.
3. Low-income for-sale units: 30 percent times 70 percent of the San Bernardino County median income for a household size appropriate to the unit. At the discretion of the City Council and Agency Board, affordable housing cost for a low-income for-sale unit, which is sold to a lower-income household earning not less than 70 percent of San Bernardino County income, adjusted for household size, may alternatively be 30 percent times the income of the purchaser.
4. Low-income rental units: 30 percent times 60 percent of the San Bernardino County median income for a household size appropriate to the unit.
5. Moderate-income, for-sale units: 35 percent times 110 percent of the San Bernardino County median income for a household size appropriate to the unit. At the discretion of the City Council and Agency Board, affordable housing cost for a moderate income, for

sale unit which is sold to a moderate-income household earning not less than 110 percent of San Bernardino County income, adjusted for household size, may alternatively be 35 percent times the income of the purchaser.

6. Moderate-income, rental units: 30 percent times 110 percent of the San Bernardino County median income for a household size appropriate to the unit.

Affordable housing agreement means a legally binding agreement between a developer and the City and/or agency, which ensures that the inclusionary requirements of this chapter are satisfied. The affordable housing agreement may also provide for compliance with the requirements of the California Community Redevelopment Law. The affordable housing agreement shall establish, among other things, the number of required affordable units, the unit sizes, location, affordability tenure, terms and conditions of affordability and unit production schedule, as provided in Section 11.81.150 of this chapter.

Affordable housing task force shall consist of the Community Development Director, Redevelopment Director, Police Chief, Fire Chief and City Engineer.

Agency means the City of Montclair Redevelopment Agency.

Agency Housing Funds means the agency's Low and Moderate Income Housing Fund or Funds, established pursuant to Health and Safety Code Section 33334.3.

California Community Redevelopment Law means the provisions of Health and Safety Code Section 33000, et seq., as it may be revised from time to time.

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

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

Density bonus means a minimum density increase of at least 25 percent over the maximum allowable residential density in the General Plan designation, zoning or specific plan, at the time of application, pursuant to Chapter 11.85 of this title.

Financial assistance means assistance to include, but not be limited to, the subsidization of fees, infrastructure, land costs, or construction costs, the use of Agency Housing Funds, Community Development Block Grant (CDBG) Funds, or the provision of other direct financial aid in the form of cash transfer payments or other monetary compensation by the City or Agency.

Household size appropriate to the unit means one person for a zero bedroom (studio) unit, two persons for a one-bedroom unit, three persons for a two-bedroom unit, four persons for a three-bedroom unit, and five persons for a four-bedroom unit. Household size appropriate to a unit with more than four bedrooms shall be equal to the number of bedrooms plus one.

Housing Trust Fund means the fund established by the City for the collection of in-lieu fees and other charges required under this chapter.

Incentives mean concessions or assistance to include, but not limited to, direct financial assistance, density increases, standard modifications or any other financial, land use, or regulatory concession which would result in an identifiable cost reduction enabling the provision of affordable housing.

Inclusionary housing project means a new residential development, substantial rehabilitation of a residential development, or conversion of existing residential buildings

which has at least 15 percent of the total units reserved and made affordable to very low-, lower- or moderate-income households as required by this chapter.

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

Income means any monetary benefits that qualify as income in accordance with State law, 25 California Code of Regulations Section 6914, or successor regulation or ordinance.

Lower-income household means a household whose gross income is not more than the qualifying limit for lower-income households in San Bernardino County established by regulation of the State of California.

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

Median income means the median income, adjusted for household size, which is periodically established by regulation of the State of California.

Moderate-income household means a household whose gross income is not more than the qualifying limit for moderate-income households in San Bernardino County established by regulation of the State of California.

Monthly housing expense means the total monthly recurring expenses required of a household to obtain shelter for the 12 months after the date of determination. For a for-sale unit, monthly housing expenses include loan principal and interest at the time of initial purchase by the homebuyer, cost of property and mortgage insurance, property taxes and assessments, homeowners' association dues, a reasonable allowance for utilities as determined by the San Bernardino County Housing Authority, space rent if the housing unit is on rented land, and costs of property maintenance and repairs. For a rental unit, monthly housing expenses include rent, a reasonable allowance for utilities as determined by the San Bernardino County Housing Authority, as well as all monthly payments made by the tenant to the lessor in connection with use and occupancy of a housing unit and land and facilities associated therewith, including any separately charged fees, utility charges, or service charges assessed by the lessor and payable by the tenant.

Redevelopment project areas means the redevelopment projects adopted by the City pursuant to the California Community Redevelopment Law.

Residential development means any new residential construction or substantial rehabilitation of five or more rental or for-sale units; or conversions of apartments to for-sale housing or for-sale housing to apartments.

Substantial rehabilitation means rehabilitation of residential units, which satisfies both of the following: (a) the value of the rehabilitation constitutes 25 percent of the after-rehabilitation value of the dwelling, inclusive of the land value, and (b) a portion of the rehabilitation is funded by the Agency.

Total residential units means the total units in a residential development, which have been approved by the City. Total residential units are composed of both market-rate units and affordable units.

Very low-income household means a household whose gross income is not more than the qualifying limit for very low-income households in San Bernardino County established by regulation of the State of California. (Ord. 05-866 § 1 (part))

11.81.030 Inclusionary housing requirement.

A. This chapter shall apply to all residential dwelling units resulting from new construction of rental and “for-sale” residential development projects in redevelopment project areas, the substantial rehabilitation of existing rental and “for-sale” residential development projects in redevelopment project areas, as well as the conversion of apartments to condominiums or condominiums to apartments in redevelopment project areas.

B. This chapter shall not apply to the following:

1. Housing projects which contain 10 dwelling units or less;
2. Existing residences that are altered, improved, restored, repaired, expanded or extended that do not constitute substantial rehabilitation or a conversion; or
3. The construction of a new residential structure which replaces a residential structure that was destroyed or demolished within two years prior to the application for a building permit for the new residential structure, provided the number of residential units is not increased from the number of residential units of the previously destroyed or demolished residential structure. (Ord. 05-866 § 1 (part))

11.81.040 Affordable housing standards.

The affordable housing standards are as follows:

A. All residential developments are subject to and must satisfy the inclusionary housing requirements of this chapter, notwithstanding a developer’s request to process a residential development under other program requirements, laws or regulations, including but not limited to Chapter 11.85 of this title.

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

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

D. Inclusionary rental units shall remain restricted and affordable to the designated income group for 55 years.

E. After the initial sale of the inclusionary for-sale units at a price affordable to the target income level group, inclusionary for-sale units shall remain affordable to subsequent income-eligible buyers pursuant to a resale restriction with a term of 45 years, or for-sale units may be sold at a market price to other than targeted households provided that the sale shall result in the recapture by the City or Agency of a financial interest in the units

equal to the amount of subsidy necessary to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the City or Agency shall be used in assisting other eligible households with home purchases at affordable prices. To the extent possible, projects using for-sale units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs, including secondary market requirements.

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

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

H. Inclusionary housing projects shall provide a mix of sizes of affordable units, in terms of number of bedrooms and unit square footage, which is proportionate to the mix of all units within the residential development.

I. No building permit shall be issued, nor any development approval granted for a residential development, which does not meet the requirements of this chapter. No affordable unit shall be rented or sold except in accordance with this chapter. (Ord. 05-866 § 1 (part))

11.81.050 Calculating the required number of affordable units.

Subject to adjustments for incentives under Section 11.81.060 of this chapter, the required number of affordable units shall be not less than 15 percent of the total residential units, approved by the final decision-making authority of the City. Not fewer than 40 percent of the affordable units shall be restricted to very low-income households. (Ord. 05-866 § 1 (part))

11.81.060 Incentive credit adjustment to the inclusionary requirement.

The City may determine that certain types of affordable housing are relatively more desirable in satisfying the City's State-mandated affordable housing requirement as well as the City's housing element goals, objectives and policies, which may include without limitation, special needs housing, housing accessible to disabled persons, and housing affordable to lower-income or extremely low-income households. As an incentive to assist the City in providing this housing, the City in its discretion, may provide developers additional (more than one unit) credit for each of such units provided, thereby reducing the total inclusionary housing requirement to less than 15 percent of all residential units approved. Such inclusionary housing incentive credits shall be specified in the affordable housing agreement. (Ord. 05-866 § 1 (part))

11.81.070 Combined inclusionary housing projects.

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

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

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

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

D. To the extent feasible, the off-site construction should be located within the City's redevelopment project areas. If the off-site construction is located outside of the City's redevelopment project areas, each off-site inclusionary housing unit shall be deemed to equal one-half of an affordable unit located within the City's redevelopment project areas. (Ord. 05-866 § 1 (part))

11.81.080 Creation of affordable units not required.

Inclusionary units created which exceed the final requirement for a project may, subject to City Council approval in the affordable housing agreement, be utilized by the developer to satisfy other inclusionary requirements for which it is obligated or market the units to other developers as a combined project subject to the requirements of Section 11.81.070 of this chapter. (Ord. 05-866 § 1 (part))

11.81.090 Incentives to the cost of affordable housing development.

The City and Agency shall consider making incentives available to developers when necessary to enable residential development projects to provide a preferable product type or affordability in excess of the requirements of this chapter. Offsets and assistance may be offered by the City and Agency, in their sole discretion, to the extent that resources and programs for this purpose are available to the City and Agency and approved for such use by the City Council and Agency Board, and to the extent that the residential development, with the use of incentives, assists in achieving the housing goals of the City and Agency. To the degree that the City and Agency make available programs to provide incentives, developers may make application for such programs. Evaluation of requests for incentives shall be based on the effectiveness of the incentives in achieving a preferable product type and/or affordability objectives as set forth within the housing element; the capability of the development team; the reasonableness of development costs and justification of subsidy needs; and the extent to which other resources are used to leverage the requested incentives. Nothing in this chapter establishes, directly or through implication, a right to receive any incentives from the City, Agency or any other party or agency to enable the developer to meet the obligations established by this chapter. Residential development projects may be entitled to density bonuses and/or other incentives in accordance with provisions of State law, pursuant to the provisions of Chapter 11.85 of this title. Any incentives approved by the City Council or Agency and the housing affordability to be achieved by use of those incentives shall be set out within the affordable housing agreement pursuant to Section 11.81.140 of this chapter or, at the discretion of the City and Agency, in a subsequent document. Furthermore, developers are encouraged to utilize local, State or federal assistance, when available, to meet the affordability standards set forth in Sections 11.81.030 and 11.81.040 of this chapter. (Ord. 05-866 § 1 (part))

11.81.100 In-lieu fees.

A developer of a residential development may pay a fee in lieu of construction of affordable units in the following circumstances:

A. The inclusionary requirement for very low-income inclusionary units may be satisfied through the payment to the City of an in-lieu fee. The City may also permit the applicant to pay an in-lieu fee for the moderate-income inclusionary units upon its determination that new construction of moderate-income inclusionary units would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, developer capability and unavailability of financial subsidies.

B. The in-lieu fee to be paid for each very low-income inclusionary unit required under this chapter shall be based on the amount of financial assistance needed to make affordable to a very low-income household, one typical newly-constructed rental apartment unit, which will remain affordable for a period of 55 years. The in-lieu fee to be paid for each moderate-income inclusionary unit required under this chapter shall be

the amount of financial assistance needed to make affordable to a moderate-income household a for-sale housing unit pursuant to a local homebuyer assistance or local down payment program, which will remain affordable for a period of 45 years. The in-lieu fee shall be based upon the City Council's determination of the average amount of financial assistance per unit provided by cities and redevelopment agencies in the San Bernardino and Riverside County area under the foregoing types of programs.

C. The dollar amount and method of payment of the in-lieu fees shall be fixed by a schedule adopted, from time to time, by resolution of the City Council.

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

E. Where a developer is authorized to pay a fee in lieu of development of affordable housing units, any approvals shall be conditioned upon a requirement to pay the in-lieu fee in an amount established by resolution of the City Council in effect at the time of payment. (Ord. 05-866 § 1 (part))

11.81.110 Housing Trust Fund.

All in-lieu fees collected hereunder shall be deposited in a Housing Trust Fund. The Housing Trust Fund shall be administered by the City and shall be used only for the purpose of providing funding assistance for the provision of affordable housing and reasonable costs of administration consistent with the policies and programs contained in the housing element of the General Plan and affordable housing requirements applicable to the Agency. The selection of projects and programs, which are assisted by the Housing Trust Fund, shall be in the sole discretion of the City. (Ord. 05-866 § 1 (part))

11.81.120 Preliminary project application and review process.

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

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

1. A brief description of the proposal, including the number of affordable units proposed;

2. The zoning, General Plan designations and assessor's parcel number(s) of the project site;
 3. A site plan, drawn to scale, which includes: building footprints, driveway and parking layout, building elevations, existing contours and proposed grading; and
 4. A letter identifying what specific incentives and/or adjustments are being requested of the City. Justification for each request should also be included.
- B. Within 30 days of receipt of the preliminary application by the planning director for projects not requesting incentives or adjustments, or 90 days for projects requesting incentives or adjustments, the department shall provide to an applicant, a letter that identifies project issues of concern, the incentives and adjustments that the Community Development Director can support when making a recommendation to the final decision-making authority, and the procedures for compliance with this chapter. The applicant shall also be provided with a copy of this chapter and related policies and all required application forms. (Ord. 05-866 § 1 (part))

11.81.130 New specific plans.

All specific plans approved on or after the effective date of the ordinance codified in this chapter shall include an inclusionary housing plan within the specific plan document. This inclusionary housing plan will include appropriate text, maps, tables or figures to establish the basic framework for implementing the requirements of this chapter. The specific plan may (but is not required to) provide for designated sites for the location of the affordable units, including but not limited to any sites for locating off-site inclusionary housing projects or combined inclusionary housing projects. It shall establish, at a minimum, but not be limited to, the following:

- A. The number of market-rate units in the specific plan;
- B. The number of required affordable units for very low-income households, lower-income households, and moderate-income households over the entire specific plan;
- C. A general provision stipulating that an affordable housing agreement shall be made a condition of all future discretionary permits for development within the master or specific plan area, such as tentative maps, parcel maps, planned unit developments, and site development plans. The provision shall establish that all relevant terms and conditions of any affordable housing agreement shall be filed and recorded as a restriction on the project as a whole and those individual lots, units, or projects that are designated as affordable units. The affordable housing agreement shall be consistent with Section 11.81.140 of this chapter. (Ord. 05-866 § 1 (part))

11.81.140 Affordable housing agreement as a condition of development.

- A. Developers subject to this chapter shall demonstrate compliance with this chapter by executing an affordable housing agreement prepared by the City or Agency and submitted to the developer for execution. Agreements which conform to the requirements

of this section and which do not involve requests for incentives, other than those permitted by right, if any, shall be reviewed by the affordable housing task force and approved by the Community Development Director or his or her designee. Agreements, which involve requests for incentives, other than those permitted by right, shall require the recommendation of the Planning Commission and action by the City Council as the final decision-maker. Following the approval and execution by all parties, the affordable housing agreement with approved site development plan shall be recorded against the entire development, including market-rate lots/units and the relevant terms and conditions there from filed and subsequently recorded as a separate deed restriction or regulatory agreement on the affordable project individual lots or units of property which are designated for the location of affordable units. The approval and execution of the affordable housing agreement shall take place prior to final map approval and shall be recorded upon final map recordation or, where a map is not being processed, prior to the issuance of building permits for such lots/units. The affordable housing agreement may require that more specific project and/or unit restrictions be recorded at a future time. The affordable housing agreement shall bind all future owners and successors in interest for the term of years specified therein.

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

1. The number of inclusionary dwelling units proposed;
2. The unit square footage and number of bedrooms;
3. The proposed location of the affordable units;
4. Amenities and services provided, such as day-care, after-school programs, transportation, job training/employment services, and recreation;
5. Level and tenure of affordability for affordable units;
6. Schedule for production of dwelling units;
7. Approved incentives provided by the City and/or Agency;
8. Where applicable, requirements for other documents to be approved by the City and/or Agency, such as marketing, leasing, and management plans; financial assistance/loan documents; resale agreements; and monitoring and compliance plans; and
9. Identification of the affordable housing developer and agreements specifying the developer's role and relationship to the project.

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

D. An affordable housing agreement will not be required for projects that will be satisfying their inclusionary housing requirement through payment to the City of an in-lieu fee. (Ord. 05-866 § 1 (

1.81.150 Agreement processing fee.

The City Council may establish, by resolution, fees to be paid by the developer at the time of preliminary project application to defray the City's cost of preparing and/or reviewing all inclusionary housing agreements. (Ord. 05-866 § 1 (part))

11.81.160 Agreement amendments.

Any amendment to an affordable housing agreement shall be processed in the same manner as an original application for approval, except as authorized in Section 11.81.130 of this chapter. Amendments to affordable housing agreements initially approved prior to the effective date of the ordinance codified in this chapter shall be entitled to consideration under this chapter provisions superseded by the ordinance codified in this chapter. (Ord. 05-866 § 1 (part))

11.81.170 Expiration of affordability tenure.

The City or its designee shall have a one-time first right of refusal to purchase any project containing affordable units offered for sale at the end of the minimum tenure of affordability for rental projects. The first right of refusal to purchase the rental project shall be submitted in writing to the Redevelopment Director. Within 90 days of its receipt, the City shall indicate its intent to exercise the first right of refusal for the purpose of providing affordable housing. (Ord. 05-866 § 1 (part))

11.81.180 Enforcement.

Enforcement provisions are as follows:

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

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

C. Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the City's Housing Trust Fund. (Ord. 05-866 § 1 (part))

11.81.190 Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.
(Ord. 05-866 § 1 (part))