

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA
ADDING ARTICLE 47, TITLED “CITY OF PACIFICA BELOW MARKET
RATE (INCLUSIONARY) PROGRAM”, TO TITLE 9, CHAPTER 4
OF THE PACIFICA MUNICIPAL CODE**

The City Council of the City of Pacifica does ordain as follows:

SECTION 1. FINDINGS.

The City Council finds and determines:

- (a) Both California and the City of Pacifica face a serious housing problem that threatens their economic security. Lack of access to affordable housing has a direct impact upon the health, safety of the residents of the City. The City will not be able to contribute to the attainment of State housing goals or to retain a healthy environment without additional affordable housing. The housing problem has an impact upon a broad range of income groups including many who are not impoverished by standards other than those applicable to California’s and the City’s housing markets, and no single housing program will be sufficient to meet the housing need.
- (b) A lack of new Inclusionary Units will have a substantial negative impact on the environment and economic climate because (i) housing will have to be built elsewhere, and transit demand and consequent noise and air pollution; and (ii) City businesses will find it more difficult to attract and retain the workers they need. Inclusionary housing policies contribute to a healthy job and housing balance by providing more affordable housing close to employment centers.
- (c) Development of new commercial projects and market-rate housing encourages new residents to move to the City. These new residents will place demands on services provided by both the public and private sectors. Some of the public and private sector employees needed to meet the needs of the new residents or development earn income only adequate to pay for affordable housing. Because affordable housing is in short supply within the City, these employees may be forced to live in less than adequate housing within the City, pay a disproportionate share of their incomes to live in adequate housing within the City, or commute ever-increasing distances to their jobs from housing located outside the City. These circumstances harm the City’s ability to attain goals articulated in the City’s General Plan and strain the City’s ability to accept and service new market-rate housing development.
- (d) 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, the plan must (i) “encourage the development of a variety of types of housing for all income levels, including multifamily rental housing;” (ii) “[a]ssist in the development of adequate housing to meet the needs of low- and moderate-income households;” and (iii) “conserve and improve the condition of the

existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.”

- (e) The residents of Pacifica seek a well-planned, aesthetically pleasing and balanced community with housing affordable to Very Low- Lower- and Moderate-Income Households. Affordable housing should be available throughout Pacifica, and not restricted to a few neighborhoods and areas. However, there may also be trade-offs where constructing affordable units at a different site than the sites of the principal project may produce a greater number of affordable units without additional costs to the project applicant. Thus, the City Council finds that in certain limited circumstances, the purpose of this Article may be better served by allowing the developer to comply with the inclusionary requirement through alternative means, such as the payment of in-lieu fees, development of offsite housing or dedication of land. For example, if a project applicant can produce a significantly greater number of affordable units off-site, then it may (but not always) be in the best interests of the City to permit the development of affordable units at a different location than that of the principal project.
- (f) Federal and state funds for the construction of new affordable housing are insufficient to fully address the problem of affordable housing within Pacifica. Nor has the private housing market provided adequate housing opportunities affordable to Moderate-, Lower- and Very Low-Income Households.
- (g) The City Council is aware that there may be times when the inclusionary housing requirements make market-rate housing more expensive. In weighing all the factors, including the significant need for affordable housing, the City Council has made the decision that the community’s interests are best served by the adoption of the inclusionary housing ordinance.
- (h) The purpose of this Article is to: (i) encourage the development and availability of housing affordable to a broad range of households with varying income levels within the City as mandated by state law, California Government Code Sections 65580 and following; (ii) promote the City’s goal to add affordable housing units to the City’s housing stock in proportion to the overall increase in new jobs and housing units; and (iii) offset the demand on housing that is created by new development and mitigate environmental and other impacts that accompany new residential and commercial development by protecting the economic diversity of the City’s housing stock, reducing traffic, transit and related air quality impacts, promoting jobs/housing balance and reducing the demands placed on transportation infrastructure in the region.

SECTION II. Chapter 4, Title 9 of the Pacifica Municipal Code is hereby amended by adding Article 47 to read as follows:

Article 47. City of Pacifica Below Market Rate (Inclusionary) Program.

Sec. 9-4.4700. INTENT.

It is the intent of this article to establish requirements for the provision of housing units for very low, lower and moderate income households in residential development projects of a certain size.

Sec. 9-4.4701. DEFINITIONS

For the purposes of this article, unless otherwise apparent from the context, the following words and phrases are defined as set forth below:

- a. "Affordable Housing Cost" means an "affordable housing cost" as defined in Section 50052.5 of the California Health & Safety Code.
- b. "Affordable Rent" means an "affordable rent" as defined in Section 50053 of the California Health & Safety Code.
- c. "Area Median Income" means the median household income for the San Francisco Primary Metropolitan Statistical Area (PMSA) as determined annually by the U.S. Department of Housing and Urban Development.
- d. "BMR Unit" means a dwelling unit that must be offered at an Affordable Rent or Affordable Housing Cost to a Very Low, Lower or Moderate Income Household.
- e. "City" means the City of Pacifica.
- f. "Density Bonus" means entitlement to build additional residential units above the maximum number of units permitted pursuant to the existing General Plan, applicable specific plan and/or zoning designation, and as further specified in Article 41 of this chapter.
- g. "Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the Residential Development is located.
- h. "Eligible Household" means a Very Low, Lower or Moderate Income Household approved by the City in accordance with this article.
- i. "For-Sale BMR Unit" means a BMR Unit offered for sale, including, but not limited to, single family homes, condominiums, other common interest developments and mutual housing associations.
- j. "Household" means one person living alone or two or more persons sharing residency whose income is considered for housing payments.
- k. "Lower Income Household" means a Household whose annual income does not exceed the qualifying limits set for "lower income households" in Section 50079.5 of the California Health and Safety Code.

l. "Market Rate Unit" means a dwelling unit where the rental rate or sales price is not restricted by this article.

m. "Moderate Income Household" means a Household whose annual income does not exceed the qualifying limits set for "persons and families of low or moderate income" in Section 50093 of the California Health and Safety Code.

n. "Off-site" means located outside the Residential Development.

o. "On-site" means located on or in the Residential Development.

p. "Redevelopment Project Area" means the area designated by the City Council of the City in Ordinance No. 467-86, adopted on July 14, 1986, as amended as the Rockaway Beach Redevelopment Project Area.

q. "Rental BMR Unit" means a BMR Unit offered for lease or rent.

r. "Residential Development" means any new construction of dwelling units, subdivision of property for housing development, conversion of rental projects to condominium or other common interest ownership under Article 24.5 or any other creation of dwelling units or lots for housing that is authorized by a discretionary land use. Residential Developments include those that are part of a mixed use project with a commercial component.

s. "Very Low Income Household" means a Household whose annual income does not exceed the qualifying limits set for "very low income households" in Section 50105 of the California Health and Safety Code.

Sec. 9-4.4702. BELOW MARKET RATE HOUSING REQUIREMENTS – GENERAL.

a. **Applicability.** The requirements of this article shall apply to all Residential Developments of eight (8) or more units, lots or parcels, including all Residential Developments in which eight (8) or more units will be added to existing projects.

b. **Number of BMR Units Required.** Not less than fifteen (15) percent of all units, lots or parcels in a Residential Development subject to this article shall be BMR Units restricted for occupancy by Very Low, Lower or Moderate Income Households. In the City's Redevelopment Project Area, forty (40) percent of the required BMR Units shall be restricted to occupancy by Very Low Income Households, at least thirty (30) percent of the required BMR Units shall be restricted to occupancy by Lower Income Households and up to thirty (30) percent of the required BMR Units shall be restricted to occupancy by Moderate Income Households. In the remainder of the City, at least fifty (50) percent of the required BMR Units shall be restricted to occupancy by Lower Income Households and up to fifty (50) percent of the required BMR Units shall be restricted to occupancy by Moderate Income Households. In determining the number of BMR Units required, any decimal fraction below .5 shall be rounded down to the nearest whole number and any decimal fraction .5 or above shall be rounded up to the nearest whole number.

c. **Exemptions.** The requirements of this article do not apply to:

1. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction takes place within three years of the date the structures were destroyed.

2. Residential Developments that already have or will have more units that qualify as BMR Units than this article requires.

Sec. 9-4.4703. FOR-SALE BMR UNITS.

a. **Price of Units.** The maximum sales price of a For-Sale BMR Unit shall be an Affordable Housing Cost approved by the City.

b. **Deed and Resale Restrictions.**

1. For-Sale BMR Units shall remain available at an Affordable Housing Cost to an Eligible Household for a minimum of 99 years. Resale controls shall be by legal agreement approved as to form by the City Attorney and shall be in the form of affordable housing covenants, deed restrictions, covenants and/or resale restriction and refinance limitation agreements. Such documents shall provide that the City has an option to purchase the For-Sale BMR Unit. The City's option to purchase may be assigned to a qualifying Eligible Household, a nonprofit housing organization, other government entity, or other entity that will ensure the continuation of the affordability of the BMR Unit.

2. In order to maintain the affordability of the For-Sale BMR Units constructed pursuant to this article, the purchase price paid by the each subsequent purchaser shall be limited to the lesser of:

A. the original purchase price, plus the percentage increase in Area Median Income from the date of original purchase, plus the cost of any capital improvement expenditures approved by the City and greater than one percent of the original purchase price, minus any costs necessary to bring the unit into conformity with City Building Regulations in the event that the occupant has allowed the unit to deteriorate due to deferred maintenance; or

B. the fair market value as determined by an appraiser approved by the City.

c. **Administration.** The City intends to contract with an outside agency, who shall be responsible for selection and qualification of buyers in accordance with City-approved policies. The Developer or subsequent seller shall pay all costs associated with buyer selection and qualification and sale of the For-Sale BMR Unit.

d. **Occupancy Restrictions.** For-Sale BMR Units shall only be occupied by their owners. Renting, leasing, subleasing or subletting shall not be permitted for more than two (2) months in any year. Violation of these occupancy restrictions will be grounds for termination of the occupancy.

Sec. 9-4.4704. RENTAL BMR UNITS.

a. **Rental Rates.** The maximum rent of a Rental BMR Unit shall be an Affordable Rent approved by the City.

b. **Rental Restrictions.** Rental BMR Units shall remain available at an Affordable Rent to an Eligible Household for a minimum of 99 years. Rent controls shall be by legal agreement approved as to form by the City Attorney and shall be in the form of affordable housing covenants, deed restrictions and/or covenants.

c. **Administration.** The rental of Rental BMR Units shall be administered according to City-approved policies by the Developer or a nonprofit housing organization, government entity or entity approved by the City.

Sec. 9-4.4705. BMR UNIT SIZE AND DESIGN.

a. **BMR Unit Requirements.** BMR Units shall:

1. have exterior design and appearance compatible with and substantially the same as Market Rate Units within the Residential Development, including landscaping;
2. be distributed throughout the Residential Development;
3. have similar access from the exterior as Market Rate Units;
4. contain proportionately the same or a larger number of bedrooms as Market Rate Units;
5. generally be of comparable size to similar Market Rate Units, although the size of BMR Units may be reduced if the project is in a very high or high density zone;
6. have access to all on-site amenities; and
7. be constructed prior to or concurrently with Market Rate Units in the Residential Development or applicable phase of the Residential Development.

b. **Interior Amenities.** Interior unit amenities, such as floor covering, appliances, and other fixtures, shall be specified within the BMR proposal submitted at the time of planning application, as required by Section 9-4.4709(a), and may differ from Market Rate Units, but must at a minimum be UL (Underwriters Laboratories) or AGA (American Gas Association) listed.

Sec. 9-4.4706. ALTERNATIVES. A Developer may propose an alternative means of complying with this article as set forth below. The Planning Commission may approve, conditionally approve or reject any alternative proposed by the Developer. The Planning Commission may only approve or conditionally approve a proposed alternative if the Planning Commission finds that the purposes of this article would be better served by implementation of the proposed alternative and that the proposed alternative meets the greatest community needs at that time.

a. **Off-Site Construction.** Off-site construction of BMR Units may be allowed if the Developer demonstrates, and the Planning Commission finds that on-site construction is infeasible. If allowed, off-site BMR Units shall be constructed within the City of Pacifica, shall be occupied prior to occupancy of the Residential Development, and shall be consistent and comply with the standards and requirements specified in this article.

b. **Land Dedication.** In lieu of building BMR Units, the Developer may dedicate land to the City suitable for the construction of BMR Units, provided that the Planning Commission reasonably determines that the land is of equivalent or greater value than the required BMR Units and that the land has the equivalent or greater development potential of the Residential Development.

c. **In-Lieu Fees.** For any Residential Development that is not located within the Redevelopment Project Area, Developer may pay the City an in-lieu fee. The in-lieu fee for each BMR Unit shall reflect the estimated cost to produce the unit and shall be set forth in a resolution adopted by the City Council. In-lieu fees shall be paid at the time a building permit is issued for the first Market Rate Unit to be developed within the Residential Development. In-lieu fees collected under this article shall be deposited into a housing trust fund and shall be used only for the purpose of providing funding assistance for the provision of affordable housing and reasonable administration costs.

d. **Combination.** Developer may propose any combination of on-site construction, off-site construction, land dedication and/or payment of in-lieu fees that at least equals the cost of providing the required BMR Units on-site.

Sec. 9-4.4707. INCENTIVES.

Developers of on-site BMR Units in accordance with the provisions of this article shall be entitled to a Density Bonus as specified in Article 41 of this chapter, and shall also be entitled to incentives as specified in 9-4.4104 of Article 41 of this chapter.

Sec. 9-4.4708. ELIGIBILITY REQUIREMENTS.

Only Eligible Households may occupy BMR Units. No Household may occupy a BMR Unit unless the City or its designee has approved the Household's eligibility in accordance with City-approved policies. Preference shall be given to persons residing or working within Pacifica.

Sec. 9-4.4709. COMPLIANCE.

a. **Application Process.** At the time of filing a planning application for a Residential Development subject to this article, the Developer shall provide, in addition to information specified elsewhere for the applicable planning permit(s), the following information:

1. The number of BMR Units proposed;
2. The unit sizes and the number of bedrooms per dwelling unit;
3. The location of the BMR Units;

4. The interior unit amenities which would differ from Market Rate Units, including, but not limited to, floor coverings, appliances, plumbing and electrical fixtures;

5. The schedule for production of BMR Units in phased Residential Developments; and

6. Any alternatives proposed to comply with this article, including reasons why the findings required to approve such an alternative can be met.

b. **Condition of Approval.** Approval of a proposal to meet the requirements of this article and recordation of any required affordable housing agreements and/or deed restrictions shall be a condition of approval of any Residential Development.

Sec. 9-4.4710. ADJUSTMENTS, WAIVERS.

a. **Process.** The requirements of this article may be waived, adjusted or reduced if the Developer shows that there is not a reasonable relationship between the impact of a proposed Residential Development and the requirements of this article or that applying the requirements of this article would take property in violation of the United States or California Constitutions. Such a request shall be made in writing and filed with the City Manager at the time of submittal of an initial application for approval of the Residential Development and/or as part of any appeal that the City provides as part of the process of approval. The request shall state completely and in detail: (i) the requested waiver, adjustment or reduction of the requirements, (ii) the factual basis for the request, and (iii) the legal basis of this request. The City Manager, in consultation with the City Attorney, shall consider the request and render a decision in writing within thirty (30) days. If the City Manager determines that the requirements of this article lack a reasonable relationship to the impact of a proposed Residential Development on demand for affordable housing in the City or that those requirements constitute a taking in violation of the United States or California Constitutions, the requirements of this article shall be modified, adjusted or waived to the extent necessary to avoid an unconstitutional result or illegal outcome. If the City Manager determines that no violation of the United States or California Constitutions would occur through application of this article, the requirements of this article shall remain applicable unless the City Manager's determination is overruled or modified by the City Council on appeal.

b. **Appeal Procedure.** A decision of the City Manager on a request for a reduction or waiver pursuant to subsection (a) above shall be appealable in accordance with this section. A person seeking judicial review of a decision shall first complete an appeal under this section. Any person wishing to appeal a decision of the City Manager shall file an appeal to the City Council in writing with the City Clerk not later than ten (10) days from the date of the written decision of the City Manager. The written appeal shall state completely and in detail the factual and legal grounds for the appeal. The City Council shall consider the appeal at a public hearing within sixty (60) days after the filing of the request. The decision of the City Council is final.

c. **Fee for Adjustment Request or Appeal.** The cost of the request for adjustment or waiver of the requirements of this article and appeal shall be borne by the applicant in an amount set forth in a resolution adopted by the City Council.

Sec. 9-4.4711. HILLSIDE PRESERVATION AND B-LOT SIZE OVERLAY DISTRICTS.

Nothing in this article is intended to nor shall it supersede the provisions of the Hillside Preservation District (HPD) or B-Lot Size Overlay District (B-District). Residential Developments located within HPD and/or B-District land that provide BMR Units in accordance with this article shall be subject to all regulations and standards of article 22.5, regarding the HPD district, including applicable lot coverage limitations, and article 20, regarding the B-District.

Sec. 9-4.4712. ENFORCEMENT.

a. **Penalty for Violation.** It shall be a misdemeanor to violate any provision of this article. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person a BMR Unit under this article at a price or rent exceeding the maximum allowed under this article or to sell or rent a BMR Unit to a household that does not qualify under this article. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of a BMR Unit to obtain occupancy of housing for which he or she is not eligible.

b. **Legal Action.** The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this article. Failure of any official or agency to fulfill the requirements of this article shall not excuse any person, owner, household or other party from the requirements of this article.

SECTION III. SEVERABILITY. It is the intent of the City Council of the City of Pacifica to supplement applicable state and federal law and not to duplicate or contradict such law and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Pacifica hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION IV. EFFECTIVE DATE. This Ordinance shall take effect thirty days after it is adopted.

SECTION V. PUBLICATION. The City Clerk shall cause this Ordinance to be published once within fifteen (15) days after its passage in the Pacifica Tribune, a newspaper of general circulation, published and circulated in the City of Pacifica in accordance with California Government Code Section 36933, and shall cause this Ordinance to be entered into the Pacifica Municipal Code.

The foregoing Ordinance was introduced on _____ and passed and adopted at a regular meeting of the City Council of the City of Pacifica held on the _____ day of _____, 2006, by the following vote:

AYES, Councilmembers:
NOES, Councilmembers:
ABSENT, Councilmembers:
ABSTAIN, Councilmembers:

APPROVED AND ADOPTED by the City Council and signed by the Mayor and attested by the City Clerk this _____ day of _____, 2006.

Sue Digre
Mayor

ATTEST:

Kathy O'Connell
City Clerk

APPROVED AS TO FORM:

Cecilia M. Quick
City Attorney