

Novato, Ca Municipal Code: Affordable and Inclusionary Housing

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Chapter XIX Zoning

Article 3. Site Planning and General Development Standards

19-24 Affordable Housing Requirements

19-24.010 Purpose

19-24.020 Findings

19-24.030 General Requirements for Provision of Affordable Units

19-24.040 Affordable Unit Requirements for Rental Developments

19-24.050 Affordable Unit Requirements for Ownership Developments

19-24.060 Affordable Unit Requirements for Land Subdivisions

19-24.070 Household Eligibility Requirements

19-24.080 Control of Resale

19-24.090 In-Lieu Participation Fees

19-24.100 Land Dedication

19-24.110 Availability of Government Subsidies

19-24.120 Density Bonus

19-24.130 Low and Very Low Income Housing Density Bonus

19-24.140 State-Mandated Density Bonus

19-24.150 Preliminary Proposal under Government Code Section 65915

19-24.160 Fee Waiver and Other Inducements for Affordable Units

19-24.170 Enforcement

19-24.180 Appeals

19-24.190 Annual Report

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Article 3. Site Planning and General Development Standards

19-24 Affordable Housing Requirements

19.24.010 Purpose. The purpose of this section is to enhance the public welfare and ensure that further housing developments contribute to the attainment of the city's housing goals by increasing the production of units affordable by households of very low and low income, and additionally stimulating funds for development of very low and low income housing. (Ord. No. 1441 § 2(A))

19.24.020 Findings. The council finds that the citizens of the city are experiencing a housing shortage for very low and low income households. A goal of the city is to achieve a balanced community with housing available for households of a range of income levels. Increasingly, persons with very low and low incomes who work and/or live within the city are unable to locate housing at prices they can afford and are increasingly excluded from living in the city. Federal and state housing subsidy programs are not sufficient by themselves to satisfy the housing needs of very low, low and moderate income households. The city finds that the high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by very low and low income households, and that continued new development which does not include

lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of developable land. The city further finds that the housing shortage for persons of very low and low incomes is detrimental to the public health, safety and welfare, and further that it is a public policy of the State of California as mandated by the requirements for a housing element of the general plan, to make available an adequate supply of housing for persons of all economic segments of the community. (Ord. No. 1441 § 2(A))

19.24.030 *General Requirements for Provision of Affordable Units.*

A. *Affordable Units or In-Lieu Fee Required.* All new residential construction or project shall provide up to 15 percent of the total number of dwelling units within the development as units affordable by low, or very low income households, or up to 15 percent of the total number of lots in the case of land subdivisions, for the development of affordable units. Fees may be paid in lieu of providing affordable units at the option of the developer, except as to those units proposed to be developed within a redevelopment project area in which case (1) the project may be exempt if subsection B of this section applies, or (2) whether the developer must pay said fees and/or develop affordable units shall be left to the discretion of the redevelopment agency. In the event the application of the required percentages produces a number which includes a fraction, the fractional portion of the affordable housing obligation can be satisfied by the payment of a proportional in-lieu fee, or by rounding up the fraction to the next whole number and providing that number of affordable housing units.

B. *Exempt Projects.* The provisions of this division (19.24) shall not apply to:

1. Housing constructed or rehabilitated within a redevelopment project area if the redevelopment agency of the City of Novato imposes its own affordability requirements for housing constructed or rehabilitated within the project area pursuant to Section 33413 of the Health and Safety Code.

2. Projects consisting, in whole or in part, of new or rehabilitated dwelling units developed by the city of Novato's Redevelopment Agency;

3. Projects within the boundaries of the Hamilton Field redevelopment project, as amended;

4. Projects for which vesting map applications have been filed and those applications were deemed complete prior to February 23, 1999, and projects subject to development agreements approved prior to February 23, 1999, to the extent the terms of said development agreements preclude application of this section 19.24.030.

5. Affordable unit requirements for residential care facilities for the elderly (section 19.34.060--Residential Care Facilities for the Elderly).

C. *Conditions of Approval.* Any development permit for a new residential unit or project shall have conditions attached that will ensure compliance with the provisions of

this section. The conditions shall specify the timing of in-lieu fees and/or the construction of the affordable units, the number of affordable units at appropriate price levels, provisions for income certification and a screening of potential purchasers and/or renters of affordable units, a resale control mechanism, and, if applicable, density bonuses. The conditions shall also require a written agreement to indicate the number, type, location, approximate size, and construction scheduling of all dwelling units and other reasonable information as required by the city for the purpose of determining the applicant's compliance with this section.

D. *Timing of Construction.* All affordable units in a project and phases of a project shall be constructed concurrently with, or prior to the construction of market rate units, unless extenuating circumstances exist as determined by the council.

E. *Limitation on Purchasers and Renters.* All affordable units shall be sold or rented to low or very low income households as certified by the Novato Redevelopment Agency.

F. *Required Features of Affordable Units.*

1. All affordable units:

a. Shall be reasonably dispersed throughout the project, where feasible;

b. Should contain on average the same number of bedrooms as the market rate units in the development; and

c. Shall be compatible with the design of the remaining units in terms of appearance, materials, and finished quality.

2. Upon a finding by the council that these features are not feasible or appropriate to a particular development project because of overall project size, density, character and location, accessibility to public transportation, proximity to retail and service establishments, or other similar facts, the council may waive all or any of them.

3. The applicant may reduce the interior amenity level or the habitable floor area of the affordable units below that of the market rate units provided the affordable units comply with all applicable building and housing code requirements.

G. *Transfer of Credit for Units.* The applicant may, with council approval, transfer credit for units constructed at one location within the city to any other location within the city to satisfy the requirements of this section. The affordable requirement may be satisfied with construction of units not more than 18 months prior to the approval of the project.

H. *Off-Site Construction of Affordable Units.* The council may authorize the applicant to construct the affordable units on a site or sites not contiguous with the project, provided that the council shall first find that:

1. The construction of the required affordable units is not feasible or appropriate as part of a larger development project because of factors including overall project size, density, character and location, accessibility to public transportation, and proximity to retail and service establishments; and
2. Construction of the off site affordable units will be consistent with the housing element of the general plan.

I. *Rental Units in Ownership Project.* The applicant may, in a home ownership project, construct rental units in a number sufficient to meet the affordable unit requirements of this section. These rental units shall be subject to section 19.24.040. The agency shall assist the applicant in obtaining available financing and/or subsidies for such a project.

(Ord. No. 1441 § 2(A); Ord. No. 1456 § 2(A))

19.24.040 *Affordable Unit Requirements for Rental Developments.*

A. *Number of Affordable Units Required.* In rental residential projects, 10 percent of the units shall be affordable rental units. The affordable rental units shall be offered at rent levels not exceeding 30 percent of gross income of households earning 60 percent of area median income. Where housing assistance rental subsidies are available, units shall be made available to very low income households. The housing unit rental prices shall be established by the city or its designee and shall be based on the number of bedrooms.

B. *Selection of Eligible Households.* The city or its designee shall screen applicants for the affordable rental units, and refer eligible households to the developer or owner. The developer or owner shall retain final discretion in the selection of the eligible households; provided, that the same rental terms and conditions (except rent levels and income) are applied to tenants of affordable units as are applied to all other tenants, except as to comply with government subsidy programs.

C. *Oversight of Transactions.* The agency shall be the designated authority on behalf of the city to require guarantees, enter into recorded agreements with developers, and take other appropriate steps necessary to assure that the required affordable rental units are provided and that they are rented to low, or very low income households. When this has been assured to the satisfaction of the agency, the agency director shall prepare a certification indicating that the developer has complied with the requirements of this section.

(Ord. No. 1441 § 2(A))

19.24.050 *Affordable Unit Requirements for Ownership Developments.*

A. *Number of affordable units required.* In ownership residential projects, 15 percent of the units shall be units affordable by households earning no more than 80 percent of

area median income. Affordable units should be sold to a range of households earning up to 80 percent of the area median income. The housing units sales prices shall be established by the City or its designee and shall be based on the number of bedrooms. This requirement will also be satisfied if 10 percent of the units are affordable by households earning 51 to 60 percent of the San Francisco Primary Metropolitan Statistical Area (PMSA) median income levels, or five percent are affordable by households earning 50 percent or less of PMSA median income level.

B. *Time Limit for Restricted Sales.* The applicant shall be required to offer to the agency or an agency-designated party all the affordable units that are required by this section for sale to eligible purchasers for a minimum of 90 days from the date of the permission to occupy. Sale and resale restrictions are removed in the event the agency does not complete the sale to an eligible purchaser (purchase contingent on a one percent of sales price refundable cash deposit and initiation of escrow within 30 days of submission of cash deposit) within 90 days from the date of project completion. The agency shall advise all prospective purchasers of the resale restriction applicable to affordable ownership units as specified in this section.

C. *Selection of Eligible Households.* The agency shall review the assets and income of prospective purchasers of the affordable ownership units on a project by project basis. The agency shall advertise the affordable units to the Novato general public. Upon notification of the availability of ownership units by the developer, the agency shall seek and screen qualified purchasers through a process involving applications and interviews. Where necessary, the agency shall hold a lottery to select purchasers. In general, the selection process shall give preference to city public employees, city employees and city residents.

(Ord. No. 1441 § 2(A))

19.24.060 Affordable Unit Requirements for Land Subdivisions.

In land subdivisions, 15 percent of the developable lots or their equivalent shall be set aside for immediate or future development of affordable units. The lots set aside may be developed by the applicant or another profit or nonprofit developer, private or public, or deeded to the city or agency. The units built on these parcels may be rental or owner occupied, and shall conform to the requirements set forth in the appropriate sections of this section. The method of providing affordable units from land subdivisions shall be specified in the conditions of approval of each such land subdivision. (Ord. No. 1441 § 2(A))

19.24.070 Household Eligibility Requirements.

A. In establishing household income categories, the agency or its designee shall consider, among other things, the median household income data provided periodically by HUD, household size and number of dependents, and all sources of household income and assets.

B. Every purchaser of an affordable dwelling unit shall certify by a form acceptable to the agency that the unit is being purchased for the purchaser's primary place of

residence. The agency shall verify this certification. Failure, by the purchaser, to maintain eligibility for homeowners property tax exemption shall be construed to mean that the affordable unit is not the primary place of residence of the purchaser.

C. The policies governing the selection of home buyers for certification by the agency under the provisions of this section shall be established by the agency. These shall include, but not be limited to, maximum income and asset limits, order of preference and policy on first-time home buyers. The most recently established criteria shall be used by the agency in structuring the lottery.

(Ord. No. 1441 § 2(A))

19.24.080 *Control of Resale.*

A. In order to maintain the availability of the affordable housing units as may be constructed pursuant to the requirements of this section, the agency shall impose the following resale conditions. The price received by the seller of an affordable unit shall be limited to the purchase price plus an increase based on the Bay Area Consumer Price Index, an amount consistent with the increase in the median income since the date of purchase, or the fair market value, whichever is less. Prior to offering an affordable housing unit for sale, seller shall provide written notice of intent to sell to the agency. Said notice shall be provided by certified mail to the executive director of the agency.

B. Home ownership affordable units constructed, offered for sale, or sold under the requirements of this section shall be offered to the agency or its assignee for a period of at least 90 days from the date of the notice of intent to sell is delivered to the agency by the first purchaser or subsequent purchaser(s). Home ownership affordable units shall be sold and resold from the date of the original sale only to households as determined to be eligible for affordable units by the agency according to the requirements of this section. The seller shall not levy or charge any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.

C. The owners of any affordable unit shall attach and legally reference in the grant deed conveying title of any such affordable ownership unit a declaration of restrictions provided by the agency, stating the restrictions imposed pursuant to this section. The grant deed shall afford the grantor and the agency the right to enforce the attached declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions as required by this section.

D. The agency shall monitor the resale of ownership affordable units. The agency or its designee shall have a ninety-day option to commence purchase of ownership affordable units after the owner gives notification of intent to sell. Any abuse in the resale provisions shall be referred to the agency for appropriate action.

(Ord. No. 1441 § 2(A))

19.24.090 *In-Lieu Participation Fees.*

A. In-lieu fees may be appropriate for particular developments not suitable for affordable units due to factors such as, but not limited to, location, development density, accessibility to public transportation, environmental conditions, or in cases where the affordable requirement includes a decimal fraction of a unit and a combination of both affordable units and in-lieu fees is required to fulfill the affordable requirement. These in-lieu fees shall be used by the city or its designee for the purpose of developing affordable housing for low and very low income households elsewhere in the city.

B. In-lieu fees may be paid in lieu of construction of affordable units at the option of developer.

C. The in-lieu participation fees for all residential development shall be paid prior to the issuance of the first building permit for the project. The amount of in-lieu fees shall be established by resolution of the council. The in-lieu fee shall be adjusted periodically to reflect changes in the Consumer Price Index (CPI), and may also be adjusted as necessary for changing conditions in the city.

(Ord. No. 1441 § 2(A))

19.24.100 Land Dedication. An applicant may dedicate land to the city or a nonprofit entity or agency approved by the city in place of actual construction of affordable units upon the approval of the council. The intent of allowing a land dedication option is to provide the land needed to make affordable housing development feasible, thus furthering the intent of this chapter.

The dedicated land shall be appropriately zoned, buildable, free of toxic substances and contaminated soils, and large enough to accommodate the number of affordable units required for the project. The city may as a condition of acceptance of land dedication require that the lots be fully improved, with infrastructure, adjacent utilities, grading and fees paid. (Ord. No. 1441 § 2(A))

19.24.110 Availability of Government Subsidies. It is the intent of this division that the requirements for units affordable by very low and low income households shall not be determined by the availability of government subsidies. This is not to preclude the use of these programs or subsidies. This division is also not intended to be an undue burden on the developers of residential projects. Therefore, as detailed in succeeding sections of this division, incentives are given to provide affordable units. (Ord. No. 1441 § 2(A))

19.24.120 Density Bonus. In order to encourage the production of affordable housing, the city may grant an increase in density up to 10 percent in a proposed residential project or land subdivision; provided, that the resultant project density (including the density bonus) conforms to all applicable general plan policies, including traffic standards, environmental standards and general plan designations. Granting of a density bonus shall be based on a project-by-project analysis and determination that such an increase in density will not be detrimental to the public health, safety and/or welfare. This density bonus is exclusive of and not a substitute for other density bonus(es) and may not be combined with another density bonus. (Ord. No. 1441 § 2(A))

19.24.130 *Low and Very Low Income Housing Density Bonus.* The city may allow an increase in density up to 25 percent above the otherwise maximum allowable density for rental residential developments in which one hundred percent of the units are affordable to low income households or fifty percent of the units are affordable to very low income households, if the proposed density (including the density bonus) conforms to all applicable general plan policies, including traffic standards, environmental standards and general plan designations. The density bonus shall decrease proportionately as the percentage of low or very low income units decreases. A density bonus granted under this section shall be in addition to the density bonus granted in compliance with Government Code Section 65915. Granting of a density bonus shall be based on a project-by-project analysis and determination that such an -increase in density will not be detrimental to the public health, safety and/or welfare. (Ord. No. 1441 § 2(A))

19.24.140 *State-Mandated Density Bonus.* This section establishes procedures in compliance with Government Code Section 65915, which requires density bonuses for affordable housing projects.

A. *Eligible Projects.* The city shall grant a density bonus of at least 25 percent and an additional concession or incentive, or financially equivalent incentives, to a developer of a housing development agreeing to construct at least:

1. Twenty percent of the units for lower-income households, as defined in Section 50079.5 of the Health and Safety Code; or
2. Ten percent of the units for very low income households, as defined in Section 50105 of the Health and Safety Code; or
3. Fifty percent of the units for qualifying residents, as defined in Section 51.2 of the Civil Code.

B. *Extent of Bonus.* For the purposes of this section, "density bonus" means a density increase of at least 25 percent over the otherwise maximum allowable residential density under the applicable zoning district as of the date of application by the developer to the city. The density bonus units shall not be included when determining the number of housing units which is equal to 10 or 20 percent of the total.

C. *Concessions or Incentives.* For the purposes of this section, "an additional concession or incentive" means any one of the following:

1. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required;

2. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial or other land uses will reduce the cost of the housing development and if the commercial, office, industrial or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located;

3. Other regulatory incentives or concessions proposed by the developer or agency which result in identifiable cost reductions.

D. *Off-Site Construction.* The city at its sole discretion, may allow a developer seeking a density bonus under Section 65915 of the Government Code to construct the bonus units and/or housing units for families of low or very low income households on a site or sites other than the one on which the housing development is proposed and for which a density bonus is sought. If such a proposal is approved by the city, no additional density bonus will be allowed on the off-site parcel.

E. *Alternative Means of Compliance.* If a developer meets the requirements for housing for low or moderate income families or for lower income households under Section 65915 of the Government Code, the developer will not be subject to the requirements of this section with respect to the requirements to provide affordable housing units or in-lieu fees. The affordable units requirements for land subdivisions of this section will continue to apply.

F. *Sale, Rental, and Resale.* The sale, rental, household selection and resale of units provided under Government Code Section 65915 shall be administered according to the provisions of this section.

(Ord. No. 1441 § 2(A))

19.24.150 Preliminary Proposal under Government Code Section 65915.

A. If a developer submits a preliminary proposal for the development of housing under Government Code Section 65915 or for other incentives of equivalent financial value (including but not limited to relief from park, open space and roadway improvements, etc.), the planning commission shall hold a noticed public hearing, shall make a determination on the proposal within 90 days of receipt of the proposal based upon the preliminary evaluation, and shall notify the housing developer in writing of the manner in which the city will comply with the Government Code Section 65915. The determination shall state whether the city will grant an additional incentive or make written findings that the additional incentive is unnecessary for affordability of the target units. The determination may be subject to change based on environmental review for a formal application for development as required by the California Environmental Quality Act. In any event the total number of units to be approved shall be consistent with Environmental Review and General Plan policies. The decision of the planning commission may be appealed to the council within five working days.

B. A preliminary proposal for development of housing or for other incentives of equivalent financial value under Government Code Section 65915 shall include the following information:

1. Assessor's parcel number and location and number of units of proposed housing development;
2. Assessor's parcel number and location of off-site low and/or moderate income units (if applicable);
3. Estimated value of density bonus;
4. Request itemizing incentives of equivalent financial value (if applicable).

C. If a proposal for housing development (i.e., subdivision or master plan), is submitted as part of a formal development application, the commission may request the developer to waive the requirement for a determination on the proposal within 90 days and, if the request is granted, may review the housing proposal as part of the formal development application.

(Ord. No. 1441 § 2(A))

19.24.160 Fee Waiver and Other Inducements for Affordable Units.

A. In the attempt to feasibly provide low or very low income affordable units, the city may waive or reduce park dedication and other fees applicable to the affordable units of a proposed housing development.

B. The city may also provide priority processing and other reasonable regulatory relief through waivers and variances as it deems appropriate to encourage development of affordable housing.

(Ord. No. 1441 § 2(A))

19.24.170 Enforcement.

A. The provisions of this section shall apply to all agents, successors and assignees of an applicant once only for development of any project. No building permit or occupancy permit shall be issued, nor any development approval granted, which does not meet the requirements of this section.

B. In addition to, or in lieu of, the provisions of subsection A of this section, the city shall institute appropriate legal actions or proceedings for the enforcement of this section.

C. Any person, firm or corporation, whether as principal agent, employee or otherwise, violating or causing the violation of any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by a fine of not more than five hundred (\$500.00) dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both fine and imprisonment. Such person, firm or corporation shall be deemed to be guilty of a separate offense for

each and every day during any portion of which any violation of this section is commenced, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

(Ord. No. 1441 § 2(A))

19.24.180 Appeals.

A. Any person aggrieved by any action involving denial, suspension or revocation of a building or occupancy permit or denial, suspension or revocation of any development approval may appeal such action or determination to the council.

B. Any applicant or other person who contends that his\her interests are adversely affected by any determination or requirement in regard to this section may appeal to the council. The appeal shall set forth specifically wherein the action fails to conform to the provisions of this section thereby adversely affecting the applicant's interests. The council may reverse or modify any determination or requirement if it finds that the action under appeal does not conform with the provisions of this section.

(Ord. No. 1441 § 2(A))

19.24.190 Annual Report. The agency shall prepare an annual report to the council on the status of the affordable units constructed under the provisions of this section. The report shall include the number, size, type, tenure, and general location of the affordable units as well as the number of resales and rental vacancy rate. The report shall provide a basis for an evaluation of the overall effectiveness of this section. (Ord. No. 1441 § 2(A))