

Chapter 17.36 – Inclusionary Housing Program

17.36.010 – Chapter Title

The Ordinance codified in this chapter shall be known and may be cited as the "Inclusionary Housing Program" of the City of Hollister.

17.36.020 – Purpose

The purpose of this Inclusionary Housing Program is to:

- A. Enhance the public welfare by facilitating the development of housing affordable to households of Very Low, Low, and Moderate Income.
- B. ~~To e~~Ensure that future residential development is consistent with housing policies of the State of California and the City of Hollister.
- C. ~~To e~~Ensure that each Residential Development Project complies with the requirements of this Chapter and is consistent with the city's housing goals of developing affordable housing opportunities, creating diverse housing opportunities for existing and future residents, and maintaining economic diversity and geographically dispersed affordable housing.

17.36.030 – Definitions

- A. *Accessory Dwelling Unit (ADU)* shall have the same meaning as defined under Section 65852.2(j) of the Government Code and shall mean an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling. An ADU also includes an efficiency unit and a manufactured home, provided it is built on a permanent foundation. An ADU may be located within an existing attached or detached garage, shed, barn or other accessory structure.
- B. *Administrator* shall mean the Inclusionary Housing Program Administrator, which shall either be the ~~C~~city itself or a third-party administrator acting as an agent for the ~~C~~city in connection with all aspects of the operation of the Inclusionary Housing Program pursuant to an Agreement entered into between the ~~C~~city and the Administrator, as such agreement may be amended or replaced from time to time.
- C. *Affordable Dwelling Unit* shall mean, for the purposes of this Chapter, a dwelling unit affordable to households earning at or below 120 percent of the county median income, including units that are affordable to Very Low, Low, and Moderate Income Households.
- D. *Attached Single-Family Dwelling Unit* for the purposes of this Chapter shall mean a single-family dwelling unit having one or more walls attached to and in common with one or more single-family dwellings, with each dwelling unit on a separate parcel.

- E. *Density Bonus* shall mean a density increase over the otherwise maximum allowable density on a site, ~~as may be permitted by the City of Hollister in Chapter 17.34, Density Bonus (referred to as the "Local Bonus" in this Chapter, or~~ pursuant to California Government Code Section 65915 and Article 15.04.602 (referred to as the "State Bonus" in this Chapter), or for any other reason.
- F. *Detached Single-Family Dwelling Unit* shall mean a dwelling unit intended for use by a single household and not attached to any other building.
- G. *For-Sale Residential Development Project* shall mean a Residential Development Project that includes the creation of one or more new dwelling units that may be sold individually. A For-Sale Residential Development Project also includes the conversion of a residential rental development to a residential ownership development.
- H. *Inclusionary Unit* shall mean a dwelling unit intended for sale or rent that is required by Article 17.36.050 to be affordable to Very Low, Low, or Moderate Income Households.
- I. *Low Income Household* shall mean a household whose income does not exceed the low income limits applicable to San Benito County as defined in California Health and Safety Code Section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 by the California Department of Housing and Community Development.
- J. *Market Rate Unit* shall mean a new dwelling unit in a Residential Development Project that is not an Affordable Dwelling Unit.
- K. *Moderate Income Household* shall mean a household whose income does not exceed the moderate income limits applicable to San Benito County as defined in California Health and Safety Code Section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 by the California Department of Housing and Community Development.
- L. *Multi-Family Unit* shall mean a residential unit intended for the use of a single household that is part of a larger building having one or more walls attached to and in common with other residential units.
- M. *Physical Needs Assessment* shall mean a report by a qualified housing professional identifying necessary repairs, replacements and maintenance at the time of the assessment or that will likely require repair or replacement within three years of the assessment, and the estimated cost of all such items, which repair replacement and maintenance must be completed prior to the approval of the unit as an Inclusionary Unit. For the purposes of this Chapter, a "qualified housing professional" is a firm approved for that purpose by the California Housing Finance Agency.
- N. *Rental Residential Development Project* shall mean a Residential Development Project that creates one or more dwelling units that cannot be lawfully sold individually in conformance with the Subdivision Map Act.
- O. *Residential Development Project* shall mean a development for which a discretionary approval or building permit is required for a residential development that includes the creation of one or more new dwelling units, conversion of nonresidential uses to dwelling units, or the conversion of a use from a Rental Residential Development Project to a For-Sale Residential Development Project.

- P. *Unit Type* shall mean the type of dwelling unit, either Attached Single-Family Dwelling Unit, Detached Single-Family Dwelling Unit, or Multi-Family Unit.
- Q. *Very Low Income Household* shall mean a household whose income does not exceed the very low income limits applicable to San Benito County as defined in California Health and Safety Code Section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 by the California Department of Housing and Community Development.
- R. *Vesting Tentative Map* shall mean a map which confers certain vested rights to proceed with development for a specified period of time after recordation.

17.36.040 – Effective Date and Inclusionary Housing Requirement Applicability

- A. *Applicability.* All For-Sale and Rental Residential Development Projects that consist of 10 or more units built anywhere in the City of Hollister shall comply with the requirements of this chapter.
- B. *Exemptions.* The provisions of this chapter shall not apply to the following projects:
 1. Accessory Dwelling Units.
 2. Residential Development Projects with less than 10 dwelling units.
 3. Residential Development Projects on property with vested rights in effect on the effective date of this chapter, including:
 - a. Property that is part of a Vesting Tentative Map.
 - b. Development that is part of an existing development agreement with the City.
 4. Residential Development Projects that have submitted a complete planning or building permit application along with the full payment of required application fees to the city prior to the effective date of this ordinance, provided that such Residential Development Projects shall comply with any approved affordable housing plan and any predecessor ordinance applicable to the development.
 5. Residential Development Projects exempted by California Government Code Section 66474.2 or 66498.1, provided that such Residential Development Projects shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was determined to be complete.
 6. Residential Development Projects exempted by another state law or by final judgement of a court of competent jurisdiction.

17.36.050 – Inclusionary Housing Requirements

All new applicable Residential Development Projects shall include Inclusionary Units. Calculations of the number of Inclusionary Units shall be based on the number of dwelling units in the Residential Development Project, without regard to any density bonus units ~~as defined in this chapter~~ provided pursuant to State Bonus. All required Inclusionary Units shall be built on the same site as the Residential Development Project.

- A. *Inclusionary Requirement.* Twenty Fifteen percent of all new Residential Development Projects shall be Inclusionary Units. The Twenty fifteen percent total shall be achieved using the following allowable ranges of affordability:
 - 1. At least 7 seven percent of the dwelling units shall be affordable to Very Low Income Households.
 - 2. At least 7 five percent of the dwelling units shall be affordable to either Very Low Income or Low Income Households.
 - 3. At least 6 three percent of the dwelling units shall be affordable to either Very Low Income, Low Income or Moderate Income Households.
- B. *Fractional Units.* When the application of the percentages specified in Section 17.36.0560.A results in a number that includes a fraction equal to one-halfquarter (0.25) or more, the fraction shall be rounded to the next higher whole number. In that event an additional Inclusionary Unit shall be provided. If the result includes a fraction less than one-halfquarter (0.25), ~~the developer shall have the option of rounding up to the next whole number and providing the Inclusionary Unit or paying a fee in lieu of providing an additional Inclusionary Unit. The amount of the fractional in lieu fee shall be calculated as provided in Section 17.36.060~~ the fraction shall be rounded down. In that event no additional Inclusionary Unit shall be required.
- C. *State Density Program.* Any Inclusionary Units provided on site in compliance with this chapter may be used to qualify for a density bonus under ~~Chapter 17.34, Density Bonus,~~ California Government Code Section 65915, or any ordinance implementing Government Code Section 65915.
- ~~D. *Local Incentives.* Projects subject to this ordinance shall be entitled to the Local Incentives described in Section 17.17.070.~~
- D. *Base for Inclusionary Requirement.* The number of Inclusionary ~~Housing u~~Units required for a project shall be based on the total number of dwelling units in the Residential Development Project prior to the addition of units under the State Bonus ~~or the additional Local Bonus.~~
- E. *Affordable Housing Agreement.* The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size, and construction schedule of all dwelling units as required to determine project compliance with the requirements of this chapter.
- F. *Construction Timing.* All Inclusionary Units shall be built prior to the full build-out of Market Rate Units in the same Residential Development Project. In phased developments, inclusionary units

shall be constructed and occupied in proportion to the number of Market Rate Units constructed and occupied in each phase.

1. A building permit may not be issued for any Market Rate Unit unless a proportional number of building ~~units~~ permits has been issued for ~~!~~Inclusionary ~~u~~Units.
2. A certificate of occupancy or final inspection may not be issued for Market Rate Units unless a proportional number of certificates of occupancy or final inspections have been issued for ~~!~~Inclusionary ~~u~~Units.

~~17.36.060 – Inclusionary Requirement In-Lieu Fees~~

~~As provided for in Sections 17.36.050.B and 17.36.050.C, a developer of a Rental Residential Development Project may pay a fee may in lieu of providing Inclusionary Units or to offset required fractional units below one-half (0.5) of a unit. A developer of a For-Sale Residential Development Project may only pay a fee to offset required fractional units below one-half (0.5) of a unit.~~

~~A. *Purpose.* This in-lieu fee is an option that may serve as an alternative to the provision of on-site inclusionary units as otherwise required by Section 17.36.050. Nothing in this chapter shall deem or be used to deem the in-lieu fee authorized in this section as an ad hoc exaction, as a mandated fee required as a condition to developing property, or as a fee subject to the analysis in Building Industry Association of Central California v. City of Patterson, 171 Cal.App.4th 886 (2009).~~

~~B. *Allowance.* In-lieu fees may be paid as follows:~~

- ~~1. *For-Sale Residential Development Projects.* The developer of a For-Sale Residential Development Project may pay an in-lieu fee only for fractional units when the number of required inclusionary units includes a fraction less than one-half.~~
- ~~2. *Rental Residential Development Projects.* The developer of a Rental Residential Development Project may pay an in-lieu fee for all or any portion of inclusionary units required, including fractional units.~~

~~C. *Amount.* In-lieu fees shall be set by resolution of the city council and shall be an amount sufficient to pay the proportionate cost of providing Inclusionary Units elsewhere in the city. The fee shall be periodically reviewed and updated by the city council. The amount of in-lieu fees shall be included in the City's master fee schedule and may be adjusted annually for inflation using an appropriate index, as determined by the city council.~~

~~D. *Timing of Payment.* Payment of in-lieu fees shall be due at the issuance of building permits for Rental Residential Development Project. For Rental Residential Development Projects constructed in phases, in-lieu fees shall be paid prior to issuance of each building permit in the proportion that the phase bears to the overall Rental Residential Development Project. Payment of a For-Sale fractional unit below one-half (0.5) of a unit shall be due prior to the issuance of building permits. The fees shall be calculated based on the fee schedule in effect at the time the permit is used.~~

~~E. — Use. The City shall use in-lieu fees paid under this chapter to support the development of new housing affordable to extremely low, very low, low, and moderate income households on sites in the City, and improve and preserve the existing supply of affordable housing in the City. In-lieu fees paid under this chapter may also be used to support appropriate Inclusionary Housing Program implementation and enforcement, provided the fees allocated toward these activities are established by city council resolution per Section 17.36.090.A.~~

~~F. — Management. All in-lieu fees and other monies on deposit with the City shall be separately accounted for and shall not be used for purposes not authorized by Section 17.36.060.~~

17.36.070 – Inclusionary Housing Incentives

~~The City of Hollister will grant the following incentives to the developer of a Residential Development Project that provides required inclusionary units:~~

~~A. — Density Bonus. A density bonus pursuant to Chapter 17.34, Density Bonus, of the Municipal Code, as follows:~~

~~1. — For Sale Residential Project: Up to 56% density bonus.~~

~~2. — Rental Residential Project: Up to 15% density bonus.~~

~~This bonus is in addition to the density bonus allowed for affordable housing projects under State law, and shall be calculated as a percentage of the base Residential Development Project. Under no circumstance shall the total of the total Density Bonus (including both the Local Bonus and the State Bonus) exceed 66% for For Sale Residential Projects and 40% for Rental Residential Projects, unless a greater Density Bonus is required by State law.~~

~~Modification of Zoning or Development Standards. The developer may be granted modifications to zoning and/or development standards as required to achieve the density bonus described in Section 17.36.070.A. Authority to act on a request for these development incentives shall rest with the final review authority regarding the underlying application.~~

17.36.060 – Alternative Compliance

Instead of providing on-site Affordable Dwelling Units as required by Section 17.36.050, developers of Residential Development Projects may fulfill the requirements of this Chapter using the following alternatives means:

A. Affordable Rental Units within For-Sale Residential Development Projects. All or a portion of the inclusionary housing requirement for a For-Sale Residential Development Project may be fulfilled by constructing as part of a For-Sale Residential Development Project the same or a greater number of rental units affordable to Very Low Income, Low Income and Moderate Income households in the proportions prescribed in Section 17.36.050. Provision of affordable rental units shall be allowed only if:

1. The rental units fulfill all standards in Section 17.36.070 of this Chapter; and

2. The rental units have at least the same number of bedrooms as the for-sale units which would have been required; or any deficiency in bedroom counts is offset by additional affordable rental units.
- B. Acquisition and Rehabilitation of Existing Units. An applicant may fulfill the inclusionary housing requirement by acquiring and rehabilitating existing Market Rate Units to become Inclusionary Units. Acquisition and rehabilitation of existing units in-lieu of construction of inclusionary housing requirements shall be allowed only if:
1. The city approves a Physical Needs Assessment performed by a qualified third-party housing professional approved by the city of each dwelling unit to be rehabilitated, the property upon which it is located, and any associated common areas; and all items identified in the Physical Needs Assessment as needing repair, replacement or maintenance are completed prior to the acceptance of the dwelling unit as an Inclusionary Unit.
 2. The value of the rehabilitation work is 25 percent or more than the value of the dwelling unit prior to rehabilitation, inclusive of land value, which shall be demonstrated through the Physical Needs Assessment described in Subsection 1 of this section.
 3. The applicant ensures that any residents residing in units to be rehabilitated find suitable replacement housing, and the applicant funds all noticing to and relocation of existing residents in the residential units to be rehabilitated.
 4. The site of the units to be rehabilitated is designated for a general plan land use and is zoned for residential development at a density to accommodate the rehabilitated affordable units.
 5. The use of the site with units to be rehabilitated does not constitute a nonconforming use.
 6. The city approves an analysis funded by the applicant and completed by a third-party consultant approved by the city and submitted at the time of development application submittal; which demonstrates the site with units to be rehabilitated is suitable for the required affordable housing development in terms of size, location, availability of sewer and water services, absence of toxins and other environmental constraints, site characteristics and surroundings.
 7. The rehabilitated units have at least the same number of bedrooms as the Inclusionary Units which would have been required; or any comparative deficiency in bedroom counts is offset by additional units beyond the number of Inclusionary Units required.
 8. The rehabilitation of the existing units and issuance of certificates of occupancy for such units are completed prior to or concurrently with the construction of and issuance of certificates of occupancy for the Market Rate Residential Development Project.

17.36.0870 - Inclusionary Unit Standards

The following standards shall apply to all Inclusionary Units built to satisfy the requirements of this chapter.

- A. Recipient Requirements. All inclusionary units shall be sold or rented to:
 - 1. Moderate Income, Low Income or Very Low Income Households;
 - 2. The City of Hollister or its designee.
- B. *Unit Type and Physical Quality.* The Unit Types of the Inclusionary Units within a Residential Development Project shall:
 - 1. Be built in the same proportion as the Market Rate Unit Types, ~~except as provided in Section 17.36.080.C and 17.36.080.D.~~
 - 2. Have an average square footage of at least 85 percent of Market Rate Units with the same bedroom count.
 - 3. Be developed with the same bedroom count ratio as the Market Rate Units.
 - 4. Have the same interior finishes and features as the Market Rate Units.
 - 5. Have the same exterior design and overall quality of construction as the Market Rate Units.
- C. For-Sale Single-Family Residential Development Projects may include affordable Attached Single-Family Dwelling Units in a proportion that constitutes more than the proportion of Attached Single-Family Dwelling Units in the overall project.
- D. Affordable Detached Single-Family Dwelling Units counted toward the inclusionary requirement may have smaller lots than Market Rate Detached Single-Family Dwelling Units in the same Residential Development Project, provided that all lot sizes are consistent with the lot size requirements of this Title 17 (Zoning).
- E. *Location.* All Inclusionary Units shall:
 - 1. Be built on the same site as the remainder of the Residential Development Project and be reasonably dispersed throughout the Residential Development Project to prevent a concentration of affordable units.
 - 2. Have the same access to common open space and shared facilities in the Residential Development Project as do the Market Rate Units.
 - 3. Be dispersed throughout the Residential Development Project.
- F. *Eligibility Screening.* The Administrator shall screen prospective buyers or renters of ~~affordable~~ **Inclusionary Units**. Buyers of ~~affordable~~ **Inclusionary Units** shall enter into an agreement with

the City. Occupants must be selected by means of an open, public process that ensures that individuals of a group of interested participants are selected in accordance with the City's ~~Live-Work Policy~~ adopted policies. Private selection of individuals by project owners is not permitted for any ~~affordable~~ Inclusionary Units.

G. *Ongoing Affordability of For-Sale Units.* In order to maintain the availability of For-Sale Inclusionary Units constructed pursuant to this chapter, the following requirements shall apply to Inclusionary Units, as documented through an affordable housing agreement, as prescribed in Section 17.36.0870.H, recorded against the property:

1. The affordable sales prices of for-sale Inclusionary Units shall be restricted to a period of thirty years pursuant to an affordable housing agreement recorded against the property and resets upon resale of the unit(s).
2. The owner shall occupy the Inclusionary Unit as the owner's principal place of residence within 60 days of the owner's receipt of a certificate of occupancy for the unit.
3. The owner shall reside in the Inclusionary Unit for at least 10 months out of each calendar year to be considered as occupying the Inclusionary Unit.
4. The owner shall not lease or rent the Inclusionary Unit or any portion of the Inclusionary Unit to another party. Any lease of the Inclusionary Unit or a portion of the Inclusionary Unit will constitute a default under the requirements of this chapter and the affordable housing agreement.

H. *Ongoing Affordability of Rental Units.* In order to maintain the availability of Inclusionary Units constructed pursuant to this chapter, rental Inclusionary Units shall remain affordable for fifty-five years, as documented through an affordable housing agreement, as prescribed in Section 17.36.0870.H, recorded against the property.

I. *Affordability Agreement Documentation.* The developer shall be required to execute standard documents, in a form approved by the city attorney, to ensure the continued affordability of the Inclusionary Units approved for each Residential Development Project. The documents may include, but are not limited to, Inclusionary Housing agreements, regulatory agreements, promissory notes, deeds of trust, resale restrictions, rights of first refusal, options to purchase, and/or other documents. The affordability documents shall be recorded against the Residential Development Project, all Inclusionary Units, and any site subject to the provisions of this chapter.

17.36.0930 – Implementation and Enforcement

- A. *Establishment of Guidelines by Resolution.* If it so desires, the city council may adopt inclusionary housing guidelines, by resolution, to assist in the implementation of this chapter.
- B. *Establishment of Administration Fees by Resolution.* The city council, by resolution, may establish fees for the ongoing administration and monitoring of the affordable units, which fees may be updated periodically, as required.

- C. *Enforcement.* The city attorney is authorized to enforce the provisions of this chapter and all **inclusionary affordable** housing agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deeds of trust and other requirements placed on Inclusionary Units by civil action and any other method permitted by law. The city may take such enforcement action as is authorized under this code and/or any other action authorized by law or by any regulatory document, restriction, or agreement executed under this chapter.

- D. *Project Approval Restrictions.* No permit, license, map, or other approval or entitlement for a Residential Development Project shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been satisfied.

- E. *Annual Monitoring.* Homeowners will receive an annual monitoring notice from the City to confirm the owner occupancy requirement and prohibitions against rental of the dwelling. The review will provide owners with an opportunity to become familiar with the guidelines of the Inclusionary Housing Program and any changes in adopted policies and procedures. For rental units, an annual monitoring notice from the City will be sent to all management agencies to confirm residents are eligible to affordable units.