



**STAFF REPORT  
CITY COUNCIL REGULAR MEETING AGENDA  
MEETING DATE: DECEMBER 4, 2023**

**SUBMITTED:** November 16, 2023  
**DEPARTMENT:** Planning  
**DEPARTMENT HEAD:** Christine Hopper, Development Services Director

**TITLE OF ITEM: ORDINANCE NO. 1243 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HOLLISTER APPROVING ZONING ORDINANCE AMENDMENT 2023-4 TO ADOPT CHAPTER 17.36 INCLUSIONARY HOUSING PROGRAM**

**BRIEF DESCRIPTION:** An ordinance to adopt a new Chapter 17.36, Inclusionary Housing Program, into the Zoning ordinance, which would require new residential development to provide a percentage of the total units as affordable housing units.

**RECOMMENDATION:** Introduce an ordinance to adopt Chapter 17.36 Inclusionary Housing Program, hold a public hearing, and schedule a second reading of the Ordinance for the December 18, 2023 City Council meeting.

**DEPARTMENT SUMMARY:** The City of Hollister has engaged with Placeworks, Inc. to prepare an Inclusionary Housing Ordinance which would require all for-sale and rental residential development projects to provide a percentage of affordable housing units as part of the development project.

The City Council considered the first reading of the ordinance at their regular meeting of May 1, 2023, where the Council directed that staff and Placeworks host an additional community outreach meeting and report back the findings during an additional City Council study session. The community outreach meeting was held on August 3, 2023, and City Council study session was held on September 11, 2023. The study session staff report and memo are provided as an attachment to this report, which summarized the results of the community outreach event.

At the September 11<sup>th</sup> study session, the City Council directed staff to make the following amendments to the draft ordinance:

- Reduce the required number of affordable units from 20% to 15% of the total number of units
- The 15% requirement should be split as follows: 7% very low income, 5% low income, and 3% moderate income
- Projects with less than 10 units are exempt from the program (no change)
- In-lieu fees will not be permitted for rental or for-sale housing projects
- Off-site construction will not be permitted
- Land dedication in-lieu of construction will not be permitted

Following the meeting, staff received a comment from Dennis Martin, attached, expressing concerns with the draft ordinance. The comment letter is provided as an attachment to this report. The comment letter also noted the following two sections of the Government Code, and expressed that the proposed ordinance may not be in compliance:

Government Code Section 65850

*The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:*

*(g) Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code. The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.*

Government Code Section 65589.8

*A local government which adopts a requirement in its housing element that a housing development contain a fixed percentage of affordable housing units shall permit a developer to satisfy all or a portion of that requirements by constructing rental housing at affordable monthly rents, as determined by the local government.*

*Nothing in this section shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, or policy requiring that any housing development contain a fixed percentage of affordable housing units.*

Staff have reviewed these sections and believes that the draft ordinance does not contain the required alternative compliance options as required by the government code. In order to meet these requirements, the ordinance must provide for the option to develop rental affordable units in an otherwise for-sale development project (Section 65589.8), and must provide at least one alternative means of compliance within the ordinance.

Staff have revised the draft ordinance to include the reduction in percentage of required affordable units in a development from 20% to 15% as directed by the City Council, as well as have proposed an alternative compliance option, described below.

Alternative Compliance

In the context of an inclusionary housing ordinance, alternative compliance means another method by which a development can be deemed to have satisfied the ordinance aside from development of the required affordable units on site, as part of the development project. Common alternative compliance options include in-lieu fees, off-site construction, land dedication, and acquisition and rehabilitation of existing units.

However, a jurisdiction could adopt any form of alternative compliance option(s) that they desired.

Based on the comments received from during the review of the draft ordinance and public meetings, staff is recommending the adoption of only one form of alternative compliance: acquisition and rehabilitation of existing units. As was heard during the meetings and public workshops on the inclusionary ordinance, there was a strong desire for inclusionary units to be built as part of the new development. This was both to add new units to the market, as well as to ensure that units would be spread throughout the community, rather than concentrated in any given area. As the ordinance was originally drafted, there were no means of alternative compliance, and only a fractional in-lieu fee was offered to account for rounding when calculating the number of units that would otherwise have been required by the ordinance. The draft ordinance has been revised in accordance with the City Council's direction to remove the fractional in-lieu fee, and instead provide policy direction to round the number of units down if the fraction is 0.25 or less, and round up if the number of units required results in a fraction greater than 0.25. As described above, in rereading the referenced sections of the government code, the ordinance should provide a rental alternative for for-sale projects, as well as at least one form of alternative compliance if a certain percentage of units is required. While the specific percentage is not proposed as policy within the Housing Element, it is proposed within the draft General Plan as a policy (to be modified to 15% based on current Council direction).

The alternative compliance method that is recommended by staff is to allow for a developer, in lieu of constructing new affordable units on site, to purchase and rehabilitate existing market rate units within the city, and make them available at restricted, affordable rents/sale prices. This option, while not directly resulting in additional housing stock within the city limits, will ensure that new affordable housing does become available at the time of new development. This addresses the concerns that arose during the review of the ordinance related to the desire for affordable housing to become available as new development occurs. Additionally, the option does not directly ensure that affordable housing does not become concentrated, but can help to make affordable housing available throughout the city where it does not currently exist through the rehabilitation of existing units. The majority of the city's existing housing is not available at affordable rates, so this alternative option can help to diversify the existing housing stock as new development occurs.

Other alternatives were considered, such as in-lieu fees, off-site construction, and land dedication. However, staff found that these alternatives were not in compliance with previous direction provided by the City Council, and the feedback received during the course of developing the ordinance. In-lieu fees, as was brought up by members of the public and City Council, often are insufficient and do not result in the direct construction of as many units as were intended by the payment of fees, especially taking into consideration inflation and costs associated with a public development project versus a private development project. Off-site construction and land dedication brought up concerns related to concentration of affordable housing in the community, rather than mixing affordable and market-rate housing throughout the city as new development occurs. Land dedication additionally bears a concern of funding affordable housing development on land after it becomes under city control; potentially resulting in lands

that are earmarked for affordable housing, but do not see development occur. For these reasons, staff is recommending that the City offer acquisition and rehabilitation of existing units as an alternative method of compliance within the Inclusionary Housing Ordinance, to ensure compliance with the government code.

In accordance with Section 17.02.120(C) of the Hollister Municipal Code, staff brought the revised draft ordinance before the Planning Commission on November 16, 2023 for their consideration of the proposed modifications to the ordinance. At the November 16, 2023 Planning Commission meeting the Planning Commission adopted Resolution 2023-36, recommending approval of the draft ordinance to the City Council with a change to modify the split of affordability to 5% moderate income, 5% low income, and 5% very-low income (Section 17.36.050(A) of the draft ordinance). The Planning Commission also requested that staff prepare a comparison analysis of nearby jurisdictions' inclusionary ordinances for City Council consideration (see attachment 7).

The draft ordinance currently contains the City Council's directed affordability split of 7% very-low income, 5% low income, and 3% moderate income. However, the Council could make a change to this section of the ordinance if they desired.

#### **CONCLUSION:**

The City of Hollister seeks to use the inclusionary ordinance as a tool to assist in the production of affordable housing. Inclusionary housing is not intended as a single solution to Hollister's affordable housing needs. Accomplishing state and local housing goals will require an additional combination of planning and zoning strategies, city policy decisions and regional coordination. However, an inclusionary housing program is one tool that will help the City to meet its RHNA (Regional Housing Needs Allocation), and is a goal in the General Plan Update. City of Hollister staff recommend that the City Council approve the following amendments to the draft Inclusionary Housing Ordinance (Section 17.36) of the Hollister Municipal Code:

- Reduction in the percentage of required affordable units in a development from 20% to 15%
- Remove in-lieu fees, and adopt a rounding methodology for fractional units
- Allow for-sale projects to construct the required affordable units as for-rent units
- Allow for acquisition and rehabilitation of existing units as an alternative compliance option

**FINANCIAL IMPACT:** Adoption of the Inclusionary Housing Ordinance will not have a direct financial impact.

**CEQA:** The proposed Zoning Ordinance amendments are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines because the proposed amendments will not result in any direct physical change to the City and therefore the proposed amendments are not a project under CEQA and are exempt from further review (CEQA Guidelines, Section 15378). Future development of a site will be subject to the requirements of CEQA.

#### **ATTACHMENTS:**

1. 1. 2023.09.11 CC Staff Report\_ZOA 2023-4\_Inclusionary Housing
2. 2. 2023.09.11 Study Session Attachment - Inclusionary Housing Workshop Memo
3. 3. 2023.05.01 CC Staff Report\_ZOA 2023-4\_Inclusionary Housing
4. 4. CityofHollister\_10.27.23\_InclusionaryStudy\_Dennis Martin
5. 5. Hollister IHO Comparative Analysis 10.20.23\_Dennis Martin
6. 6. Inclusionary Chapter\_Ordinance\_11.07.23\_Redline
7. 7. Inclusionary Housing Comparison
8. 8. Resolution 2023-36\_ZOA 2023-4\_IHO\_Unsigned\_Redline

**THIS REPORT WAS REVIEWED BY THE CITY MANAGER WHO CONCURS WITH  
THE STAFF RECOMMENDATION**



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David Mirrione, City Manager

## ORDINANCE NO. 1243

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HOLLISTER APPROVING ZONING ORDINANCE AMENDMENT 2023-4 TO ADOPT CHAPTER 17.36 INCLUSIONARY HOUSING PROGRAM

**WHEREAS**, the State of California requires local governments to plan to meet the housing needs of all income groups; specifically, “local and state governments have a responsibility to use the powers vested in them to facilitate the improvements and development of housing to make adequate provision for the housing needs of all economic segments of the community” pursuant to the State Government Code Section 65580; and

**WHEREAS**, the City Council has determined that there is a demand for affordable housing for very low, low, and moderate income households in the City of Hollister as documented in the City of Hollister Housing Element; and

**WHEREAS**, Housing Element Goal H4 of the General Plan requires the City to develop affordable housing opportunities in the City; furthermore, Policy H4 of the Housing Element requires the City to establish a program for increasing affordable housing in the City by requiring residential developers to provide a percentage of the units within a residential development to very low, low, and moderate income households; and

**WHEREAS**, on August 3, 2020 the City Council adopted Resolution 2020-147 accepting awarded grant funding from Housing and Community Development related to the Senate Bill 2: Building Homes and Jobs Act (SB2) planning grant program; and

**WHEREAS**, as part of the ongoing 2040 General Plan Update, the City Council at its regular meeting of June 21, 2021 discussed affordable housing within the City and potential inclusionary requirements, and directed staff to include a 20 percent affordability component as a recommended policy within the 2040 General Plan Update; and

**WHEREAS**, on November 1, 2021 the City Council, based on the recommended policy direction for the General Plan Update, directed staff to conduct a financial feasibility analysis and prepare an inclusionary ordinance which requires residential developers to include a 20 percent affordability component utilizing the awarded SB 2 Planning Grant funds; and

**WHEREAS**, on January 18, 2022 staff discussed the inclusionary ordinance with the City Council and the City Council reaffirmed that the inclusionary ordinance should be prepared which requires a 20 percent affordability component for all residential projects; and

**WHEREAS**, the Inclusionary Housing Program Financial Feasibility Analysis dated January 2023 was prepared by Placeworks; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on March 23, 2023 to review the new Chapter 17.36, Inclusionary Housing Program, during which all interested parties were heard and the commission adopted Resolution 2023-10 recommending adoption of the Inclusionary Housing Program to the City Council; and

**WHEREAS**, the City Council heard a first reading of the draft Chapter 17.36, Inclusionary Housing Program, during a duly noticed public hearing on May 1, 2023, and directed staff to hold an additional public outreach meeting and study session with the City Council to receive additional feedback on the draft ordinance; and

**WHEREAS**, a public outreach meeting was held on August 3, 2023 where interested parties were heard and feedback was received; and

**WHEREAS**, the City Council held a study session to discuss the draft ordinance on September 11, 2023, where they provided additional direction to staff for amendments to the draft ordinance, including a reduction in the percentage of affordable units required from 20% to 15%; and

**WHEREAS**, an inclusionary housing ordinance which requires 15% or less of the residential units in a development to be made affordable does not require the preparation of a financial feasibility analysis; and

**WHEREAS**, following the September 11, 2023 study session, staff and the City Council received a public comment which resulted in the need for additional changes to be considered within the draft ordinance; and

**WHEREAS**, Section 17.02.040 of the Hollister Municipal Code requires significant changes made to a proposed amendment to Title 17, Zoning, that are made after the Planning Commission has made a recommendation on an amendment should be brought back before the Planning Commission for reconsideration, prior to City Council consideration; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on November 16, 2023 to consider the amended draft Chapter 17.36, Inclusionary Housing Program, during which all interested parties were heard, and the Planning Commission adopted Resolution 2023-36 recommending approval of the draft ordinance to the City Council with a modification of the affordability split to 5% moderate income, 5% low income, and 5% very-low income; and

**WHEREAS**, the City Council held a duly noticed public hearing on December 4, 2023 to consider the amended draft Chapter 17.36, Inclusionary Housing Program, during which all interested parties were heard; and

**WHEREAS**, after closing the public hearing, the City Council determined to adopt Chapter 17.36, Inclusionary Housing Program; and

**WHEREAS**, the proposed Zoning Ordinance amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) because the proposed amendments will not result in any direct physical change to the City, and

therefore the proposed amendments are not a project under CEQA and are exempt from further review (CEQA Guidelines Section 15378).

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Hollister does hereby ordain as follows:

Title 17 is amended to add Chapter 17.36, Inclusionary Housing Program, to read as follows:

### **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. Ensure that future residential development is consistent with housing policies of the State of California and the City of Hollister.
- C. 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 city itself or a third-party administrator acting as an agent for

the city in connection with all aspects of the operation of the Inclusionary Housing Program pursuant to an Agreement entered into between the 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 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 provided pursuant to State Bonus. All required Inclusionary Units shall be built on the same site as the Residential Development Project.

- A. *Inclusionary Requirement.* Fifteen percent of all new Residential Development Projects shall be Inclusionary Units. The fifteen percent total shall be achieved using the following allowable ranges of affordability:
  1. At least seven percent of the dwelling units shall be affordable to Very Low Income Households.
  2. At least five percent of the dwelling units shall be affordable to either Very Low Income or Low Income Households.

3. At least 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 17.36.050.A results in a number that includes a fraction equal to one-quarter (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-quarter (0.25), 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 California Government Code Section 65915, or any ordinance implementing Government Code Section 65915.
  - D. *Base for Inclusionary Requirement.* The number of Inclusionary 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.
  - 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 permits has been issued for Inclusionary 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 Units.

### **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.

### **17.36.070 - 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.
  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 Inclusionary Units. Buyers of 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 adopted policies. Private selection of individuals by project owners is not permitted for any 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 17.36.070.I, 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 17.36.070.I, 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.

#### **17.36.080 – 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 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.

**INTRODUCED** at a regular City Council meeting on the 4<sup>th</sup> day of December, 2023.

**PASSED AND ADOPTED**, by the City Council of the City of Hollister at a Regular Meeting held this 4th day of December, 2023, by the following vote:

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Mia Casey, Mayor

ATTEST:

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Jennifer Woodworth, MMC, City Clerk

APPROVED AS TO FORM:

Lozano Smith Attorneys at Law

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Mary F. Lerner, City Attorney

I, JENNIFER WOODWORTH, MMC, City Clerk of the City of Hollister, do hereby certify that the attached Ordinance No. 1243 is an original Ordinance, or true and correct copy of a City Ordinance, duly adopted by the Council of the City of Hollister at a regular meeting of said Council held on the 4th day of December, 2023, at which meeting a quorum was present.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Hollister this City Council day of December, 2023.

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Jennifer Woodworth, MMC

City Clerk of the City of Hollister