



**STAFF REPORT
CITY COUNCIL REGULAR MEETING AGENDA
MEETING DATE: MAY 1, 2023**

SUBMITTED: April 13, 2023
DEPARTMENT: Planning
DEPARTMENT HEAD: Christine Hopper, Development Services Director

TITLE OF ITEM: ORDINANCE NO. 2033 AN ORDINANCE 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 20% affordable housing units on-site.

RECOMMENDATION: Staff recommends that the City Council 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 May 15, 2023 City Council meeting.

DEPARTMENT SUMMARY:

The City of Hollister has engaged with PlaceWorks to prepare the City's 2040 General Plan Update (GPU). In community discussions, City leaders discussed prioritizing the affordable housing stock in Hollister and developing strategies to facilitate the development of affordable housing units. One specific strategy discussed is the creation of an inclusionary housing ordinance to require all new residential development projects to include a percentage of affordable housing units. The City Council, based on recommendations from the General Plan Advisory Committee and Planning Commission, provided staff direction to incorporate an action item into the General Plan Update calling for the creation of a citywide inclusionary housing ordinance that requires all for-sale and rental residential development projects to provide 20% affordable housing units on-site.

In addition, the City of Hollister was awarded SB 2 Planning Grant funding, part of which was allocated for the creation of an inclusionary housing ordinance. With the policy direction that resulted from the ongoing GPU, Staff was directed by the City Council to establish an Inclusionary Housing Ordinance for the City of Hollister with a 20% affordability requirement, and to prepare a feasibility analysis to assess the potential impacts of that requirement on the financial feasibility of a range of development prototypes.

BACKGROUND:

Assembly Bill (AB) 1505 was enacted to ensure that inclusionary housing ordinances do not unduly constrain housing production or deprive developers of fair and reasonable returns on their investments. Per AB 1505, the California Department of Housing and Community Development (HCD) has the authority to review the financial feasibility analysis of a local inclusionary housing program if the program requires more than 15 percent of rental units to be restricted to households earning less than 80 percent of the area median income (AMI). AB 1505 also states that HCD may request review of the Feasibility Analysis if any of the following are true:

- The City failed to meet 75% RHNA over 5-year period; or

- The City failed to submit housing element for 2+ years.

As a result of AB 1505 and to ensure the City is meeting all State requirements, staff consulted with PlaceWorks to complete a financial feasibility analysis of the 20 percent inclusionary requirement directed by City Council, and to identify incentives required to offset potential financial constraints posed by the requirement. The financial feasibility analysis is based on a series of pro formas of five residential development “prototypes” that are representative of current development trends in Hollister. For each development prototype, the financial feasibility of a fully-market rate scenario is compared to the financial feasibility of a scenario that fulfills the 20% inclusionary requirement. The financial feasibility analysis also identifies strategies that are required to be implemented within the proposed ordinance in order to assure that the ordinance does not constrain development.

ANALYSIS:

Inclusionary Housing Program Financial Feasibility

Methodology

Feasibility studies for inclusionary housing ordinances determine the quantity of affordable housing units that proposed development project(s) can bear while remaining financially feasible. The financial impacts of an inclusionary housing requirement on a residential development project can be determined by comparing the difference between the financial performance of a fully market-rate development project to the same project that provides the required number of below-market rate (BMR) units, while also receiving any available density bonus and other allowed incentives.

Pro Forma

PlaceWorks prepared a series of pro forma financial analyses for each development prototype to identify whether, and how, a 20 percent affordability requirement could be supported by the market-rate components of the project. The pro formas rely on multi-year cash flow projections to achieve the most accurate evaluation of feasibility. PlaceWorks developed three for-sale and two for-rent housing development prototypes that reflect recent development patterns in Hollister. PlaceWorks developed these prototypes using multiple inputs to ensure they are representative of local development patterns and provide for the most accurate analysis possible within the limitations of a financial feasibility assessment.

The five analyzed prototypes are as shown:

- Prototype 1 For-Sale. Low-density single-family detached housing subdivision at a gross density of 4 dwelling units per acre.
- Prototype 2 For-Sale. Medium-density single-family detached housing subdivision at a gross density of 10 dwelling units per acre.
- Prototype 3 For-Sale. High-density stacked-flat condominium project comprising a four-story building with 12 residential units over tuck-under parking, for a gross density of 40 units per acre.
- Prototype 4 Rental. Medium-scale three-story apartment development at a density of 20 units per acre.

- Prototype 5 Rental. Larger-scale four-story apartment development at a density of 32 units per acre.

The financial feasibility of each development prototype was analyzed under three different scenarios. The industry-accepted metric of 15% Internal Rate of Return (IRR) was used to determine the feasibility of the for-sale prototypes; 6% Cash-on-Cash (COC) Yield was used for the rental projects:

1. Fully Market Rate Scenario. This scenario consists of a fully market rate development prototype, without the introduction of affordability requirements.
2. Inclusionary Scenario. Under this scenario, seven percent of the development prototype's housing units are dedicated to very low income households, seven percent to low income households, and six percent to moderate income households, for a total of 20 percent. This scenario also includes the maximum 25% State Density Bonus which is afforded for projects which provide seven percent very low income units.
3. Local Bonus Scenario. In all five development prototypes, the Inclusionary Scenario resulted in financial infeasibility. The Local Bonus Scenario was developed to identify the number of additional market-rate units beyond those allowed under state density bonus law, that would be needed to achieve financial feasibility with the inclusionary requirement. It is assumed this additional density would be facilitated by a locally adopted density bonus allowance.

Summary

Overall, the financial feasibility analysis found the Fully Market-Rate Scenarios of all five development prototypes were financially feasible. The for-sale prototypes achieved IRRs of 17 to 47%, while the rental prototypes demonstrated COC Yields at or above six percent. This is not surprising given they are based on current development patterns and reflect current market trends.

As noted above, the Inclusionary Scenarios of all five prototypes dropped to infeasible levels. For-sale projects showed IRRs of 6.3% to -19.4% and rental projects achieved COCs of 5.7% and 5.9%. This indicates that a 20% inclusionary requirement consisting of roughly equal proportions of very-low-, low- and moderate-income units will render residential development projects financially infeasible. The addition of units per State Density Bonus Law is not sufficient to offset that impact.

The results of the Local Bonus Scenario illustrate the additional density that would be required to bring the inclusionary projects to feasibility. This increase ranges from up to 15% for rental projects to up to 55% for smaller, for-sale projects. As such, the analysis finds that in order to ensure that a 20% inclusionary requirement does "unduly constrain" development, the City of Hollister should provide the additional ordinance components:

- A local density bonus allowance that goes beyond the required by State law.
- Increases in allowed site density to accommodate bonus densities.
- An in-lieu fee for rental housing projects, to meet State requirements for an alternative to on-site inclusionary housing provision in rental projects.

- An allowance for for-sale residential projects to include affordable attached single-family units in a proportion that constitutes more than the proportion of attached units in the overall project.
- An allowance for single-family detached residential units counted toward the inclusionary requirement to have smaller lots than single-family detached market-rate units in the same residential project.

Inclusionary Ordinance

The purpose of this Inclusionary Housing Ordinance is to enhance the public welfare by facilitating the development of housing affordable to households of very-low, low, and moderate income, and to ensure the utilization of developable land in the City of Hollister is compatible with State and local housing policies. Requiring inclusionary below market rate (BMR) units within each residential development project is consistent with the City's current Housing Element goals of developing affordable housing opportunities, creating diverse housing opportunities for existing and future residents, and maintaining economic diversity and geographically dispersed affordable housing.

Goals of the 2015-2023 Housing Element

Goal H4.1 promote a fair share of well-designed affordable and varied housing in all neighborhoods throughout the City.

Goal H4.4 of the 2015-2023 Housing Element establishes the primary intent to adopt an inclusionary housing policy around the year 2020.

Goal H4.6 focuses on establishing resale controls with future grant and inclusionary programs to ensure homes are maintained at an affordable rate through longer periods of time.

Key Provisions

Within the Inclusionary Ordinance is a set of key provisions as guidance to how the ordinance will be implemented on all future residential development projects.

As shown in Section 17.17.050 of the ordinance, the inclusionary requirements are broken into three income categories to equal the 20% inclusionary requirement with more emphasis is targeted to provide more very-low and low income units.

- At least seven percent of the dwelling units shall be affordable to Very Low Income Households.
- At least seven percent of the dwelling units shall be affordable to either Very Low Income or Low Income Households.
- At least six percent of the dwelling units shall be affordable to Moderate Income Households.

Project Size Exemption

The ordinance indicates residential project developments 10 units or less are not subject to the inclusionary ordinance. All residential development projects greater than 10 units are subject to the inclusionary ordinance and expected to provide 7% very-low, 7% low, and 6% moderate income units.

Location & Size of Inclusionary Units

All inclusionary units must demonstrate the following requirements:

- 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.
- Have the same access to common open space and shared facilities in the Residential Development Project as do the Market Rate Units.
- Be dispersed throughout the residential development project(s)

Fractional Units

If the number of for-sale and rentals inclusionary units result in a fractional unit equal to one-half (0.5) or more, the fraction shall be rounded to the next higher whole number and an additional Inclusionary Unit shall be provided. If the number of for-sale and rentals inclusionary units result in a fraction less than one-half (0.5), 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.

In-Lieu Fee

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.

In-Lieu Payments

A developer of a Rental Residential Development Project may pay a fee 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 and cannot pay a fee in lieu of providing Inclusionary Units.

Density Bonus

The City shall provide a density bonus of up to 56% for for-sale residential projects, and up to 15% for rental residential projects.

Timing of Payment

Payment of in-lieu fees shall be due at the issuance of building permits for the 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 the phase bears to the overall Rental Residential Development Project.

Unit Type & Physical Quality

- Be built in the same proportion as the Market Rate Unit Types, except as provided in Sections 17.17.080.C and 17.17.080.D.
- Have an average square footage of at least 85 percent of Market Rate Units with the same bedroom count.
- Be developed with the same bedroom count ratio as the Market Rate Units.
- Have the same interior finishes and features as the Market Rate Units.
- Have the same exterior design and overall quality of construction as the Market Rate Units.

Income Requirements & Resale Restrictions

The inclusionary program will require households purchasing an affordable unit qualify based on income and the sales price qualify as affordable to the household. Additionally, the city's ordinance will restrict future resales for a term of thirty (30) years, so the next purchasing household must also be income-qualified and the sales price represent an affordable housing payment for the purchasing household. If the home is sold within the term, the new homeowner will be subject to a full thirty (30) year affordability requirement.

Monitoring

Homeowners will receive an annual monitoring notice from the City to confirm the owner occupancy requirement and prohibitions against rental of the dwelling. 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.

PLANNING COMMISSION:

At the March 23, 2023 regular meeting of the City of Hollister Planning Commission, the Commission voted unanimously to adopt a resolution recommending approval of the draft ordinance to the City Council (Resolution 2023-10 attached). There were no proposed changes to the draft ordinance, and no members of the public provided comment during the public hearing.

The full presentation and discussion of the Inclusionary Housing Program can be viewed at the following link, beginning at the 1:17:38 timestamp.

<https://www.youtube.com/watch?v=k1Y450raoTw>

The presentation slides which were presented to the Planning Commission are also included as an attachment to this report.

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 and is discussed in the current Housing Element and a goal in the General Plan Update. City of

Hollister staff recommend the City Council to receive and accept the financial feasibility study. In addition to the study, provide staff direction on the adoption of the inclusionary housing ordinance Section 17.36 of the City of Hollister Municipal Code.

CITY COUNCIL OPTIONS:

The City Council can choose one of the following options:

1. Introduce the draft ordinance with the intention to approve a Zoning Ordinance Amendment to adopt Chapter 17.36, Inclusionary Housing Program, with the draft Chapter 17.36 included as Exhibit A and the Inclusionary Housing Program Financial Feasibility Analysis included as Exhibit B.
2. Introduce the draft ordinance with the intention to approve a Zoning Ordinance Amendment to adopt Chapter 17.36, Inclusionary Housing Program, with the draft Chapter 17.36 included as Exhibit A and the Inclusionary Housing Program Financial Feasibility Analysis included as Exhibit B with modifications by the City Council; or
3. Continue the hearing and direct staff to provide additional information or clarification.

Staff recommends the City Council select Option 1 for this Item.

FINANCIAL IMPACT: \$0

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. Exhibit A. DRAFT_IH_FFA_3.15.23
2. Attachment 1. Resolution 2023-10_ZOA 2023-4_Inclusionary Housing
3. Attachment 2. 3.23.23_Hollister PC_Pres_Inclusionary Housing

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



David Mirrione, Interim City Manager

ORDINANCE NO. 2033

AN ORDINANCE 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 improvement 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 H.4 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 June 21, 2021 discussed affordable housing within the City and potential inclusionary requirements and directed Staff 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 award SB 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 is included to this Resolution as Exhibit A; and

WHEREAS, the Inclusionary Housing Program Financial Feasibility Analysis used, appropriate methodology to compare the difference between the financial performance of a fully market-rate development project and one that provides the required number of below-market rate (BMR) units while also receiving any available density bonus and other allowed incentives; and

WHEREAS, the Inclusionary Housing Program Financial Feasibility Analysis finds that a 20% inclusionary requirement for for-sale and rental residential projects, consisting of roughly equal proportions of very-low-, low- and moderate-income unit, is financially feasible if the City of Hollister provides additional incentives to the developer as defined in the Inclusionary Housing Program Financial Feasibility Analysis; and

WHEREAS, based on policy direction for the 2040 General Plan Update from the General Plan Advisory Committee (GPAC), Planning Commission, City Council, and the results of the Inclusionary Housing Program Financial Feasibility Analysis, Staff has prepared Draft Chapter 17.36, Inclusionary Housing Program, which requires a 20 percent affordability component for all residential developments over 10 units and includes additional incentives, as recommended in the Inclusionary Housing Program Financial Feasibility Analysis, to ensure financial feasibility of the inclusionary requirement; 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

WHEREAS, after closing the public hearing the Planning Commission determined to adopt Resolution 2023-10 recommending approval of the draft ordinance to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on May 1, 2023 to review the new Chapter 17.36, Inclusionary Housing Program, during which all interested parties were heard; and

WHEREAS, the proposed Zoning Ordinance amendment is 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 any future development projects will be subject to the requirements of CEQA and therefore the proposed amendments are not a project under CEQA and are exempt from further review (CEQA Guidelines, Section 15378); and

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

Title 17 Zoning is amended to add Chapter 17.36 Inclusionary Housing Program, which shall 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. To ensure that future residential development is consistent with housing policies of the State of California and the City of Hollister.
- C. To 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-part 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, 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. *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.
- N. *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.
- O. *Unit Type* shall mean the type of dwelling unit, either Attached Single-Family Dwelling Unit, Detached Single-Family Dwelling Unit, or Multi-Family Unit.
- P. *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.
- Q. *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 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. All required Inclusionary Units shall be built on the same site as the Residential Development Project.

- A. *Inclusionary Requirement.* Twenty percent of all new Residential Development Projects shall be Inclusionary Units. The twenty percent total shall be achieved using the following allowable ranges of affordability. :
 1. At least 7 percent of the dwelling units shall be affordable to Very Low Income Households.
 2. At least 7 percent of the dwelling units shall be affordable to either Very Low Income or Low Income Households.
 3. At least 6 percent of the dwelling units shall be affordable to either Very Low Income, Low Income or Moderate Income Households.
- B. *Rental Residential Development Projects.* Instead of providing required inclusionary units on site, Rental Residential Development projects may pay the in-lieu fee specified in Section 17.36.060.
- C. *Fractional Units.* When the application of the percentages specified in Section 17.36.060.A results in a number that includes a fraction equal to one-half (0.5) 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-half (0.5), 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.
- D. *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..

- E. *Local Incentives.* Projects subject to this ordinance shall be entitled to the Local Incentives described in Section 17.17.070.
- F. *Base for Inclusionary Requirement.* The number of Inclusionary Housing 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.
- G. *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.
- H. *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 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 – 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 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.

- B. *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.

17.36.080 - 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 Sections 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 units. Buyers of affordable units shall enter into an agreement with the City. Occupants must be selected by means of an open, public process ensures that individuals of a group of interested participants are selected in accordance with the City's Live-Work Policy. Private selection of individuals by project owners is not permitted for any affordable 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 17.36.080.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.
- 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 17.36.080.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.

17.36.090 – 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 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 1st day of May, 2023.

PASSED AND ADOPTED, by the City Council of the City of Hollister at a Regular Meeting held this 1st day of May, 2023, by the following vote:

Mia Casey, Mayor

ATTEST:

Jennifer Woodworth, MMC, City Clerk

APPROVED AS TO FORM:

Lozano Smith Attorneys at Law

Mary F. Lerner, City Attorney

I, JENNIFER WOODWORTH, MMC, City Clerk of the City of Hollister, do hereby certify that the attached Ordinance No. 2033 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 1st day of May, 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 May, 2023.

Jennifer Woodworth, MMC

City Clerk of the City of Hollister