

SECTION 29 – AFFORDABLE HOUSING¹

29.1 PURPOSE. The purposes of this section are to:

- (a) Enhance the public welfare by establishing policies which require the on-site development of affordable housing, meet the City's regional share of housing needs, and implement the goals and objectives of the general plan and housing element.
- (b) Mitigate the impacts of residential and nonresidential projects on the need for affordable housing by imposing a housing impact fee whereby developers of residential and nonresidential projects will contribute to the supply of housing for households with very low, low, and moderate incomes.

29.2 Definitions. The definitions in this section govern the application and interpretation of this section. Words and phrases not defined in this section are to be interpreted so as to give this section its most reasonable application.

"Affordable housing fund" means a fund or account designated by the City to maintain and account for all monies received under this section.

"Affordable housing agreement" means an agreement in conformance with section 29.8(b) between the City and an applicant, governing how the applicant will comply with this section.

"Affordable housing guidelines" means the requirements for implementation and administration of this section adopted by the City Council.

"Affordable housing plan" means a plan containing all of the information specified in and submitted in conformance with section 29.8(a) specifying the manner in which affordable units will be provided in conformance with this section and the affordable housing guidelines.

"Affordable rent" means the total monthly housing expenses for a rental affordable unit not exceeding the rents specified by California Health and Safety Code Section 50053 and California Code of Regulations Title 25, Sections 6910-6924. "Affordable rent" includes the total of monthly payments by the tenant for all of the following:

- (1) use and occupancy of the affordable unit and land and all facilities associated with the affordable unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas;
- (2) any additional separately charged fees or service charges assessed by the owner, other than security deposits;
- (3) an allowance for utilities paid by the tenant as established by the San Mateo County Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone service or cable TV; and

¹ Section 29 was added by Ord. 2017-1115, 1/24/2017

- (4) any other interest, taxes, fees or charges for use of the land or affordable unit or associated facilities and assessed by a public or private entity other than the owner, and paid by the tenant.

"Affordable sales price" means the maximum purchase price that will be affordable to the specified household at the specified income level, calculated in accordance with California Health and Safety Code Section 50052.5. The affordable sales price shall include a reasonable down payment, and monthly housing payments (including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners association dues, property maintenance and repairs, and a reasonable allowance for utilities), all as determined by the City.

"Affordable unit" means a dwelling unit affordable to very low, low, or moderate income households.

"Applicant" or "developer" means a person, persons, or entity that applies for a residential or nonresidential project and also includes the owner or owners of the property if the applicant does not own the property on which development is proposed.

"Area median income" or "AMI" means the annual median income for San Mateo County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of Belmont in the event that such median income figures are no longer published periodically in the California Code of Regulations.

"Building permit" includes full structural building permits as well as partial permits such as foundation-only permits.

"Common ownership or control" refers to property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent (10%) or more of the interest in the property.

"Decision-making body" means the City staff person or body authorized to approve or deny an application for a planning or building permit for a residential or nonresidential project.

"Density bonus units" means dwelling units approved in a residential project under California Government Code Section 65915 that are in excess of the maximum allowable residential density otherwise permitted by the City of Belmont.

"First approval" means the first of the following approvals to occur with respect to a residential project: planning permit or building permit.

"Housing impact fee" or "housing fee" means the fee paid by developers of residential and nonresidential projects to mitigate the impacts that such developments have on the demand for affordable housing in the City.

"Low income households" are those households whose income does not exceed the low income limits applicable to San Mateo County as defined in California Health and Safety

Code Section 50079.5 and published annually by the California Department of Housing and Community Development in California Code of Regulations Title 25, Section 6932 (or its successor provision).

"Market rate unit" means a new dwelling unit in a residential project that is not an affordable unit.

"Moderate income households" are those households whose income does not exceed the moderate income limits applicable to San Mateo County as defined in California Health and Safety Code Section 50093 and published annually by the California Department of Housing and Community Development in California Code of Regulations Title 25, Section 6932 (or its successor provision).

"Nonresidential project" means an application for a planning permit or building permit that includes the new construction of gross square feet of nonresidential space or the conversion of a residential use to a nonresidential use.

"Planning permit" means any discretionary approval of a residential project, including but not limited to a general or specific plan adoption or amendment, rezoning, tentative map, parcel map, conditional use permit, variances, or design review.

"Residential ownership project" means any residential project that includes the creation of one or more additional dwelling units that may lawfully be sold individually. A residential ownership project also includes the conversion of a residential rental project to a residential ownership project.

"Residential project" means any development for which a planning permit or building permit is required that includes the creation of one or more additional dwelling units, conversion of nonresidential uses to dwelling units, or the conversion of a use from a residential rental project to a residential ownership project.

"Residential rental project" means any residential project that creates one or more additional dwelling units that cannot be lawfully sold individually.

"Very low income households" are those households whose income does not exceed the very low income limits applicable to San Mateo County as defined in California Health and Safety Code Section 50105 and published annually by the California Department of Housing and Community Development in California Code of Regulations Title 25, Section 6932 (or its successor provision).

29.3 AFFORDABLE HOUSING REQUIREMENTS².

- (a) Residential Projects. This subsection applies to all residential projects and contiguous properties that are under common ownership or control, except for any residential project exempt under section 29.4 or unless an alternative means of compliance is approved under section 29.7.

² Amended by Ord. 2017-1126, §2, 11/28/2017

- (1) Large Ownership Projects (25+ units). Residential ownership projects with 25 units or more must provide 15% of the dwelling units in the residential project at affordable sales price to moderate income households.
- (2) Small Ownership Projects (less than 25 units). All residential ownership projects consisting of 24 units or less must pay housing impact fees as specified in section 29.5 to mitigate the project's impact on the need for affordable housing.
- (3) Large Rental Projects (25+ units). Residential rental projects with 25 units or more must provide 15% of the dwelling units in the residential project at affordable rents to low income households.
- (4) Small Rental Projects (less than 25 units). Residential rental projects consisting of 24 units or less must pay housing impact fees as specified in section 29.5 to mitigate the project's impact on the need for affordable housing.
- (b) Non-Residential Projects. Unless the nonresidential project is exempt under section 29.4 or an alternative means of compliance is approved under section 29.7, all nonresidential projects must pay housing impact fees as specified in section 29.5 to mitigate the project's impact on the need for affordable housing.
- (c) Mixed Projects. When a residential project includes both ownership and rental dwelling units, the provisions of this section that apply to ownership residential project shall apply to that portion of the development that consists of ownership dwelling units, while the provisions of this section that apply to rental residential project shall apply to that portion of the development that consists of rental dwelling units.

29.4³ EXEMPTIONS. The following development projects are exempt from this section:

- (a) Residential projects consisting of the construction of one unit on an existing lot;
- (b) Accessory dwelling units;
- (c) Development projects to the extent they have received a vested right to proceed without conforming to this section under state law, including those that are the subject of development agreements currently in effect with the City, if such development agreements were executed prior to the effective date of this section and where such agreements expressly preclude the city from requiring compliance with this section;
- (d) Development projects located on property owned or leased by the state of California or any of its agencies, with the exception of property not used exclusively for public purposes;
- (e) Any nonresidential project operated by a nonprofit organization to provide food storage, meal service or temporary shelter to the homeless;
- (f) Any nonresidential project involving no more than one total employee; or,

³ Amended by Ord. 2017-1126, §3, 11/28/2017

- (g) Any nonresidential project otherwise determined to be exempt by City Council resolution.

29.5 HOUSING IMPACT FEE

- (a) Established by Council Resolution. The amount of the housing impact fee shall be established from time to time by resolution of the City Council. Housing impact fees shall not exceed the cost of mitigating the impact of nonresidential and residential project projects on the need for affordable housing in the City.
- (b) Timing of Payment. Payment of housing impact fees is due at building permit issuance for the project. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.

29.6 PROVISION OF AFFORDABLE UNITS

- (a) Calculating the Number of Affordable Units. The number of affordable units required by this section is calculated based on the number of dwelling units in the residential project, excluding any density bonus units. Fractions of a unit are rounded up to the next highest whole number.
- (b) Standards for Affordable Units.
 - (1) Affordable units must be comparable in exterior appearance and overall quality of construction to market-rate units in the same housing development. Interior finishes and amenities must equal those provided in the base model market-rate units.
 - (2) The number of bedrooms in the affordable units must be comparable to the average number of bedrooms in the market-rate units, and the affordable units must be reasonably dispersed within the residential project, with unit locations comparable to those of the market-rate units, or, subject to the approval of the community development director, may be clustered within the residential project when this furthers affordable housing opportunities.
 - (3) The affordable units must have the same amenities as the market rate units, including the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential project.
- (c) Timing of Construction.
 - (1) Affordable units must be constructed in proportion to construction of the market-rate units, at a ratio of one affordable unit to each six market-rate units.
 - (2) A building permit may not be issued for any market-rate unit unless a proportional number of building permits have been issued for affordable units.
 - (3) 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 affordable units.

- (4) An alternative phasing plan may be approved as part of the approval of the affordable housing plan described in section 29.8.
- (d) Continued Affordability.
 - (1) All affordable units must remain affordable to the targeted income group for 99 years.
 - (2) The continued affordability of the unit must be secured by a resale restriction, deed of trust, or regulatory agreement recorded against the property for execution by the city manager, in a form approved by the city attorney.
 - (3) Any household that occupies an affordable unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third party for a limited period of time due to household hardship, as determined by the City.
 - (4) No household may begin occupancy of an affordable unit until the household has been determined to be eligible to occupy that unit by the City or designee.

29.7⁴ ALTERNATIVE MEANS OF COMPLIANCE

- (a) For-Sale Alternative to Fees. An applicant for a residential ownership project of 24 units or less may elect to provide 15% of the dwelling units in the residential project at affordable sales price to moderate income households rather than pay housing impact fees.
- (b) For-Rent Alternative to Fees. An applicant for a residential rental project of 24 units or less may elect to provide 15% of the dwelling units in the residential project at affordable rents to low income households rather than pay housing impact fees.
- (c) For-Rent Alternative to Fees or Sale
 - (1) Ownership Projects. An applicant for a residential ownership project may elect to provide 15% of the dwelling units in the residential project at affordable rent to low income households rather than provide for-sale units.
 - (2) Sale of Affordable Rental Units. Any rent regulatory agreement for rental units in a residential ownership project shall include provisions for sale of the affordable units and relocation benefits for tenants of the affordable units if the owner of the residential ownership project later determines to offer the affordable units in the residential project for sale to moderate-income households at an affordable sales price.
- (d) Off-Site Construction of Affordable Units.
 - (1) The applicant, or an entity controlled by the applicant, or another entity that has entered into an agreement with the applicant to provide affordable housing, may submit an affordable housing plan that proposes to construct affordable units on another site. Two or more applicants may also jointly propose off-site

⁴ Amended by Ord. 2017-1126, §4, 11/28/2017

construction of affordable units on a single site. The decision-making body may grant a credit for off-site construction if it makes all of the following findings:

- (A) For ownership projects, the off-site location includes either units to be sold to moderate-income households at affordable sales price equal to at least twenty percent of the market-rate units in the residential project; or, includes units to be rented to low income households at affordable rents equal to at least twenty percent of the market-rate units in the residential project;
 - (B) For rental projects, the off-site location includes units to be rented to low income households at affordable rents equal to at least twenty percent of the market-rate units in the residential project;
 - (C) Financing or a viable financing plan, which may include public funding, is in place for the off-site affordable units;
 - (D) The off-site location is suitable for the proposed affordable housing, consistent with any affordable housing guidelines and the Housing Element, and will not tend to cause residential segregation; and
 - (E) Construction of the off-site affordable units has not commenced before the first approval of the residential project, and construction of the off-site units will occur concurrently with construction of the market-rate units in the residential project as described in Section 29.6(c).
- (2) Off-site construction of affordable units does not qualify the residential project for a density bonus or other regulatory incentives allowed by Government Code Section 65915 unless the off-site development includes the dedication of land conforming to the provisions of Section 65915(g). No off-site alternative may be approved by the City if a density bonus or other regulatory incentive is requested for the site on which the affordable housing is to be built. Any off-site alternative must comply with the density, intensity and other development standards that are permitted under the zone for the site.
- (d) Land Donation for Affordable Housing Development.
- (1) The applicant for a residential rental project may donate land in accordance with this Section 29.7(d) as an alternative to providing on-site affordable units under Section 29.3(a)(3). The decision-making body may grant a credit for donation of land if it makes all of the following findings:
 - (A) The applicant will donate and transfer the land no later than the date of the residential rental project approval;
 - (B) The developable acreage, zoning classification, and general plan designation of the land being transferred are sufficient to permit construction of units affordable to low income households in an amount not less than twenty percent of the number of market rate residential units of the proposed residential rental project;
 - (C) The transferred land is served by adequate public facilities and infrastructure;

- (D) The transferred land will have all of the permits and approvals, other than building permits, necessary for the development of the low income housing units on the transferred land, no later than the date of the residential rental project approval;
 - (E) The transferred land is subject to a deed restriction ensuring that all units developed on site remain affordable to the targeted income group for 99 years;
 - (F) The land will be transferred to the City of Belmont or to a housing developer approved by the City of Belmont;
 - (G) The transferred land will be within one-quarter mile of the proposed large rental project and will not tend to cause residential segregation; and
 - (H) Financing or a viable financing plan, which may include public funding, is in place for the low income units.
- (e) Nonresidential Projects. An applicant for a nonresidential development may submit an affordable housing plan that proposes to mitigate the affordable housing impacts of the development through the construction of affordable units, either on-site or off-site, rather than pay housing impact fees. The decision-making body may approve or conditionally approve such an alternative if it determines, based on substantial evidence, that such alternative compliance will provide as much or more affordable housing at the same or lower income levels as would payment of housing impact fees, is consistent with the general plan and housing element and the provisions of this section, and will otherwise provide equal or greater public benefit than would payment of the housing fee.

29.8⁵ APPLICATION AND REVIEW PROCEDURES

(a) Affordable Housing Plan.

- (1) Application. An applicant for a residential ownership project of 25 units or more, a residential rental project of 25 units or more, or any residential or nonresidential project proposing to provide affordable units under the provisions of Section 29.7 must submit an affordable housing plan concurrently with the application for the first approval of the project. The contents of the affordable housing plan must comply with the application form required by the Community Development Department.
- (2) Completeness. If an affordable housing plan is required, no application for a first approval the project may be deemed complete until a complete affordable housing plan is submitted.
- (3) Costs. The cost of reviewing any proposed alternative, including but not limited to the cost to the City of hiring a consultant to review the application, shall be borne by the applicant.

⁵ Amended by Ord. 2017-1126, §5, 11/28/2017

- (4) Not Required When Paying Impact Fees. An affordable housing plan is not required for a residential ownership project of 24 units or less, a residential rental project of 24 units or less, or a nonresidential project if the applicant proposes to pay housing impact fees.
 - (5) Processing. Any affordable housing plan shall be processed concurrently with all other permits required for the development project. Before approving the affordable housing plan, the decision-making body shall find that the affordable housing plan conforms to this section. An affordable housing plan must include a condition requiring recordation of an affordable housing agreement described in subsection (b), before approval of any final or parcel map or building permit for the development project.
 - (6) Modification. The approved affordable housing plan may be amended before issuance of a building permit for the development project. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. Other modifications to the affordable housing plan shall be processed in the same manner as the original plan.
- (b) Affordable Housing Agreement.
- (1) Affordable housing agreements acceptable to the city manager shall be recorded against the residential project before approval of any final or parcel map, or issuance of any building permit, whichever occurs first.
 - (2) The affordable housing agreement must specify the number, type, location, size, and phasing of all affordable units, provisions for income certification and screening of potential purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved affordable housing plan and any affordable housing guidelines, as determined by the city manager or designee.
 - (3) 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.
 - (4) The City Council, by resolution, may adopt affordable housing guidelines to implement this section.

29.9 AFFORDABLE HOUSING FUND

- (a) An “Affordable Housing Fund” is established to receive all housing impact fees or other funds collected under this section which shall be deposited into the City's Affordable Housing Fund.
- (b) The monies in the Affordable Housing Fund and all earnings from investment of the moneys in the Fund shall be expended exclusively to provide housing affordable to very low income, lower income, and moderate income households in the City, consistent with the goals and policies contained in the City's Housing Element and for administration and compliance monitoring of the affordable housing program.

29.10 ADMINISTRATIVE RELIEF

- (a) As part of an application for the first approval of a residential or nonresidential project, a developer may request that the requirements of this section be waived or modified by the decision-making body, based upon a showing that applying the requirements of this section would result in an unconstitutional taking of property or would result in any other unconstitutional result.
- (b) A request for a waiver or modification shall set forth in detail the factual and legal basis for the claim.
- (c) A request for a waiver or modification shall be reviewed and considered at the same time as the project application or any affordable housing plan.
- (d) The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and substantial evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification under this section.

29.11 ENFORCEMENT

- (a) The city attorney is authorized to enforce the provisions of this section and all affordable housing agreements, regulatory agreements, and all other covenants or restrictions placed on affordable units, by civil action and any other proceeding or method permitted by law.
- (b) Failure of any official or agency to fulfill the requirements of this section shall not excuse any developer or owner from the requirements of this section. No permit, license, map, or other approval or entitlement for a residential project shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this section have been satisfied.
- (c) The remedies provided for in this section shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.