

## **Chapter 17.91: Inclusionary Housing Requirements**

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### **17.91.000 Title.**

The provisions of this chapter shall be known collectively as the inclusionary housing requirement of the city of San Luis Obispo. (Ord. 1458 § 3 (part), 2004; Ord. 1348 § 2 (part), 1999)

### **17.91.010 Purpose.**

The purpose and intent of this chapter is to promote the public welfare by increasing the production and availability of affordable housing units, and to establish an inclusionary housing requirement which implements general plan policies guiding land use and housing development. (Ord. 1458 § 3 (part), 2004; Ord. 1348 § 2 (part), 1999)

### **17.91.020 Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meaning set forth below:

- A. "Affordable" means housing which can be purchased or rented by a household with very low-, low-, or moderate-income, as described in the city's affordable housing standards.
- B. "Affordable housing agreement" shall mean a written agreement between the developer, city and possibly additional parties which specifies the terms and conditions under which affordable housing requirements are to be met.
- C. "Affordable housing fund" means a fund established and administered by the city, containing in-lieu fees and other funds held and used exclusively to increase and improve the supply of affordable housing.
- D. "Affordable housing project" shall mean a development project in which one hundred percent of the dwellings to be built will be sold or rented in conformance with the city's affordable housing standards.
- E. "Building valuation" shall mean the total value of all construction work for which a construction permit is required, as determined by the chief building official using the Uniform Building Code.
- F. "Commercial project" means a development project involving primarily nonresidential uses, including retail, office, service-commercial, light-industrial, neighborhood-commercial, tourist-commercial, and manufacturing uses as further described in the zoning regulations.
- G. "Density" means residential density as defined in Section 17.16.010 of this code.
- H. "Density bonus" means a density increase of at least twenty-five percent over the maximum density otherwise allowable under the zoning regulations.
- I. "Development project" shall mean an activity for which a subdivision map or construction permit is required, including new buildings and building additions or remodels as described in Section 17.91.030, but not including changes in ownership, occupancy, management or use.
- J. "Director" means the community development director or his or her authorized representative.
- K. "Equity build-up" shall mean a property's sales price at first resale, less the initial purchase price and less the city's equity share as described in Section 17.91.150.
- L. "Expansion area" means a land area proposed for annexation to the city or annexed after the adoption date of the ordinance codified in this chapter.
- M. "Inclusionary housing unit" means a dwelling which is built under the provisions of this chapter, and which meets the city's affordable housing standards.
- N. "In-lieu fee" means a fee paid to the city as an alternative to the production of inclusionary housing, to be used in the acquisition, construction, or rehabilitation of affordable housing.
- O. "Low-" or "lower-income households" shall have the meaning set forth in California Health and Safety Code Section 50079.5; provided, the income of such persons and families shall not exceed eighty percent of the median income within the county.

- P. "Market value" shall mean the highest price a willing buyer would pay and a willing seller would accept, both being fully informed and in an open market, as determined by an appraiser or other qualified professional.
- Q. "Mixed use development project" shall mean a development project which combines residential and nonresidential uses on the same lot, pursuant to city zoning regulations.
- R. "Moderate-income households" shall include those persons and families whose incomes exceed eighty percent but are less than or equal to one hundred twenty percent of the median income within the county.
- S. "Real property" shall mean land and improvements, if any, including anything permanently affixed to the land, such as buildings, walls, fences, and paved areas.
- T. "Residential project" shall mean development projects which result in the subdivision of land and/or the construction or conversion of dwellings, including, but not limited to, single-family detached homes, apartments, condominiums, live/work studios, mobile homes, and group housing.
- U. "Very low income" shall have the meaning set forth in California Health and Safety Code Section 50105; provided, that such income level shall not exceed fifty percent of median income within the county. (Ord. 1458 § 3 (part), 2004; Ord. 1348 § 2 (part), 1999)

#### **17.91.030 Applicability and exclusions.**

- A. This chapter shall apply to development projects consisting of five or more lots or new dwelling units, and to commercial development projects consisting of two thousand five hundred square feet of gross floor area or larger.
- B. The following types of development projects are excluded:
  - 1. Residential developments of four units or less;
  - 2. New commercial developments of less than two thousand five hundred square feet gross floor area;
  - 3. Residential and commercial building additions, repairs or remodels; provided, that such work does not increase the number of existing dwellings by four or more units, or result in an increase in gross floor area of two thousand five hundred square feet;
  - 4. The conversion of less than five dwelling units to condominiums within any five-year period;
  - 5. Commercial condominium conversions which do not result in the creation of new dwellings;
  - 6. Affordable housing projects;
  - 7. Emergency projects, or projects which the city council determines are necessary to protect public health and safety;
  - 8. Development projects which the city council determines are essentially noncommercial or nonresidential in nature, which provide educational, social or

related services to the community and which are proposed by public agencies, nonprofit agencies, foundations and other similar organizations;

9. Projects which replace or restore a structure damaged or destroyed by fire, flood, earthquake or other disaster within three years prior to the application for the new structure(s);
10. Projects for which an approved tentative map or vesting tentative map exists, or for which a construction permit was issued prior to the effective date of the ordinance codified in this chapter and which continue to have unexpired permits. (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)

#### **17.91.040 General standards.**

**A. Methods of Meeting Requirements.** New development projects shall satisfy the inclusionary housing requirements, as specified in Tables 2 and 2A of the general plan housing element, which provide that all nonexempt development projects shall contribute toward the production of affordable housing by constructing at least one affordable dwelling unit or paying an in-lieu fee. To meet the requirements, the developer shall comply with one or more of the following methods:

1. Construct the required number of affordable dwelling units, as specified in Table 2, as adjusted by Table 2A; or
2. Pay an in-lieu fee as described in Table 2, as adjusted by Table 2A. For development projects in which the adjustment factor under Table 2A equals zero ("0"), the minimum adjustment factor shall be 0.25 (resulting in a minimum in-lieu fee of 1.25 percent of the building valuation for in-city development projects and commercial developments in expansion areas, and 3.75 percent of building valuation for residential developments in expansion areas); or
3. Dedicate real property for affordable housing; or
4. Use a combination of the above methods, to the approval of the city council.

**B. Affordable Housing Standards.** Affordable dwelling units constructed must meet city affordable housing standards, and must be consistent with affordability policies in the general plan housing element.

**C. Concurrent Development.** The required inclusionary units shall be constructed concurrently with market rate units unless the developer and the city council agree within an affordable housing agreement to an alternative development schedule. (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)

#### **17.91.050 Procedures.**

**A. Fractional Numbers.** In determining the number of dwellings that are required to be built pursuant to Table 2, fractional units less than 0.50 shall be rounded down to the first whole number unit, and fractional units of 0.50 or greater shall be rounded up to the next higher whole number unit, as calculated by the director.

**B. Determining Adjustment Factor Using Project Density and Average Unit Size.** To determine the adjustment factor in Table 2A, project density shall be calculated by dividing the total number of density units proposed (including density bonus where applicable) by the development project site's net area. Average floor area shall be

- calculated by dividing the total gross floor area of all dwellings (excluding garages) within the development project by the total number of dwellings. Dedicated open space shall not be included in a site's net area.
- C. Mixed Use Development Projects.** For mixed-use development projects with five or more dwellings, the inclusionary housing requirement is determined by: (1) using Table 2 to calculate the base inclusionary requirement for the commercial use, and (2) using Table 2A to adjust the base requirement based on project density and average unit size, as described in subsection B of this section. For mixed use development projects with less than five dwellings, the base inclusionary housing requirement for the commercial use shall apply.
- D. Timing.** The inclusionary housing requirement shall be met prior to issuance of a certificate of occupancy for the first unit in a building, or the first building in a complex to be constructed or remodeled; or for subdivisions, prior to final map approval; or prior to building permit issuance, for projects for which a certificate of occupancy is not issued; or as otherwise agreed to by the city council as part of tentative map, rezoning, conditional use permit or other development approval.
- E. Affordable Housing Agreement.** To meet the requirement, the developer may enter into an agreement with the city, the city's housing authority, nonprofit housing provider, or other qualified housing provider approved by the city council to construct, refurbish, convert, operate and maintain the required affordable housing. Such affordable housing agreements shall be to the approval of the director and shall be in a form approved by the city attorney. (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)

#### **17.91.060 In-lieu housing fee.**

- A. Payment of In-Lieu Fee.** Developer may, at his or her discretion, choose to pay a fee to the city or dedicate real property in lieu of constructing affordable dwellings to meet this requirement.
- B. Amount and Method of Payment.** The dollar amount and method of payment of the in-lieu fee shall be as described in Table 2, and where applicable, as adjusted by Table 2A of the general plan housing element, as further described in Section 17.91.040(A)(2), to the approval of the director. For subdivisions in which the construction valuation is not known, the director shall estimate the average construction valuation based on lot area, land value, and applicable city development standards. Developer shall use the estimated average construction valuation to determine the amount of in-lieu fees.
- C. Timing.** In-lieu fees shall be paid prior to release of occupancy of the first dwelling within a residential development; or for residential subdivisions to be built out by others, prior to final subdivision map approval; or prior to occupancy for new commercial buildings or remodels; or prior to building permit issuance, for projects for which a certificate of occupancy is not issued; or as otherwise provided by written agreement between the developer and city, to the approval of the director. (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)

#### **17.91.070 Affordable housing fund established.**

The city hereby establishes an affordable housing fund. Said fund shall be administered by the finance director and shall be used exclusively to provide funding for the provision of

affordable housing and for reasonable costs associated with the development of affordable housing, at the discretion of the city council.

- A. In-Lieu Fees.** In-lieu fees collected shall be deposited into the affordable housing fund, to the satisfaction of the finance director. (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)

#### **17.91.080 Real property dedication.**

- A. Irrevocable Offer to Dedicate Real Property.** At the discretion of the city council, an irrevocable offer to dedicate real property equal or greater in value to the in-lieu fee which would otherwise be required may be offered to the city, or to a housing provider designated by the city, instead of providing the required number of affordable dwellings or paying in-lieu fees. In considering an offer to dedicate real property, the city council must find that the dedication of real property will provide equal or greater public benefit than constructing affordable units or paying in-lieu fees, based on the following criteria:

1. Valuation of the land and/or improvements to be dedicated relative to other methods of meeting the requirement;
2. Suitability of the land and/or improvements for housing, including general plan conformity, size, shape, topography, and location; and
3. Feasibility of developing affordable housing, including general plan consistency, and availability of infrastructure.

- B. Real Property Valuation.** The valuation of real property offered in-lieu shall be determined by the director, based upon an appraisal made by a qualified appraiser mutually agreed to by the developer and the city. Costs associated with the appraisal, title insurance and transfer, recordation and related costs shall be borne by the developer.

- C. Agreement and Timing.** The real property dedication shall be by deed or other instrument acceptable to the city, and shall be completed by recordation with the recorder of the county of San Luis Obispo prior to occupancy release of the first residential unit or commercial building in the development; or prior to building permit issuance, for projects for which a certificate of occupancy is not issued; or as otherwise provided by written agreement between the developer and the city. (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)

#### **17.91.090 Incentives.**

- A. Eligibility for Incentives.** The developer may be eligible to receive or to request development incentives in return for constructing affordable housing in connection with a development project, pursuant to the affordable housing incentives (Chapter 17.90), as part of a city planning application. Incentives or other forms of financial assistance may be offered by the city to the extent that resources are available for this purpose and to the degree that such incentives or assistance will help achieve the city's housing goals.

- B. Affordable Housing Agreement.** Any incentives provided by the city, beyond those incentives to which a developer may be automatically entitled to under Chapter 17.90 of this code, shall require city council approval and shall be set out in an affordable housing agreement. The form and content of such agreement shall be to the approval

of the city attorney and the director. Developers are further encouraged to utilize other local, state or federal assistance, when available, to meet the affordable housing standards. (Ord. 1458 § 3 (part), 2004; Ord. 1348 § 2 (part), 1999)

### **17.91.100 Project application.**

**A. Method of Application.** An applicant/developer proposing a project for which affordable housing is required shall submit a statement with the standard planning application, describing the inclusionary housing proposal. The developer's statement shall include:

1. A brief description of the proposal, including the method chosen to meet the inclusionary housing requirement; number, type and location of affordable units; term of affordability; preliminary calculation of in-lieu fees; or offer of land dedication;
2. How the proposal meets general plan policies and inclusionary housing requirements;
3. Plans and other exhibits showing preliminary site layout, grading, building elevations, parking and other site features, location of affordable dwelling units, and (where applicable) market-rate dwelling units;
4. Description of incentives requested, including exceptions from development standards, density bonuses, fee waivers or other incentives; and
5. Other information which the director determines necessary to adequately evaluate the proposal, including but not limited to the method proposed to award occupancy of the affordable units.

**B. Director Response.** After receiving a complete planning application, including an affordable housing proposal, the director shall respond to the applicant or developer's affordable housing proposal. The city response shall identify: (1) affordable housing issues and concerns; (2) incentives which the director can support when making a recommendation to the decision-making body; and (3) procedures which will need to be followed to comply with the inclusionary housing requirements. (Ord. 1458 § 3 (part), 2004; Ord. 1348 § 2 (part), 1999)

### **17.91.110 Conditions of development approval.**

**A. Submittal of an Affordable Housing Agreement.** Applicants and developers for development projects subject to this chapter shall, as a condition of development approval, prepare and submit an affordable housing agreement for city approval. The draft agreement shall be reviewed by the director and city attorney for compliance with project approvals, city policies and standards, and applicable codes. Following approval and signing of the agreement by the parties, the final agreement shall be recorded and relevant terms and conditions shall be recorded as a deed restriction on those lots or affordable units subject to affordability requirements. The affordable housing agreement shall be binding to all future owners and successors in interest.

**B. Agreements for Constructing Affordable Units.** For development projects meeting their inclusionary requirement through construction of affordable dwelling units, the affordable housing agreement shall specify:

1. The number and location of affordable units;

2. The size (square footage), number of bedrooms, and design of the affordable units;
  3. Terms of affordability;
  4. Schedule for construction of the affordable units;
  5. Incentives or other assistance to be provided by the city;
  6. Where applicable, the procedures to be used for qualifying tenants or buyers, setting rental/sales costs, renting or selling units, filling vacancies, and managing the units; and
  7. Mechanisms or procedures to assure that the selection of potential residents takes place via an open, public process including but not limited to a lottery, selection by the housing authority or other non-profit 3rd party, or by other means that insure (qualified) members of the community have an equal chance at participation. The agreement shall also specify the mechanism or procedures used to assure the continued affordability and availability of the specified number of dwelling units to very-low, lower, and moderate income households and/or qualifying seniors.
  8. Other terms or conditions requested by city.
- C. Agreements for Real Property Dedication.** For development projects meeting their inclusionary housing requirement through real property dedication, the agreement shall specify:
1. The method of conveyance, schedule, and appraised value of the proposed dedication;
  2. Calculation of housing in-lieu fees otherwise applicable to the project at the time of recordation;
  3. Title report and insurance;
  4. Description of location, condition, improvements, and other relevant factors applying to the property; and
  5. Other information required by the city.
- D. Payment of In-Lieu Fees.** An affordable housing agreement shall not be required for projects which meet their inclusionary housing requirement through the payment of in-lieu fees. (Ord. 1458 § 3 (part), 2004; Ord. 1348 § 2 (part), 1999)

### **17.91.120 Program requirements.**

Only households qualifying as very low-, low- or moderate-income, pursuant to the affordable housing standards, shall be eligible to rent, purchase or occupy inclusionary units developed or funded in compliance with this requirement. For sale inclusionary housing units shall be owner-occupied for the term of the affordable housing agreement. (Ord. 1458 § 3 (part), 2004; Ord. 1348 § 2 (part), 1999)



**17.91.130 Eligibility screening.**

The city, its housing authority, or other housing provider designated by the city shall screen prospective renters or buyers of affordable units. Renters or buyers of affordable units shall enter into an agreement with the city, its housing authority or other housing provider to comply with the affordable housing standards. Occupants must be selected by means of an open, public process which ensures that individuals of a group of interested participants have equal probability of selection. Private selection of individuals by project owners is not permitted except for any affordable units provided in excess of the required inclusionary units. (Ord. 1458 § 3 (part), 2004; Ord. 1348 § 2 (part), 1999)

**17.91.140 Affordability restrictions.**

Developers of affordable units for sale shall specify the type of affordability restriction to be applied. The developer shall choose to either: (1) participate in a shared equity purchase program, as described in Section 17.91.150, or (2) enter into an affordable housing agreement to ensure that affordability is maintained for the longest period allowed or required by state law, but not less than thirty years. Affordable rental units shall be affordable for the longest period allowed or required by state law, but not less than thirty years. (Ord. 1348 § 2 (part), 1999)

**17.91.150 Shared equity purchase program.**

- A. Under this program, the qualified buyer of a designated affordable dwelling unit shall enter into a shared equity agreement with the city. Said agreement shall be recorded as a second trust deed against the purchased property, at no interest, securing and stating the city's equity share in the property. The city's equity share shall be calculated by the director, and shall be the decimal percentage of the property's value resulting from:
1. The difference between the property's market value and the actual price paid by the homeowner, divided by the market value; and/or when applicable,
  2. The amount of subsidy provided by the city to the homeowner to purchase the property, divided by the property's market value.
- B. Upon sale, the city's equity share shall be repaid to the city from the proceeds of the sale, less the city's percentage share of title insurance, escrow fees and documentary transfer taxes, at the close of escrow. (Ord. 1458 § 3 (part), 2004; Ord. 1348 § 2 (part), 1999)

**17.91.151 Early resale of shared equity properties.**

In the event of "early resale," owners of properties subject to the shared equity purchase program shall either: (1) pay an equity recapture fee to the city as described in the schedule below, in addition to the city's equity share, or (2) sell the property to another eligible household. "Early resale" shall mean the sale, lease or transfer of property in within five years of the initial close of escrow. If the owner chooses to pay the equity recapture fee, the recapture fee shall be paid to the city upon resale at close of escrow, based on the following schedule:

Year	% of Equity Build-up Recaptured
0-2	100%
3	75%
4	50%
5	25%
6 and after	0%

The recapture amount shall be determined prior to the calculation of escrow closing costs. (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)

**17.91.160 Management and monitoring.**

Inclusionary rental units shall be managed and operated by the property owner, or the owner's agent, for the term of the affordable housing agreement. Sufficient documentation shall be submitted to ensure compliance with this chapter, to the satisfaction of the director. (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)

**17.91.170 Enforcement and appeals.**

- A. Enforcement.** No final subdivision map shall be approved, nor building permit issued, nor shall any other development entitlement be granted for a development project which does not meet these requirements. No inclusionary unit shall be rented or sold except in accordance with these requirements and the affordable housing standards.
- B. Appeals.** The director shall administer and interpret these requirements, subject to applicable codes and city procedures. Decisions of the director are appealable, subject to the zoning regulations appeal provisions (Chapter 17.66). (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)

**17.91.180 Severability.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other persons or situations shall not be affected thereby. (Ord. 1458 § 3 (part), 2004: Ord. 1348 § 2 (part), 1999)