

CITY OF PASADENA



INCLUSIONARY HOUSING ORDINANCE

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CHAPTER 17.42 – INCLUSIONARY HOUSING REQUIREMENTS

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17.42.010 - Purpose of Chapter

This Chapter establishes standards and procedures to encourage the development of housing that is affordable to a range of households with varying income levels. The purpose of this Chapter is to encourage the development and availability of affordable housing by ensuring that the addition of affordable housing units to the City's housing stock is in proportion with the overall increase in new housing units.

17.42.020 - Applicability and Exempt Projects

The requirements of this Chapter shall apply to all new residential projects, all subdivisions maps approved after the date of this Ordinance, and all single room occupancy projects, except as noted in Subsection B. The requirements of this Chapter shall apply to all developers and their agents, successors-in-interest, and assigns proposing a residential project. All inclusionary units required by this Chapter shall be sold or rented in compliance with this Chapter and the City's regulations for the implementation of this Chapter (see Subsection A).

- A. Additional regulations.** The Council shall by resolution establish regulations for the implementation of this Chapter. (These regulations were first adopted by the Council on September 10, 2001 and are entitled "City of Pasadena Inclusionary Housing Regulations.") All references to "Director" in said regulations shall mean the City Manager or the Assistant City Manager.
- B. Exempt projects.** The following are exempt from the requirements of this Chapter.
 - 1. Project with discretionary approvals.** A residential project that has obtained:

- a. Discretionary approval (e.g., a Conditional Use Permit, Variance, or Design Review approval) in compliance with this Zoning Code before the effective date of this Chapter; and
 - b. A Building Permit in compliance with the discretionary approval within 12 months of the effective date of this Chapter; and
 - c. A Certificate of Occupancy in compliance with the same discretionary approval.
2. **Exempt by State law.** A residential project that is exempt from this Chapter by State law, including a project for which the City enters into a development agreement.
 3. **Project with Redevelopment Agreement.** A residential project for which the Community Development Commission has executed a Redevelopment Agreement, provided that the Redevelopment Agreement is effective at the time the residential project would otherwise be required to comply with the requirements of this Chapter, and there is no uncured breach of the Redevelopment Agreement before issuance of a Certificate of Occupancy for the project. (Ord. 7020 § 1, 2005, Ord. 7028 § 1, 2006)

17.42.030 - Definitions

All of the terms used in this Chapter are defined in Article 8 (Glossary of Specialized Terms and Land Use Types) under the term "Affordable Housing Definitions."

17.42.040 - Inclusionary Unit Requirements

- A. **Minimum number of units required.** A minimum of 15 percent of the total number of dwelling units in a residential project shall be developed, offered to, and sold or rented to households of low and moderate-income, at an affordable housing cost, as follows.
 1. **Units for sale.** If the project consists of units for sale, a minimum of 15 percent of the total number of units in the project shall be sold to low or moderate-income households.
 2. **Rental units.** If the residential project consists of rental units, a minimum of 10 percent of the units shall be rented to low-income households and five percent of the units shall be rented to low or moderate-income households.
- B. **Exception to minimum number required.** For a period of 12 months from the effective date of this Chapter, a residential project that obtains discretionary approval, or if no discretionary approval is required, obtains a Building Permit within that period, shall develop, offer to, and sell the following number of units to low and moderate-income households at an affordable housing cost, instead of the 15 percent required by Subsection A.
 1. **Units for sale.** If the project consists of units for sale, a minimum of six percent of the total number of units shall be sold to low or moderate-income households.

2. **Rental units.** If the project consists of rental units, a minimum of four percent of the total number of units shall be rented to low-income households and two percent of the total number of units shall be rented to low or moderate-income households.
- C. **Allowable credits.** The inclusionary unit requirements of Subsections A. and B. may be reduced as follows.
1. **Very low-income units in lieu of low-income units.** If very low-income units are provided in lieu of the required low-income units, the project shall receive a credit of 1.5 affordable units for each unit actually provided.
 2. **Very low-income units in lieu of moderate-income units.** If very low-income units are provided in lieu of required moderate-income units, the project shall receive a credit of two units for each unit actually provided.
 3. **Low-income units in lieu of moderate-income units.** If low-income units are provided in lieu of required moderate-income units, the project shall receive a credit of 1.5 units for each unit actually provided.
- D. **Rounding of quantities in calculations.** In calculating the required number of inclusionary units, fractional units of 0.75 or above shall be rounded-up to a whole unit if the residential project consists of 10 to 20 units; and fractional units of 0.50 or above shall be rounded-up to a whole unit if the project consists of 21 or more units.

17.42.050 - Alternatives to Units within Project

As an alternative to developing required inclusionary units within an affected residential project in compliance with Section 17.42.040 (Inclusionary Unit Requirement), the requirements of this Chapter may be satisfied through one or more of the following alternatives, in compliance with the City's regulations for the implementation of this Chapter (see Section 17.42.020.A).

- A. **In lieu fee.** The developer may choose to pay a fee in lieu of providing all or some of the inclusionary units, as follows.
1. **Amount of fee.** The amount of the fee shall be as required by the Council's Fee Resolution.
 2. **Special adjustment for first 12 months.** For 12 months from the effective date of this Chapter, the fee shall be 40 percent of that required by the Council's Fee Resolution.
 3. **Timing of payment.** One-half of the in-lieu fee required by this Subsection shall be paid (or a letter of credit posted) before issuance of a Building Permit for any part of the residential project. The remainder of the fee shall be paid before a Certificate of Occupancy is issued for any unit in the project.
 4. **Housing Trust Fund.** Fees collected in compliance with this Section shall be deposited in the Inclusionary Housing Trust Fund.

- B. Off-site units.** Upon application by the developer and at the discretion of the City Manager or the Assistant City Manager, the developer may satisfy the inclusionary unit requirements for the project, in whole or in part, by constructing or substantially rehabilitating the required number of units on a site other than that of the affected residential project.
- C. Land donation.** Upon application by the developer and at the discretion of the City Manager or the Assistant City Manager, the developer may satisfy the project inclusionary unit requirements, in whole or in part, by dedicating land to the City for the construction of the inclusionary units.
- D. On-site inclusionary units required when very low, low, and/or moderate income households are displaced.** Any other provision of this chapter, notwithstanding, any project subject to this chapter which results in the displacement of very low, low, and/or moderate income household(s) shall be required to provide on-site inclusionary units as required by this chapter. (Ord. 7020 § 2, 2005, 7028 § 2, 2006)

17.42.060 - Housing Plan and Housing Agreement Required

- A. Submittal and execution.** The developer shall comply with the following requirements at the times and in compliance with the standards and procedures in the City's regulations for the implementation of this Chapter (see Section 17.42.020.A).
 - 1. Housing Plan.** The developer shall submit an Inclusionary Housing Plan for approval by the City Manager or the Assistant City Manager, detailing how the provisions of this Chapter will be implemented for the proposed project.
 - 2. Housing Agreement.** The developer shall execute and cause to be recorded an Inclusionary Housing Agreement, unless the developer is complying with this Chapter as provided in Sections 17.42.050.A. (In lieu fee) or C. (Land donation).
- B. Discretionary approvals.** No discretionary approval shall be issued for a residential project subject to this Chapter until the developer has submitted an Inclusionary Housing Plan.
- C. Issuance of Building Permit.** No Building Permit shall be issued for a residential project subject to this Chapter unless the City Manager or the Assistant City Manager has approved the Inclusionary Housing Plan, and any required Inclusionary Housing Agreement has been recorded.
- D. Issuance of Certificate of Occupancy.** A Certificate of Occupancy shall not be issued for a residential project subject to this Chapter unless the approved Inclusionary Housing Plan has been fully implemented. (Ord. 7020 § 3, 4, 2005)

17.42.070 - Standards

- A. Location within project, relationship to non-inclusionary units.** All inclusionary units shall be:
 - 1. Reasonably dispersed throughout the residential project;

2. Proportional, in number, bedroom size, and location, to the market rate units; and
 3. Comparable with the market rate units in terms of the appearance, base design, materials, and finished quality.
- B. Timing of construction.** All inclusionary units in a residential project shall be constructed concurrent with, or before the construction of the market rate units. If the City approves a phased project, the required inclusionary units shall be provided within each phase of the residential project.
- C. Time limit for reserving units.** All required inclusionary units shall be reserved for low and moderate-income households at the applicable affordable housing cost for the following minimum time periods.
1. **Units for sale - 45 years.** A unit for sale shall be reserved for the target income level group at the applicable affordable housing cost for a minimum of 45 years.
 2. **Rental units - Reserved in perpetuity.** A rental unit shall remain reserved for the target income level group at the applicable affordable housing cost in perpetuity.
- D. Recapture of financial interest.** Notwithstanding Subsection C. 1., above, inclusionary units for sale may be sold to an above-moderate-income purchaser in compliance with the City's regulations for the implementation of this Chapter (see Section 17.42.020.A); provided that the sale shall result in a recapture by the City, or its designee, of a financial interest in the unit equal to:
1. **Difference between price and value.** The difference between the initial affordable sales price and the appraised value at the time of the initial sale; and
 2. **Proportionate share of appreciation.** A proportionate share of any appreciation.
- E. Preference and priority system.** The preference and priority system set forth in the City's Inclusionary Housing Regulations shall be used for determining eligibility among prospective beneficiaries for inclusionary units created through this Chapter. (Ord. 7028 § 3, 4, 2006)

17.42.080 - Enforcement

- A. Forfeiture of funds.** Any individual who sells or rents an inclusionary unit in violation of this Chapter shall be required to forfeit all money so obtained. Recovered funds shall be deposited into the Inclusionary Housing Trust Fund.
- B. Legal actions.** The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including actions:
1. To disapprove, revoke, or suspend any permit, including a Building Permit, Certificate of Occupancy, or discretionary approval; and
 2. For injunctive relief or damages.

C. Recovery of costs. In any action to enforce this Chapter, or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.

17.42.090 - Takings Determination

A. Determination of a taking of property without just compensation.

- 1. Initiated by request from developer.** Commencing upon the approval or disapproval of the Inclusionary Housing Plan by the City Manager or the Assistant City Manager, in compliance with the City's regulations for the implementation of this Chapter (see Section 17.42.020.A), and within 15 days thereafter, a developer may request a determination that the requirements of this Chapter, taken together with the inclusionary incentives as applied to the residential project, would legally constitute a taking of property of the residential project without just compensation under the California or Federal Constitutions.
- 2. Burden on developer.** The developer has the burden of providing economic information and other evidence necessary to establish that application of the provisions of this Chapter to the project would constitute a taking of the property of the proposed project without just compensation.
- 3. City Manager or the Assistant City Manager's determination subject to appeal.** City Manager or the Assistant City Manager shall make the determination, which may be appealed in compliance with Chapter 17.72 (Appeals) except that the Council shall serve as the applicable review authority.

B. Presumption of facts. In making the taking recommendation or determination, the review authority shall presume each of the following facts:

- 1. Application of requirements.** Application of the inclusionary housing requirement to the residential project;
- 2. Incentives.** Application of the inclusionary incentives;
- 3. Product type.** Utilization of the most cost-efficient product type for the inclusionary units; and
- 4. External funding.** External funding where reasonably likely to occur.

C. Modifications to reduce obligations. If it is determined that the application of the provisions of this Chapter would be a taking, the Inclusionary Housing Plan shall be modified to reduce the obligations in the inclusionary housing component to the extent, and only to the extent necessary, to avoid a taking. If it is determined no taking would occur though application of this Chapter to the residential project, the requirements of this Chapter remain applicable. (Ord. 7020 § 4, 2005)

17.42.100 - Inclusionary Housing Trust Fund

There is hereby established a separate fund of the City, to be known as the Inclusionary Housing Trust Fund. All monies collected in compliance with Subsections 17.42.050 A. (In lieu fee), 17.42.080 D. (Recapture of financial interest), or 17.42.090 (Enforcement), above, shall be deposited in the Inclusionary Housing Trust Fund. (Ord. 7056 § 2, 2006)

17.42.110 - Administrative Fees

The Council may by resolution establish reasonable fees and deposits for the administration of this Chapter. (Ord. 7056 § 2, 2006)

17.42.120 - Appeal

Within 15 calendar days after the date of the City Manager or Assistant City Manager's decision, an appeal may be filed in compliance with Chapter 17.72 (Appeals and Calls for Review). (Ord. 7020 § 7, 2005; Ord. 7056 § 2, 2006)

AFFORDABLE HOUSING DEFINITIONS

Affordable Housing Definitions. The following terms and phrases are defined for the purposes of Chapter 17.42 (Affordable Housing Requirements and Incentives).

1. **Adjusted for Household Size Appropriate for the Unit.** A household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.
2. **Affordable Housing Cost.** The total housing costs paid by a qualifying household, which shall not exceed a specified fraction of its gross income, adjusted for household size appropriate for the unit, as follows:
 - a. **Very low-income households, rental units.** Thirty percent of 50 percent of the Los Angeles County median income.
 - b. **Low-income households, rental or for-sale units.** Thirty percent of 80 percent of the Los Angeles County median income.
 - c. **Moderate-income households, for-sale units.** Forty percent of 110 percent of the Los Angeles County median income.
 - d. **Moderate-income households, rental units.** Thirty percent of 120 percent of the Los Angeles County median income.
3. **Developer.** Any association, corporation, firm, joint venture, partnership, person, or any entity or combination of entities, which seeks City approval for all or part of a residential project.
4. **Inclusionary Housing Agreement.** A legally binding agreement between a developer and the City, in a form and substance satisfactory to the City Manager or Assistant City Manager and City Attorney, containing those provisions necessary to ensure that the requirements of this Chapter, whether through the provision of inclusionary units or through an alternative method, are satisfied.
5. **Inclusionary Housing Plan.** The plan referenced in Section 17.42.070 A. (Procedures), and further described in the City's regulations for the implementation of Chapter 17.42 (Section 17.42.020.A), which identifies the manner in which the requirements of Chapter 17.42 will be implemented for a particular residential project.
6. **Inclusionary Housing Trust Fund.** Shall have the meaning identified in Section 17.42.110 (Inclusionary Housing Trust Fund), below.
7. **Inclusionary Unit.** A dwelling unit that will be offered for sale or rent to low- and moderate-income households, at an affordable housing cost, in compliance with this Chapter.

Definitions

8. **Low-Income Households.** Households whose gross income does not exceed 80 percent of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.
9. **Low-Income Units, Moderate-Income Units, and Very Low-Income Units.** Inclusionary units restricted to occupancy by low, moderate, or very low-income households, respectively, at an affordable housing cost.
10. **Market Rate Units.** Those dwelling units in a residential project that are not inclusionary units.
11. **Moderate-Income Households.** Households whose gross income does not exceed 120 percent of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.
12. **Redevelopment Agreement.** An Owner Participation Agreement, Disposition and Development Agreement, or similar agreement entered into between the Community Development Commission and a developer.
13. **Regulations.** The regulations adopted by the Council in compliance with Section 17.42.020.A for the implementation and enforcement of the provisions of Chapter 17.42.
14. **Residential project.** A subdivision resulting in the creation of 10 or more residential lots, the new construction of a project consisting of 10 or more multi-family units, 10 or more single-room occupancy units, or 10 or more single-family units for which a PD approval is obtained.
15. **Substantial Rehabilitation or Substantially Rehabilitated.** The rehabilitation of a dwelling unit(s) that has substantial building and other code violations, and has been vacant for at least 180 days, in that the unit is returned to the City's housing supply as decent, safe, and sanitary housing, and the cost of the work exceeds \$40,000.00 per dwelling unit, as that amount may be adjusted for inflation in compliance with the City's regulations for the implementation of Chapter 17.42 (Section 17.32.020.A).
16. **Total Housing Costs.** The total monthly or annual recurring expenses required of a household to obtain shelter. For a rental unit, total housing costs shall include the monthly rent payment and utilities. For an ownership unit, total housing costs shall include the mortgage payment (principal and interest), homeowner's association dues, mortgage insurance, taxes, utilities, and any other related assessments.
17. **Very low-Income Households.** Households whose gross income is equal to 50 percent or less of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.