

# **Inclusionary Requirement for Affordable Housing**

## **San Mateo County Ordinance Code**

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# **INCLUSIONARY REQUIREMENT FOR AFFORDABLE HOUSING**

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## **SECTION 7908. FINDINGS**

1. The State of California requires local governments to plan to meet the housing needs of all income groups. Specifically, "local governments have a responsibility to use their powers to facilitate the improvement and development of housing to meet the housing needs of all economic segments of the community (State Government Code Section 65580) and to [a]ssist in the development of adequate housing to meet the needs of low and moderate income households (Government Code Section 65583(c)(2))."
2. It is a public purpose of the County, as expressed in the County's General Plan Housing Element "to promote sufficient production of new housing of affordable cost and diverse size to accommodate the housing needs of all persons who reside, work, or who can be expected to work or reside in the County (Policy 14.2, Housing Element, County General Plan)."

3. As documented in the County's General Plan Housing Element, there is a housing shortage for extremely low, very low and low-income households in the County and a shortage of ownership housing for moderate income households. Increasingly, very low and low-income persons who work or live within the County are unable to locate suitable housing at prices they can afford and are increasingly excluded from living in San Mateo County. Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of very low and low-income households.
4. The County finds that newly constructed housing does not, to any appreciable extent, provide housing affordable to extremely low, very low and low-income households. New development which does not include or otherwise provide for affordable housing will serve to further aggravate the current housing shortage for extremely low, very low and low income households and the shortage of ownership housing for moderate income households, by reducing the supply of developable land and causing increases in land costs which make affordable housing prohibitively difficult to develop.
5. The County further finds that the housing shortage for extremely low, very low and low-income households, and the shortage of ownership housing for moderate income households, is detrimental to the public health, safety and general welfare.
6. This ordinance will help create affordable housing for extremely low, very low, low and moderate income households.
7. Large families and the disabled have special housing needs which may be served by this ordinance.

**SECTION 7909. PURPOSE.** The purpose of this Chapter is to:

1. Enhance the public health, safety, and general welfare by increasing the production of housing units affordable to extremely low, very low and low-income households and the production of ownership housing affordable to moderate income households in unincorporated San Mateo County.
2. Increase the supply of affordable housing in unincorporated San Mateo County by requiring the inclusion of housing affordable to extremely low, very low or low-income households, or the inclusion of ownership housing affordable to moderate income households, in new residential developments.
3. Implement Policy 14.37 of the San Mateo County General Plan (Housing Element).

## **SECTION 7910. DEFINITIONS**

1. Extremely Low Income Household – “Extremely low income household” is a household whose income, with adjustments for household size, does not exceed the qualifying limits for extremely low income households as established by and amended from time to time by the U.S. Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended. The current extremely low income limits are available at the San Mateo County Office of Housing.
2. Very Low Income Household – “Very low income household” is a household whose income, with adjustments for household size, does not exceed the qualifying limits for very low income households as established by and amended from time to time by the U.S. Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended. The current very low income limits are available at the San Mateo County Office of Housing.
3. Low Income Household – “Low income household” is a household whose income, with adjustments for household size, does not exceed the qualifying limits for low income households as established by and amended from time to time by the U.S. Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended. The current low income limits are available at the San Mateo County Office of Housing.
4. Moderate Income Household – “Moderate income household” is a household whose income, with adjustments for household size, does not exceed 120 percent of the County median household income as established by and amended from time to time by the U.S. Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended. The current moderate income limits are available at the San Mateo County Office of Housing.
5. Disabled Household – A disabled household is a household with at least one person who has either a physical or developmental impairment that affects the ability to perform activities of daily living.
6. Large Family Household – A large family household is a household that has five (5) or more persons living together as a family unit.
7. Inclusionary Unit – An inclusionary unit is a dwelling unit included in a residential development in order to meet the inclusionary requirement set forth in Section 7911 of this Chapter.

**SECTION 7911. INCLUSIONARY REQUIREMENT.** For all new multiple-family developments creating five (5) or more residential units require that a minimum of 20%

of the total units constructed be designated for sale or rent to extremely low, very low, low or moderate-income households as follows:

1. For Multiple-Family Ownership Housing Developments: The 20% inclusionary requirement may be satisfied by designating the required inclusionary units for extremely low, very low, low or moderate income households, in any combination; however, no more than 1/2 of the required inclusionary units may be designated for moderate income households. If the number of required inclusionary units is less than two, the required inclusionary unit may be designated for moderate income households.
2. For Multiple-Family Rental Housing Developments: The 20% inclusionary requirement shall be satisfied by designating at least 1/2 of the required inclusionary units for extremely low or very low-income households. The remaining 1/2 of the required inclusionary units may be designated for extremely low, very low or low-income households, in any combination. Units designated for moderate income households may not be used to satisfy the inclusionary requirement for rental housing developments contained in this section. If the number of required inclusionary units is less than two, the required inclusionary unit may be designated for low-income households.
3. Credit for Disabled or Large Family Units: A reduction in the inclusionary requirement contained in this section may be allowed, at the County's discretion, if required affordable units are designed, constructed and designated for either disabled or large family households. Specifically, one affordable unit designated for a disabled or large family household will count as two units towards satisfaction of the inclusionary requirement. A unit designed and constructed to be accessible or adaptable for disabled households must comply with Section 1107A of the California Building Code. A unit designed and constructed for large families must contain three or more bedrooms.
4. Calculation of Inclusionary Units: The inclusionary requirement shall be 20% of the total units constructed, not including density bonus units granted pursuant to the County Density Bonus Program (County Ordinance Code Part VI, Division VI, Chapter 1). If inclusionary units are to be provided on-site, any fractional portion resulting from the calculation of inclusionary units required hereunder shall be disregarded. If in-lieu fees are to be paid, any fractional portion resulting from the calculation of inclusionary units required hereunder shall be included in calculation of in-lieu fees.

**SECTION 7912. ALTERNATIVES TO CONSTRUCTING UNITS ON SITE.** The following alternatives to constructing the required inclusionary units shall be allowed upon the County's approval, based on supporting evidence submitted by the applicant demonstrating how the alternative will further affordable housing opportunities in the County to an equal or greater extent than on-site construction of the required inclusionary units.

1. In-Lieu Fee Option for Developments of 5 to 9 Units. The payment of an in-lieu fee may be allowed for developments creating 5 to 9 units. The in-lieu fees shall be deposited in a county housing fund for use by the County, or its contracted profit or non-profit housing organization, to support affordable housing programs in the County.

The in-lieu fee shall equal a percentage of the estimated cost to construct all the inclusionary units that would otherwise be required for each residential development pursuant to Section 7911. The amount of the fee shall be determined as follows:

- a. The estimated cost to construct a single unit of average size for the residential development shall be determined by multiplying the square footage of the average size unit by the average cost per square foot to construct the appropriate type of dwelling as shown on the most recent Building Valuation Table in use by the County Planning and Building Division.
- b. The estimated cost to construct all the inclusionary units required for the residential development shall be determined by multiplying the number of required inclusionary units by the estimated cost to construct a single unit of average size for the residential development.
- c. The applicable percentage used to calculate the in-lieu fee shall be related to the total number of units in a residential development as specified in the Table below:

Total Number of Units in Development	Applicable Percentage of Construction Cost
5	50
6	60
7	70
8	80
9	90

- d. The In-lieu fee shall be determined by multiplying the applicable percentage by the estimated cost to construct all the inclusionary units required for the residential development.

Example: 8-unit residential development, average unit size 1,000 sq. ft. 20% Inclusionary requirement = 1.6 units, pursuant to Section 7911

- a.  $1,000 \times \$90.85 = \$90,850$

(ave. size unit) x (ave. construction cost per sq. ft. from most recent Building Permit Valuation Table) = (estimated cost to construct a single unit of average size)

- b.  $\$90,850 \times 1.6 = \$145,360$   
(estimated cost to construct a single unit of average size) x (the number of inclusionary units required) = (the estimated cost to construct all the inclusionary units required for the development)
  - c. 80% required percentage for 8-unit development (from Table in Section 7912)
  - d.  $\$145,360 \times 0.80 = \$116,288$   
(estimated cost to construct all the inclusionary units required for the development) x (the required percentage from Table in Section 7912 for an 8-unit development) = (In-lieu Fee)
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- 2. Transfer to Alternative Development Site. A developer who is developing more than one project in the unincorporated area may be allowed to transfer the obligation for inclusionary units from one development to another if the units transferred to another location are targeted to meet the same goals (number of units, affordability level) that they would have had to meet if they were built on the subject site. This option will only be allowed if the alternative development occurs prior to or concurrently with the development of market-rate units on the subject site.
- 3. Land Dedication. Land dedication may be allowed as an option if the site being dedicated is in the unincorporated area, is of equal or greater value than the amount of the in-lieu fee specified by this section, and is physically suitable and has infrastructure adequate to support development that meets the inclusionary requirement applicable to the subject development site. Sufficient resources must be available to assure production of the units by the County or its agent.
- 4. Acquisition/Rehabilitation/Enforcement. Acquisition and rehabilitation, if necessary, of existing dwelling units may be allowed as an alternative to constructing inclusionary units on-site if the acquired/rehabilitated units are targeted to meet the same goals (number of units, affordability level) that they would have had to meet if they were built on the subject site. This option will only be allowed if the acquisition/rehabilitation occurs prior to or concurrently with the development of market-rate units on the subject site.

**SECTION 7913. ASSISTANCE AVAILABLE TO DEVELOPERS.** Residential developments providing inclusionary units on-site as required pursuant to Section 7911 will be eligible to receive the following assistance from the County:

- 1. Fee Reduction or Deferral. The County may reduce or defer planning and building permit processing fees, as specified in Housing Element Policy 14.30.

2. Priority Processing. The County Planning and Building Division may provide priority permit processing, as specified in Housing Element Policy 14.31.
3. Density Bonus. The County shall offer a density bonus, i.e., an increase in the number of units permitted in a proposed residential development, as specified in the Density Bonus Ordinance (County Ordinance Code Part VI, Division VI, Chapter 1).

## **SECTION 7914. STANDARDS FOR THE PROVISION OF INCLUSIONARY UNITS**

### **1. General Standards for all Inclusionary Units**

- a. Inclusionary units in a residential development shall be constructed concurrently with market-rate units. Where the phasing of construction is necessary, each phase shall provide the required ratio of inclusionary units to market-rate units to ensure that the inclusionary units are made available for sale or rent at the same time as the market-rate units.
- b. Inclusionary units shall be integrated into the overall design and distributed throughout the development. The units shall be generally the same size as the market-rate units and their exterior materials and appointments shall be architecturally compatible with the market-rate units in the development.
- c. The mix of unit sizes and bedroom counts in the inclusionary units should be proportional to the mix of unit sizes and bedroom counts provided in the market rate units (i.e., if 50% of the market rate units are two bedroom units, 50% of the inclusionary units should be two bedroom units).

### **2. Specific Standards for Ownership Inclusionary Units**

- a. Price Levels. Ownership inclusionary units shall be offered at sales prices that are considered affordable to extremely low, very low, low-income, or moderate households, as defined in Section 7910.
- b. Assurance of Continued Affordability: Resale Controls
  - (1) In order to maintain the affordability of the inclusionary units constructed pursuant to this Chapter, the purchase price paid by the original qualified purchaser and each subsequent purchaser of an ownership inclusionary unit shall be limited to:
    - (a) The original purchase price plus the percentage increase defined in the original deed from the developer to the first eligible home buyer, plus the amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, minus any costs necessary to bring the unit into conformity



with County Building Regulations, in the event that the occupant has allowed the unit to deteriorate due to deferred maintenance; or

- (b) The fair market value, whichever is less.
  - (2) The deed restrictions, recorded as part of the grant deed to the first eligible home buyer, will contain provisions which will provide the County with a first right to either purchase the unit at the contract price or assign the County's first right to a eligible buyer. Such restrictions shall include provisions that, should the County fail to exercise its first right to purchase, the seller is required to sell the unit at the defined "affordable sales price" to an eligible buyer selected by the seller. The seller shall not levy or charge any additional fees nor shall any "finders fee" or other monetary consideration be charged other than customary real estate commissions and closing costs.
  - (3) The owners of any inclusionary unit shall incorporate as a part of the grant deed conveying title of any such unit, a declaration of restrictions, stating the restrictions imposed by this Chapter including, but not limited to, all applicable resale controls and occupancy restrictions. The terms of the restrictions shall specifically assign to the County all of the sellers' rights to enforce the declaration of restrictions in the manner provided by law. The County or its designee shall monitor resales of inclusionary units, for purposes of preventing any abuse or violation of sale or resale controls. Unless otherwise agreed to by the County, the restrictions shall last no less than 55 years. The determination of the term of affordability by the County may be impacted as necessary to facilitate the use of Federal or State affordable housing financing programs.
- c. Buyer Certification and Selection. Inclusionary units are to be sold to households who qualify as extremely low, very low, low-income, or moderate households, as defined in Section 7910. Buyers eligible to purchase inclusionary units will be selected by the developer in accordance with a marketing program approved, in advance by the County. The marketing program shall set forth an equitable selection process to be used for the marketing of the affordable units established in conformance with this Chapter.

Selection criteria may include, but not be limited to, household income and assets, household size, and the size of available units. In addition, priority may be given, first, to current residents of San Mateo County, and second, to persons employed in San Mateo County.

- d. Monitoring Fee. At the time of resale, or whenever the County exercises its option to purchase any ownership inclusionary unit, the current owner shall pay a monitoring fee to the County. The amount of the fee shall be set by resolution of the Board of Supervisors, and may be adjusted periodically as necessary to cover the County's costs to monitor resales of inclusionary units.

### 3. Specific Standards for Rental Inclusionary Units

- a. Rent Levels. Rental inclusionary units shall be offered at rent levels that are considered affordable to extremely low, very low or low-income households, as defined in Section 7910.
- b. Assurance of Continued Affordability. A developer of rental inclusionary units required by this Chapter will be required to assure the continued affordability of such units. This assurance shall be in the form of an agreement recorded prior to issuance of a certificate of occupancy. Unless otherwise agreed to by the County, the agreement shall provide that the developer agrees, and binds any successors, to maintain the units as affordable housing for no less than 55 years. The determination of the term of affordability by the County may be impacted as necessary to facilitate the use of Federal or State affordable housing financing programs.
- c. Tenant Certification and Selection. Rental inclusionary units are to be rented to households who qualify as extremely low, very low or low-income households, as defined in Section 7910. Owners of rental inclusionary units must make available to the County adequate records in order to prove to the County that all tenants occupying the designated affordable rental units are eligible under the term of this ordinance, and the specific agreement implementing the affordability requirements executed by the County and the developer. The agreement will provide for a fair and equitable tenant selection process to insure the selection of eligible tenants. Selection criteria may include, but not be limited to, amount of household income and assets, household size, and the size of available units. In addition, priority may be given, first, to current residents of San Mateo County, and second, to persons employed in San Mateo County.
- d. Monitoring Fee. For each inclusionary rental unit provided under this Chapter, the owner shall pay an annual monitoring fee each year for the term of required affordability. The amount of the fee shall be set by resolution of the Board of Supervisors, and may be adjusted periodically as necessary to cover the County's costs to monitor inclusionary rental units.

## **SECTION 7915. PROCEDURE TO ENSURE COMPLIANCE WITH INCLUSIONARY REQUIREMENTS**

1. No planning approval, building permit or certificate of occupancy shall be granted to a multiple-family residential development of five (5) or more units that does not meet the requirements of this Chapter.
2. The manner of compliance with this Chapter shall be specified as a condition of the County's formal approval of the project (i.e., as a condition of any subdivision, design review, or other planning approval required for the project). In those instances where a residential development may need no formal approval other than a building permit, the Planning Director shall specify the manner of compliance with this Chapter prior to issuance of a building permit.
3. The inclusionary units required pursuant to this Chapter shall be ready for occupancy or the in-lieu fees shall be paid to the County before the final certificate of occupancy for market rate units is issued. No County official or agency shall issue the final certificate of occupancy for market rate units until the inclusionary units are ready for occupancy or the fees have been paid.
4. Failure of any County official or agency to fulfill the requirements of this Chapter shall not excuse any applicant from meeting the requirements of this Chapter.

## **SECTION 7916. ENFORCEMENT**

1. The County may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to, actions to revoke, deny or suspend any permit or planning approval.
2. In case of failure to pay when due an in-lieu fee under this Chapter, the fee shall be the greater of: (1) the fee that would have been payable at the time of completion of construction plus interest from that date at the rate of interest on one-year treasury bills as of the date of completion of construction; or (2) the fee that would have been payable if the development had been completed at the time of enforcement, whichever is greater. The payment of fees may be enforced as a lien on the property.
3. It shall be unlawful for any person to sell or rent an inclusionary unit constructed pursuant to this Chapter either at a price or rent exceeding the maximum allowed under this Chapter, or to a household not qualified under this Chapter.

**SECTION 7917. ADJUSTMENTS.** A developer of any project subject to the inclusionary requirements in this Chapter may request and apply to the Planning Commission for a reduction, adjustment, or waiver of the requirements. Any such request or application shall be made in writing and filed with the Planning Division. The request shall set forth in detail the factual and legal basis for the claim of waiver,

reduction, or adjustment. The Planning Commission shall consider the request at the public hearing on the permit application or at a separate hearing. The applicant shall bear the burden of presenting substantial evidence to support the request, including technical information to support the applicant's position. A reduction, adjustment or waiver shall be approved only if the Planning Commission finds that: (1) the project will not be feasible if subjected to the full requirements of this Chapter and affordable housing units would accordingly not be constructed; or (2) full enforcement of the inclusionary requirement as provided herein (including payment of an in-lieu fee) will not foster the development of affordable housing units.

#### **SECTION 7918. SEVERABILITY**

1. If any clause, sentence, section or part of this Chapter, or any fee imposed upon any person or entity, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this Chapter, or such person or entity, and shall not affect or impair any of the remaining provisions, clauses, sentences, sections, or parts of this Chapter or the effect of the Chapter on other persons or entities.
2. It is hereby declared to be the intention of the Board of Supervisors of San Mateo County that this Chapter would have been adopted had such unconstitutional, illegal, or invalid clause, sentence, section, or part of this Chapter not been included herein, or had such person or entity been expressly exempted from the application of this Chapter. To this end, the provisions of the Chapter are severable.

(Sections 7908 to 7918 - Added by Ordinance No. 4206 - March 16, 2004)

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