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## **Chapter 17.44 INCLUSIONARY ZONING**

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### **Article I. General Provisions**

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#### **17.44.010 Title.**

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This chapter shall be called the “Inclusionary Zoning Ordinance of the City of Pleasanton.” (Ord. 1818 § 1, 2000)

#### **17.44.020 Purpose.**

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The purpose of this chapter is to enhance the public welfare and assure that further housing development attains the city’s affordable housing goals by increasing the production of residential units affordable to households of very low, low, and moderate income, and by providing funds for the development of very low, low, and moderate income ownership and/or rental housing. In order to assure that the remaining developable land is utilized in a manner consistent with the city’s housing policies and needs, 15 percent of the total number of units of all new multiple-family residential projects containing 15 or more units, constructed within the city as it now exists and as may be altered by annexation, shall be affordable to very low and low income households. For all new single-family residential projects of 15 units or more, at least 20 percent of the project’s dwelling units shall be affordable to very low, low, and/or moderate income households. These requirements shall apply to both ownership and rental projects. (Ord. 1818 § 1, 2000)

#### **17.44.030 Definitions.**

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For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

“Affordable housing proposal.” A proposal submitted by the project owner as part of the city development application (e.g., design review, planned unit development, etc.) stating the method by which the requirements of this chapter are proposed to be met.

“Affordable rent.” A monthly rent (including utilities as determined by a schedule prepared by the city) which does not exceed one-twelfth of 30 percent of the maximum annual income for a household of the applicable income level.

“Affordable sales price.” A sales price which results in a monthly mortgage payment (including principal and interest) which does not exceed one-twelfth of 35 percent of the maximum annual income for a household of the applicable income level.

“Amenities.” Interior features which are not essential to the health and safety of the resident, but provide visual or aesthetic appeal, or are provided as conveniences rather than as necessities. Interior amenities may include, but are not limited to, fireplaces, garbage disposals, dishwashers, cabinet and storage space and bathrooms in excess of one. Amenities shall in no way include items required by city building codes or other ordinances that are necessary to ensure the safety of the building and its residents.

“Applicant.” Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city permits and approvals for a project.

“City.” The city of Pleasanton or its designee or any entity with which the city contracts to administer this

chapter.

“Commercial, office, and industrial project.” For the purposes of this chapter, any new nonresidential (commercial, office, or industrial) development or redevelopment greater than 10 gross acres 250,000 square feet of gross building area, whichever is less.

“Dwelling unit.” A dwelling designed for occupancy by one household.

“HUD.” The United States department of housing and urban development or its successor.

“Household.” One person living alone; or two or more persons sharing residency whose income is considered for housing payments.

“Household, low income.” A household whose annual income is more than 50 percent but does not exceed 80 percent of the annual median income for Alameda County, based upon the annual income figures provided by the U.S. department of housing and urban development (HUD), as adjusted for household size.

“Household, moderate income.” A household whose annual income is more than 80 percent but does not exceed 120 percent of the annual median income for Alameda County, based upon the annual income figures provided by HUD, as adjusted for household size.

“Household, very low income.” A household whose annual income does not exceed 50 percent of the annual median income for Alameda County, based upon the annual income figures provided by HUD, as adjusted for household size.

“Inclusionary unit.” A dwelling unit as required by this chapter which is rented or sold at affordable rents and/or affordable sales prices (as defined by this chapter) to very low, low, or moderate income households.

“Inclusionary unit credits.” Credits approved by the city council in the event a project exceeds the total number of inclusionary units required in this chapter. Inclusionary unit credits may be used by the project owner to meet the affordable housing requirements of another project subject to approval by the city council.

“Income.” The gross annual household income as defined by HUD.

“Life of the inclusionary unit.” The term during which the affordability provisions for inclusionary units shall remain applicable. The affordability provisions for inclusionary units shall apply in perpetuity from the date of occupancy, which shall be the date the city of Pleasanton performs final inspection for the building permit.

“Lower income housing fee.” A fee paid to the city by an applicant for a project in the city, in lieu of providing the inclusionary units required by this chapter.

“Median income for Alameda County.” The median gross annual income in Alameda County as determined by HUD, adjusted for household size.

“Off-site inclusionary units.” Inclusionary units constructed within the city of Pleasanton on a site other than the site where the applicant intends to construct market rate units.

“Ownership units.” Inclusionary units developed as part of a residential development which the applicant intends will be sold, or which are customarily offered for individual sale.

“Project.” A residential housing development at one location or site including all dwelling units for which permits have been applied for or approved.

“Project owner.” Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the project is located.

“Property owner.” The owner of an inclusionary unit, excepting a “project owner.”

“Recapture mechanisms.” Legal programs and restrictions by which subsidies provided to inclusionary

units will be controlled and repaid to the city and/or other entity upon resale, to ensure the ongoing preservation of affordability of inclusionary units or to ensure funds for inclusionary units remain within the city's affordable housing program.

“Rental units”: Inclusionary units which the applicant intends will be rented or leased, or which are customarily offered for lease or rent.

“Resale restrictions.” Legal restrictions which restrict the price of inclusionary units to ensure that they remain affordable to very low, low, and moderate income households on resale.

“Residential project, multiple-family.” A residential project consisting of condominiums, apartments, and similar dwellings attached in groups of four or more units per structure and including multiple units located on a single parcel of land under common ownership.

“Residential project, single-family.” A residential project consisting of detached and attached single-family homes, including paired single-family, duets, duplexes, townhomes, and similar unit types where each unit is located on a separate parcel of land.

“Unit type.” Various dwelling units within a project which are distinguished by number of bedrooms and/or the type of construction (e.g., detached single-family, duets, townhomes, condominiums). (Ord. 1818 § 1, 2000)

## **Article II. Zoning Requirements**

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### **17.44.040 General requirements/applicability.**

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A. Residential Development. For all new multiple-family residential projects of 15 units or more, at least 15 percent of the project's dwelling units shall be affordable to very low, and/or low income households. For all new single-family residential projects of 15 units or more, at least 20 percent of the project's dwelling units shall be affordable to very low, low, and/or moderate income households. These dwelling units shall be referred to as “Inclusionary Units”. Special consideration will be given to projects in which a significant percentage of the inclusionary units are for very low and low income households. The specific mix of units within the three affordability categories shall be subject to approval by the city.

The inclusionary units shall be reserved for rent or purchase by eligible very low, low, and moderate income households, as applicable. Projects subject to these requirements include, but are not limited to, single-family detached dwellings, townhomes, apartments, condominiums, or cooperatives provided through new construction projects, and/or through conversion of rentals to ownership units.

The percentage of inclusionary units required for a particular project shall be determined only once on a given project, at the time of tentative map approval, or, for projects not processing a map, prior to issuance of building permit. If the subdivision design changes, which results in a change in the number of unit types required, the number of inclusionary units required shall be recalculated to coincide with the final approved project. In applying and calculating the 15 percent requirement, any decimal fraction less than or equal to 0.50 may be disregarded, and any decimal fraction greater than 0.50 shall be construed as one unit.

B. Commercial, Office, and Industrial (COI) Development. In lieu of paying the lower income fee as set forth in city Ordinance No. 1488, COI development may provide affordable housing consistent with this chapter. As a result, new COI developments are strongly encouraged to submit an affordable housing proposal as set forth in Section 17.44.090 of this chapter. Upon submittal of the affordable housing proposal, city staff will meet with the developer to discuss the potential for providing incentives to encourage on-site construction of affordable housing units and alternatives to constructing affordable units as set forth in this chapter. In the event a developer requests incentives or alternatives as a means of providing affordable housing in connection with a COI development, the affordable housing proposal will

be reviewed as set forth in Section 17.44.090 of this chapter. COI development not pursuing the inclusion of affordable housing shall be subject to the lower income fees as set forth in city ordinance 1488. (Ord. 1818 § 1, 2000)

**17.44.050 Inclusionary unit provisions and specifications.**

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- A. Inclusionary units shall be dispersed throughout the project unless otherwise approved by the city.
- B. Inclusionary units shall be constructed with identical exterior materials and an exterior architectural design that is consistent with the market rate units in the project.
- C. Inclusionary units may be of smaller size than the market units in the project. In addition, inclusionary units may have fewer interior amenities than the market rate units in the project. However, the city may require that the inclusionary units meet certain minimum standards. These standards shall be set forth in the affordable housing agreement for the project.
- D. Inclusionary units shall remain affordable in perpetuity through recordation of an affordable housing agreement as described in Section 17.44.060 of this chapter.
- E. All inclusionary units in a project shall be constructed concurrently within or prior to the construction of the project’s market rate units.
- F. For purposes of calculating the affordable rent or affordable sales price of an inclusionary unit, the following household size assumptions shall be used for each applicable dwelling unit type:

<b>Unit Size</b>	<b>HUD Income Category by Household Size</b>
Studio unit	1 person
1 bedroom unit	2 persons
2 bedroom unit	3 persons
3 bedroom unit	4 persons
4 or more bedroom unit	5 or more persons

- G. The city’s adopted preference and priority system shall be used for determining eligibility among prospective beneficiaries for affordable housing units created through this inclusionary zoning ordinance. (Ord. 1818 § 1, 2000)

**17.44.060 Affordable housing agreement.**

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An affordable housing agreement shall be entered into by the city and the project owner. The agreement shall record the method and terms by which a project owner shall comply with the requirements of this chapter. The approval and/or recordation of this agreement shall take place prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for such lots or units.

The affordable housing agreement shall state the methodology for determining a unit’s initial and ongoing rent or sales and resale price(s), any resale restrictions, occupancy requirements, eligibility requirements, city incentives including second mortgages, recapture mechanisms, the administrative process for monitoring unit management to assure ongoing affordability and other matters related to the development and retention of the inclusionary units.

In addition to the above, the affordable housing agreement shall set forth any waiver of the lower income housing fee. For projects which meet the affordability threshold with very low and/or low income units, all units

in the project shall be eligible for a waiver of the lower income housing fee. For single-family residential projects which meet the affordability threshold with moderate income units, or multiple-family residential projects which do not meet the affordability threshold, only the inclusionary units shall be eligible for a waiver of the lower income housing fee except as otherwise approved by the city council.

To assure affordability over the life of the unit, the affordable housing agreement shall be recorded with the property deed or other method approved by the city attorney. In the event an inclusionary unit is affordable by design the affordable housing agreement shall stipulate the method for assuring that the units retain their affordability as the housing market changes.

The community development director may waive the requirement for an affordable housing agreement for projects approved prior to the effective hereof and/or for projects that have their affordable housing requirements included in a development agreement or other city document. (Ord. 2000 § 1, 2009; Ord. 1818 § 1, 2000)

#### **17.44.070 Incentives to encourage on-site construction of inclusionary units.**

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The city shall consider making available to the applicant incentives to increase the feasibility of residential projects to provide inclusionary units. Incentives or financial assistance will be offered only to the extent resources for this purpose are available and approved for such use by the city council or city manager, as defined below, and to the extent that the project, with the use of incentives or financial assistance, assists in achieving the city's housing goals. However, nothing in this chapter establishes, directly or through implication, a right of an applicant to receive any assistance or incentive from the city.

Any incentives provided by the city shall be set out in the affordable housing agreement pursuant to Section 17.44.060 of this chapter. The granting of the additional incentives shall require demonstration of exceptional circumstances that necessitate assistance from the city, as well as documentation of how such incentives increase the feasibility of providing affordable housing.

The following incentives may be approved for applicants who construct inclusionary units on-site:

- A. **Fee Waiver or Deferral.** The city council, by resolution, may waive or defer payment of city development impact fees and/or building permit fees applicable to the inclusionary units or the project of which they are a part. Fee waivers shall meet the criteria included in the city's adopted policy for evaluating waivers of city fees for affordable housing projects. The affordable housing agreement shall include the terms of the fee waiver.
- B. **Design Modifications.** The granting of design modifications relative to the inclusionary requirement shall require the approval of the city council and shall meet all applicable zoning requirements of the city of Pleasanton. Modifications to typical design standards may include the following:
  - Reduced setbacks;
  - Reduction in infrastructure requirements;
  - Reduced open space requirements;
  - Reduced landscaping requirements;
  - Reduced interior or exterior amenities;
  - Reduction in parking requirements;
  - Height restriction waivers.
- C. **Second Mortgages.** The city may utilize available lower income housing funds for the purpose of providing second mortgages to prospective unit owners or to subsidize the cost of a unit to establish an affordable rent or an affordable sales price. Terms of the second mortgage or subsidy shall be stated in the affordable housing agreement. The utilization of these incentives shall not be the sole source of providing

the inclusionary units and they are intended to augment the developer's proposal.

D. Priority Processing. After receiving its discretionary approvals, a project that provides inclusionary units may be entitled to priority processing of building and engineering approvals subject to the approval of the city manager. A project eligible for priority processing shall be assigned to city engineering and/or building staff and processed in advance of all nonpriority items. (Ord. 1818 § 1, 2000)

#### **17.44.080 Alternatives to constructing inclusionary units on-site.**

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The primary emphasis of this inclusionary zoning ordinance is to achieve the inclusion of affordable housing units to be constructed in conjunction with market rate units within the same project in all new residential projects. However, the city acknowledges that it may not always be practical to require that every project satisfy its affordable housing requirement through the construction of affordable units within the project itself. Therefore, the requirements of this chapter may be satisfied by various methods other than the construction of inclusionary units on the project site. Some examples of alternate methods of compliance appear below. As housing market conditions change, the city may need to allow alternatives to provide options to applicants to further the intent of providing affordable housing with new development projects.

A. Off-Site Projects. Inclusionary units required pursuant to this chapter may be permitted to be constructed at a location within the city other than the project site. Any off-site inclusionary units must meet the following criteria:

1. The off-site inclusionary units must be determined to be consistent with the city's goal of creating, preserving, maintaining, and protecting housing for very low, low, and moderate income households.
2. The off-site inclusionary units must not result in a significant concentration of inclusionary units in any one particular neighborhood.
3. The off-site inclusionary units shall conform to the requirements of all applicable city ordinances and the provisions of this chapter.
4. The occupancy and rents of the off-site inclusionary units shall be governed by the terms of a deed restriction, and if applicable, a declaration of covenants, conditions and restrictions similar to that used for the on-site inclusionary units.

The affordable housing agreement shall stipulate the terms of the off-site inclusionary units. If the construction does not take place at the same time as project development, the agreement shall require the units to be produced within a specified time frame, but in no event longer than five years. A cash deposit or bond may be required by the city, refundable upon construction, as assurance that the units will be built.

B. Land Dedication. An applicant may dedicate land to the city or a local nonprofit housing developer in place of actual construction of inclusionary units upon approval of the city council. The intent of allowing a land dedication option is to provide the city or a local nonprofit housing developer the free land needed to make an inclusionary unit development feasible, thus furthering the intent of this chapter.

The dedicated land must be appropriately zoned, buildable, free of toxic substances and contaminated soils, and large enough to accommodate the number of inclusionary units required for the project. The city's acceptance of land dedication shall require that the lots be fully improved, with infrastructure, adjacent utilities, grading, and fees paid.

C. Credit Transfers. In the event a project exceeds the total number of inclusionary units required in this chapter, the project owner may request inclusionary unit credits which may be used to meet the affordable housing requirements of another project. Inclusionary unit credits are issued to and become the possession of the project owner and may not be transferred to another project owner without approval by the city

council. The number of inclusionary unit credits awarded for any project is subject to approval by the city council.

D. **Alternate Methods of Compliance.** Applicants may propose creative concepts for meeting the requirements of this chapter, in order to bring down the cost of providing inclusionary units, whether on- or off-site. The city council may approve alternate methods of compliance with this chapter if the applicant demonstrates that such alternate method meets the purpose of this chapter (as set forth in Section 17.44.020 of this chapter).

E. **Lower Income Housing Fee Option.** In lieu of providing inclusionary units in a project, an applicant may pay the city's lower income housing fee as set forth in Chapter 17.40 of this title. (Ord. 1818 § 1, 2000)

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## **Article III. Miscellaneous**

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### **17.44.090 Administration.**

An applicant of a project subject to this chapter shall submit an affordable housing proposal stating the method by which it will meet the requirements of this chapter. The affordable housing proposal shall be submitted as part of the applicant's city development application (e.g., design review, planned unit development, etc.) to the planning division in a form approved by the city manager. The community development director may waive the requirement for submittal of an affordable housing proposal for projects approved prior to the effective date hereof and/or for projects that have undergone considerable public review during which affordable housing issues were addressed.

The affordable housing proposal shall be reviewed by the city's housing commission at a properly noticed meeting open to the public. The housing commission shall make recommendations to the city council either accepting, rejecting or modifying the developer's proposal and the utilization of any incentives as outlined in this chapter. The housing commission may also make recommendations to the planning commission regarding the project as necessary to assure conformance with this chapter.

Acceptance of the applicant's affordable housing proposal is subject to approval by the city council, which may direct the city manager to execute an affordable housing agreement in a form approved by the city attorney. The city manager or his or her designee shall be responsible for monitoring the sale, occupancy and resale of inclusionary units. (Ord. 2000 § 1, 2009; Ord. 1818 § 1, 2000)

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### **17.44.100 Conflict of interest.**

The following individuals are ineligible to purchase or rent an inclusionary unit: (a) city employees and officials (and their immediate family members) who have policymaking authority or influence regarding city housing programs; (b) the project applicant and its officers and employees (and their immediate family members); and (c) the project owner and its officers and employees (and their immediate family members). (Ord. 1818 § 1, 2000)

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### **17.44.110 Enforcement.**

The city manager is designated as the enforcing authority. The city manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. The provisions of this chapter shall apply to all agents, successors and assigns of an applicant. No building permit or final inspection shall be issued, nor any development approval be granted which does not meet the requirements of this chapter. In the event that it is determined that rents in excess of those allowed by operation of this chapter have been charged to a tenant residing in an inclusionary unit, the city may take appropriate legal action to recover, and the project owner shall

be obligated to pay to the tenant, or to the city in the event the tenant cannot be located, any excess rents charged. (Ord. 1818 § 1, 2000)

**17.44.120 Appeals.**

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Any person aggrieved by any action or determination of the city manager under this chapter, may appeal such action or determination to the city council in the manner provided in Chapter 18.144 of this code. (Ord. 1818 § 1, 2000)