

Chapter 18.82 - INCLUSIONARY HOUSING UNITS

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18.82.010 Purpose.

The purpose of this Ordinance is to establish a Citywide Inclusionary Housing Program that provides requirements and procedures to develop housing that would be affordable to households of very low, low, or moderate incomes, meet the city's regional share of housing needs, and implement the goals and objectives of the General Plan and Housing Element.

18.82.020 Definitions.

The following definitions shall apply to this Ordinance:

"Affordable housing cost" means the housing cost for dwelling units as defined by California Health and Safety Code Section 50052.5 for owner-occupied housing and the affordable rent for rental units as defined by California Health and Safety Code Section 50053, as applicable.

"Affordable Housing Covenants" means the plan that is part of the Affordable Housing Agreement which ensures the continued affordability of Inclusionary Housing Units in a particular residential development and describes the real estate and financial terms and requirements of the Inclusionary Housing Units.

"Affordable Housing Plan" means the plan that is part of the Affordable Housing Agreement which provides the location of the Inclusionary Housing Units within the overall residential development project.

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

"Certificate of occupancy" is the permit issued by the La Habra Building and Safety division authorizing the occupancy of a residential unit.

"Construction scheduling and phasing" shall apply to the construction area as identified in the Affordable Housing Plan and shall include the estimated timing for each phase of construction.

"Contiguous property" means any parcel of land that is:

- A. Touching another parcel at any point;
- B. Separated from another parcel at any point only by a public right of way, private street or way, or public or private utility, service, or access easement; or
- C. Separated from another parcel only by other real property of the applicant which is not subject to the requirements of this chapter at the time of the planning permit application by the applicant.

"Density bonus" shall allow higher densities for residential development if affordable units are provided pursuant to California Government Code Section 65915 et seq. and Chapter 18.80 of the La Habra Municipal Code.

"Homeowner's Association" means a private organization within the residential subdivision community that establishes and enforces its rules for maintenance and operations.

"Housing Administrator" means the City staff person that reviews the Affordable Housing Agreement and its Affordable Housing Plan, Inclusionary Housing Plan, and Affordable Housing Covenants for any residential development that is required to provide Inclusionary Housing Units.

"Inclusionary Housing developer" means the developer that is selected by the City to construct the Inclusionary Housing Units that may be required for a particular residential development in accordance with the provisions of this Ordinance. To be considered as the City's selected Inclusionary Housing developer, all potential developers shall submit pro-formas, construction schedules, financial documentation, administration costs, and other related information to the City. The City shall review and consider this material in selecting the Inclusionary Housing developer.

"Inclusionary Housing Unit" means those affordable residential units that are constructed for households with very low, low, or moderate incomes, as required by the provisions of this Ordinance.

"Inclusionary Housing In-Lieu Fee Fund" means the fee fund where all acquired in-lieu fees shall be deposited. Deposited fees shall be used by the City to enter into joint

venture agreements with developers to construct the required Inclusionary Housing Units. Collected fees could also be used for City staff that conduct periodic inspections to ensure that the constructed Inclusionary Housing Units comply with the Affordable Housing Agreement, Affordable Housing Plan, Inclusionary Housing Plan, Affordable Housing Covenants, and all other City and zoning requirements.

"Inclusionary Housing Plan" means the plan that is part of the Affordable Housing Agreement, which describes the design, features, and affordability of the Inclusionary Housing Units as required by this Ordinance.

"Inclusionary Housing Unit" means a dwelling unit required by this Ordinance to be affordable to very-low, low, or moderate income households.

"Low-income household" shall have the definition given in California Health and Safety Code Section 50079.5.

"Market rate unit" means a new dwelling unit in a residential development that is not an Inclusionary Housing Unit and can be purchased or rented at market rates. These units are not considered to be affordable units.

"Moderate income household" shall have the definition given in California Health and Safety Code Section 50093(b), except that for the purposes of moderate income rental inclusionary units that are located upon the same site as the market rate residential development rental units, "moderate income household" means a household earning no more than eighty percent (80%) of area median income.

"Physical needs assessment" means a report by a qualified housing professional identifying those items that are necessary repairs, replacements and/or maintenance at the time of the assessment or that will likely require repair or replacement within three (3) years of the assessment. Estimated cost of repairs should be included in the assessment. All required repairs must be completed prior to occupancy of the repaired Inclusionary Housing Unit.

"Planning permit" means a tentative map, parcel map, conditional use permit, site development permit, planned development permit, development agreement, or special use permit, or any discretionary permit excluding General Plan Amendments, zoning and rezoning, annexation, Specific Plans, and area development policies.

"Very-low income household" means a household earning no more than the amount defined by California Health and Safety Code Section 50105.

18.82.030 Provision of Inclusionary Housing Units.

The provisions of this Ordinance shall apply to all residential development that will construct 10 or more units. These applicable residential developments will be required to

comply with this Ordinance and provide Inclusionary Housing Units at an affordable housing cost.

18.82.040 Exemptions.

This Ordinance shall not apply to any of the following:

- A. Projects that are not proposing residential units.
- B. Residential projects which are developed in accordance with the terms of a development agreement that was approved by the City prior to enactment of this Ordinance.
- C. Residential developments for which a planning permit has been formally submitted to the City and accepted by the City before July 1, 2021. Should the planning permit for an approved residential project expire or be revoked by the City, the requirements of this Ordinance shall then apply if a new planning permit is resubmitted for the residential project.
- D. The Director of Community and Economic Development may exempt a residential development from the requirements of this Ordinance if applicable federal, state or local laws are changed which result in conflict with this Ordinance.

18.82.050 Inclusionary Housing Requirements.

All residential development that will construct 10 or more units will be required to comply with this Ordinance and provide Inclusionary Housing Units. If Inclusionary Housing Units are required, the following provisions shall apply:

- A. Either for-sale or rental Inclusionary Housing Units may be provided, subject to the following affordability requirements for each unit type.
 - 1. If the applicant chooses to provide for-sale Inclusionary Housing Units, 15% of the total number of dwelling units proposed with the residential development can be made available for purchase to those households earning no more than 110% of the area median income.
 - 2. If the applicant chooses to provide rental Inclusionary Housing Units, 9% of the total number of dwelling units proposed with the residential development can be made available for rent to moderate income households, or 6% of the total number of dwelling units for rent to very-low and low income households.
 - 3. If both for-sale and rental units are being provided, the for-sale units shall comply with those provisions described in No. 1 above. The rental units shall comply with those provisions described in No. 2 above.

- B. In calculating the required total number of Inclusionary Housing Units, all fractional units shall be rounded up to the next higher whole number.
- C. If an applicant owns or controls contiguous properties, the applicant shall not avoid the requirements of this Ordinance by submitting piecemeal Planning permit applications. The first Planning permit application for the residential development shall identify all contiguous properties under common ownership and control, as applicable.

18.82.060 Timing of Construction of Inclusionary Housing Units.

The applicant's Inclusionary Housing Plan shall indicate the scheduling and phasing for construction of the required Inclusionary Housing Units. The City shall review the proposed construction scheduling and phasing with its review and approval of the Inclusionary Housing Plan. The latest that any Inclusionary Housing Unit could be built, however, would be prior to issuance of the last certificate of occupancy for the overall residential development project.

18.82.070 Design of Inclusionary Housing Units.

- A. The Inclusionary Housing Units shall be constructed similarly as the market rate units that would be built with the overall residential project. The Inclusionary Housing Units and market rate units shall have consistent exterior and interior design features, construction materials, furniture, and all other similar improvements. In addition, Inclusionary Housing Units shall have access to common open space and facilities, and all other amenities as the market rate units.
- B. Applicants that are required to provide Inclusionary Housing Units can apply those benefits that are described in Chapter 18.80 Affordable Housing Incentives, which allow density bonuses, parking reductions and other benefits for providing affordable housing units.

18.82.080 Applicant Options for Providing Inclusionary Housing Units

To comply with the City's Inclusionary Housing requirements, applicants may construct their required Inclusionary Housing Units either on-site within the overall proposed residential project site; or off-site on other dedicated property; or pay in-lieu fees, or reconstruct other existing residential units, subject to the following provisions:

- A. Applicants may construct their required Inclusionary Housing Units on-site within the residential project.
- B. Applicants may construct their required Inclusionary Housing Units off-site. If construction of the required Inclusionary Housing Units occurs off-site, the applicant must also acquire and manage the off-site property.

- C. Applicants may pay In-lieu fees. The in-lieu fee shall be charged at an amount equivalent to six dollars and fifty cents (\$6.50) per square foot of building space for the project's total floor area. All in-lieu fees shall be paid prior to the last certificate of occupancy that is issued for the overall proposed residential development.
- D. Applicants may acquire and reconstruct existing units, subject to the following provisions. These types of units can be acquired by the applicant, then reconstructed in accordance with City Building procedures and requirements, then converted to affordable Inclusionary Housing Units.
1. If the existing units are occupied, the applicant shall assume the costs for noticing, relocating the existing residents, and complying with all State and County requirements related to relocation.
 2. The existing residential units cannot be a nonconforming use.
 3. The reconstructed units shall comply with all current applicable Building and Housing Codes and requirements.
 4. A physical needs assessment shall be prepared and submitted to the City. The assessment shall evaluate each existing unit to be acquired and reconstructed, the property upon which it is located, any associated common area, and describe all existing structures and properties that need repair, replacement and/or maintenance.
 5. If existing units are owner-occupied, then the reconstructed Inclusionary Housing Unit shall continue to be owner-occupied. If the existing units are rentals, the applicant may choose to have the Inclusionary Housing Unit be either renter or owner-occupied.
 6. The bedroom count of the reconstructed units shall be the same as the required bedroom count that would be required for the Inclusionary Housing Unit.
- E. Applicants may choose any combination of the options described in A through D above to comply with the provisions of this Ordinance. Should an applicant choose to select a combination of options, the City shall review these proposals on a project-by-project basis to ensure that the required number of Inclusionary Housing Units are ultimately provided.
- F. Applicants, at a minimum, shall provide the following information, regardless if the required Inclusionary Housing Units are constructed on- or off-site:

1. The project site is consistent with the City's General Plan and Zoning designations, maximum residential density standards, and other relevant development and design requirements.
 2. The project site is suitable for development of the Inclusionary Housing Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant development and design requirements.
 3. Sufficient infrastructure is available and neighboring streets must be accessible at the property line and have adequate capacity.
 4. There are no environmental or geological hazards at the project site.
 5. Schedules for acquiring property or existing residential units, construction activities, and final inspections shall be provided.
 6. Inclusionary Housing Units shall not be eligible for credits or transfers.
- G. The City shall establish an Inclusionary Housing In-Lieu Fee Fund where all acquired in-lieu fees shall be deposited. Said fee fund shall be approved by City Resolution. Deposited fees shall be used by the City to enter into joint venture agreements with developers to construct the required Inclusionary Housing Units.
- H. To be considered as the City's selected Inclusionary Housing developer, all potential developers shall submit pro-formas, construction schedules, financial documentation, administration costs, and other related information to the City. The City shall review and consider this material in selecting the Inclusionary Housing developer.
- I. All on-site or off-site Inclusionary Housing Units, regardless if the units are for-sale or rental, shall be subject to the design standards, requirements, and procedures described in this Ordinance.
- J. Inclusionary Housing Units, regardless if the units are for-sale or rental, shall be within a newly established Homeowner's Association or incorporated into an existing Homeowner's Association. If the Inclusionary Housing Units are constructed on-site, as part of the larger residential development, said Inclusionary Housing Units must be included within the newly established Homeowner's Association. If said Inclusionary Housing Units are constructed off-site, these units must either be within a newly established Homeowner's Association or be incorporated into an existing Homeowner's Association that may have been established with the existing off-site property.

18.82.090 Affordable Housing Agreement.

Applicants that are required to provide Inclusionary Housing Units, in accordance with the provisions of this Ordinance, shall prepare an Affordable Housing Agreement that describes the design and location of the Inclusionary Housing Units and their affordability requirements. The following describes those plans that shall be included in the Affordable Housing Agreement and how the Affordable Housing Agreement will be approved by the City.

A. Plans Included in the Affordable Housing Agreement.

1. Affordable Housing Plan. These plans shall show the location of the Inclusionary Housing Units within the overall residential project site.
2. Inclusionary Housing Plan. These plans shall describe the Inclusionary Housing Units that will be provided, as follows:
 - a. Will the Inclusionary Housing Units be for-sale or rental.
 - b. How will the inclusionary housing requirements be satisfied pursuant to this Ordinance.
 - c. The number of Inclusionary Housing Units that are required and will be provided, unit types, number of bedrooms and baths, unit size, design features and amenities, etc.
 - d. Anticipated construction activities, phasing, and completion schedule.
 - e. How will the Inclusionary Housing Units be marketed.
 - f. How will tenant incomes be verified for rental inclusionary units (if applicable).
 - g. Provide a financing program for the ongoing administration and monitoring of rental inclusionary units.
 - h. How will the affordability of the Inclusionary Housing Units be maintained.
 - i. Any other information that is necessary to evaluate the compliance of the affordability of the Inclusionary Housing Units with the provisions of this Ordinance and the City's Affordable Housing Agreement requirements.
3. Affordable Housing Covenants. These covenants shall ensure the continued affordability of Inclusionary Housing Units in the overall residential development.

- a. Affordable Housing Covenants shall include the following, as applicable: inclusionary housing and regulatory terms, promissory notes, deeds of trust, resale restrictions, rights of first refusal, options to purchase, and/or other relevant financial and administration documents.
- b. Affordable Housing Covenants shall require that all Inclusionary Housing Units remain affordable to the targeted income group for no less than the time periods set forth in California Health and Safety Code Sections 33413(c)(1) and (2). A longer term of affordability may be required if the residential development receives a subsidy of any type, including but not limited to loan, grant, mortgage financing, mortgage insurance, or rental subsidy, and whether the subsidy program requires a longer term of affordability.

B. Approval of the Affordable Housing Agreement.

1. For those residential developments that are required to provide Inclusionary Housing Units, the Affordable Housing Plan and Inclusionary Housing Plan shall be reviewed as part of the overall residential development's Planning permit application.
2. The Affordable Housing Agreement, including the Affordable Housing Plan, Inclusionary Housing Plan, and Affordable Housing Covenants shall be approved by City Council Resolution, prior to issuance of any building permit for the overall residential development.
3. Upon submittal, the Affordable Housing Administrator shall determine if the Affordable Housing Agreement, including the Affordable Housing Plan, Inclusionary Housing Plan, and Affordable Housing Covenants are complete and conform to the provisions of this Ordinance and City's Housing requirements.
4. The City Council can also establish fees for the ongoing administration and monitoring of the Inclusionary Housing Units. Said fees can be updated periodically, as required.

18.82.100 Monitoring and Enforcement.

All applicants shall either construct their required Inclusionary Housing Units or pay appropriate in-lieu fees, prior to issuance of the last certificate of occupancy for the overall residential development project. To ensure that the constructed Inclusionary Housing Units are properly maintained and have incorporated satisfactorily into the overall residential development project, the following provisions shall be implemented.

- A. Inclusionary Housing Units, regardless if the units are for-sale or rental, shall be within a newly established Homeowner's Association or incorporated into an existing Homeowner's Association. If the Inclusionary Housing Units are constructed on-site, as part of the larger residential development, said Inclusionary Housing Units must be included within the newly established Homeowner's Association. If said Inclusionary Housing Units are constructed off-site, these units must either be within a newly established Homeowner's Association or be incorporated into an existing Homeowner's Association that may have been established with the existing off-site property.
- B. The Homeowner's Association shall prepare and submit Annual Compliance Reports to the City to ensure that the Inclusionary Housing Units continue to comply with the Affordable Housing Agreement, Affordable Housing Plan, Inclusionary Housing Plan, Affordable Housing Covenants, and all other City requirements.
- C. City staff may conduct periodic inspections to also ensure compliance with the Affordable Housing Agreement, Affordable Housing Plan, Inclusionary Housing Plan, Affordable Housing Covenants, and all other City and zoning requirements. The City Council may adopt fees to cover the costs for City inspections and monitoring. These fees shall be deposited into the Inclusionary Housing In-Lieu Fee Fund.
- D. The City shall evaluate the effectiveness of this Ordinance every three years after the operative date of this Ordinance. Subsequent revisions to this Ordinance will require City Council review and approval.
- E. The City Attorney is authorized to provide legal support and review, as necessary, for all Affordable Housing Agreements, Affordable Housing Plans, Inclusionary Housing Plans, Affordable Housing Covenants, other regulatory agreements and covenants, resale restrictions, promissory notes, deeds of trust, and other legal documents.

18.82.110 Adjustments or Waivers.

Adjustments and/or waivers from the provisions and requirements of this Ordinance may be considered by the City on a project-by-project basis. Adjustments and/or waivers of the following circumstances and conditions may be proposed by the applicant, subject to City approval. Procedures and requirements for City review and approval of any adjustment or waiver request are described as follows.

- A. Circumstances and Conditions
 - 1. Residential developments for which a Planning permit has been approved by the City prior to enactment of this Ordinance shall be waived from the provisions and requirements of this Ordinance. However, should the

Planning permit expire or is revoked by the City, the requirements of this Ordinance shall then apply if a new Planning permit is resubmitted for the residential project.

2. An applicant may propose an alternative method of meeting the inclusionary housing requirements described in this Ordinance. The Director of Community and Economic Development may approve the recommended alternative if determined that the alternative will provide as much or more affordable housing units; the alternative will benefit the same or lower income levels; affordable units will be constructed of the same or superior design quality; and the alternative will provide greater public benefit.
3. The requirements of this Ordinance may be waived, adjusted, or reduced if an applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of the proposed residential development and the requirements of this Ordinance, or that the requirements of this Ordinance will take property in violation of California laws.

B. City Review and Approval of Adjustment and Waiver Requests

1. Any request for a waiver or adjustment shall be submitted to the City concurrently with the Planning permit application, Affordable Housing Plan or Inclusionary Housing Plan for the particular residential development.
2. The applicant is responsible for presenting substantial evidence to support the requested waiver or adjustment.
3. The Director of Community and Economic Development may exempt a residential development from the requirements of this Ordinance or approve any adjustment or waiver request if the applicant provides substantial evidence to support said exemptions or requests, and if applicable federal, state or local laws are changed which conflict with this Ordinance.