

**BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE**

**IN THE MATTER OF:**

An Ordinance of the City Council of the City of Lafayette amending Chapter 6-37: Inclusionary Housing to the Lafayette Municipal Code to allow a developer to voluntarily provide rent-restricted housing units if certain conditions are met. (ZT03-17)

Ordinance 659

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The City Council of the City of Lafayette does ordain as follows:

**Section 1. Findings.** The City Council finds the following:

**WHEREAS**, the Legislature of the State of California has declared that the availability of housing is of vital statewide importance, especially housing that is affordable to lower-income households;

**WHEREAS**, toward this objective, the Legislature requires that each local government in California identify, in its General Plan Housing Element, adequate sites for housing, as defined by Government Code Section 65583, and make adequate provision for the existing and projected needs of all economic segments of the community;

**WHEREAS**, the City of Lafayette provides a variety of programs to address these housing needs in its certified Housing Element, including a program to develop an inclusionary housing ordinance;

**WHEREAS**, on June 13, 2016, the City Council adopted an inclusionary housing ordinance requiring that 15% of housing units in for-sale developments in the downtown be available for households of very low, low and moderate incomes.

**WHEREAS**, on March 13, 2017, the City Council directed staff to proceed with amending the inclusionary housing ordinance to allow a developer to voluntarily provide rent-restricted housing units if certain conditions are met.

**WHEREAS**, pursuant to the California Environmental Quality Act ("CEQA") the City evaluated the proposed regulations and determined that they are exempt from CEQA under Section 15061(b)(3) because the proposed revisions to the ordinance do not have a potential for resulting in either a direct physical change in the environment or a reasonable foreseeable indirect physical change in the environment, but rather concern general policy and procedure making.

**WHEREAS**, on May 1, 2017, at a duly noticed hearing, the Planning Commission considered the staff report and the amendments to the ordinance, and continued the matter to May 15 to allow staff time for further review.

**WHEREAS**, on May 15, 2017, the Planning Commission considered the staff report and the amendments to the ordinance and adopted Resolution 2017-10.

**WHEREAS**, on June 19, 2017, the Planning Commission considered additional amendments to the ordinance and adopted revised Resolution 2017-10 by a vote of 4-0 finding the proposed

amendments to be exempt from CEQA and recommending that the City Council adopt the proposed amendments to the inclusionary housing regulations, and

**WHEREAS**, on July 10 and July 24, 2017, the City Council of the City of Lafayette conducted duly noticed public hearings pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with application proposed regulations were heard and the City Council suggested additional revisions to the ordinance which required the review and recommendation of the Planning Commission; and

**WHEREAS**, on August 21, 2017, the Planning Commission considered these additional amendments to the ordinance and adopted Resolution 2017-22 by a vote of 5-0-2 finding the proposed amendments to be exempt from CEQA and recommending that the City Council adopt the proposed amendments to the inclusionary housing regulations, and

**WHEREAS**, on September 11, 2017, the City Council of the City of Lafayette conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with application proposed regulations were heard and the matter was fully studied. The City Council introduced this ordinance and continued the matter to September 25 for adoption.

**WHEREAS**, all other legal prerequisites to the adoption of this Ordinance have occurred.

**NOW THEREFORE BE IT RESOLVED BY THE CITY OF LAFAYETTE CITY COUNCIL THAT:**

**Section 2. CEQA.** The City Council hereby finds that the subject Zoning Text Amendment is exempt from CEQA under Section 15061(b)(3) because the proposed revisions to the ordinance do not have a potential for resulting in either a direct physical change in the environment or a reasonable foreseeable indirect physical change in the environment, but rather concerns general policy and procedure making.

**Section 3. Zoning Text Amendment Findings.** Pursuant to Lafayette Municipal Code Section 6-213 and based on the record before the City Council and all written and oral evidence presented to the Council, the City Council hereby makes and adopts the following findings:

A. The Amendment is compatible with the each element of the General Plan and will allow a developer to voluntarily provide rent-restricted housing units if certain conditions are met. The provisions implement goals articulated in the Housing Element and do not change the density, extent or type of development otherwise permitted under the municipal code.

B. The Amendment is compatible with the uses authorized in, and the regulations prescribed for, the zoning districts for which it is proposed. The amendments to the inclusionary housing provisions enacted by this ordinance allow a developer to satisfy the inclusionary requirements for for-sale projects by providing rental units to very low and low income households either on or off site. The regulations do not change the density, extent or type of development otherwise permitted under the municipal code.

C. There is community need to add these revisions to Chapter 6-37 to the Lafayette Municipal Code because they offer flexibility and additional ways to provide affordable housing. It is well understood that the Bay Area suffers from a shortage of housing units, particularly at prices that

are affordable to very low and low income households. The Housing Element of the General Plan calls for creating additional affordable housing units to accommodate a diversity of Lafayette citizens in terms of age and socio-economic background and meet regional housing needs, and expanding housing opportunities for persons with special housing needs.

**Section 4. Adoption of Amendment.** Based on the record before the City Council, all written and oral evidence presented to the City Council, and the findings made in this Ordinance, the City Council hereby approves ZT03-17 amending Chapter 6-37 to the Lafayette Municipal Code as shown in Exhibit "A" attached hereto and incorporated herein by reference.

**Section 5. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

**Section 6. Public Records.** The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: City Clerk, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, California 94549.

**Section 7. Publication.** The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, including the names of the city council members voting for and against its passage, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption, including the names of the city council members who voted for and against its passage.

**Section 8. Effective Date.** This Ordinance becomes effective thirty (30) days after its adoption.

**Section 9. Certification.** The City Clerk shall certify to the adoption of this Ordinance.

**PASSED AND ADOPTED** by the City Council of the City of Lafayette at a regular meeting on September 25, 2017 by the following vote:

**AYES:** Anderson, Tatzin, Burks, Mitchell and Samson

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

**ATTEST:**

**APPROVED:**

  
Joanne Robbins, City Clerk

  
Mike Anderson, Mayor

**Attachment**

Exhibit A. Chapter 6-37 LMC "Inclusionary Housing"



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## INCLUSIONARY HOUSING

### Chapter 37 "Inclusionary Housing"

#### Sections:

- 6-3701 Purpose.
- 6-3702 Definitions.
- 6-3703 Basic Provisions.
- 6-3704 Inclusionary Percentage.
- 6-3705 Calculation of Inclusionary Units.
- 6-3706 Fractional Units.
- 6-3707 In-Lieu Fee.
- 6-3708 Segmentation.
- 6-3709 Term of affordability.
- 6-3710 Design.
- 6-3711 Timing.
- 6-3712 Alternatives.
- 6-3713 Inclusionary Housing Agreement.
- 6-3714 Allowances.
- 6-3715 Reductions, Adjustments, or Waivers.

**Section 1.01 Purpose.**

The purpose of this chapter is to facilitate the development and availability of housing affordable to a broad range of households of various income levels and sizes in Lafayette. This chapter is intended to:

- (a) Implement State policy that declares local governments have a responsibility to facilitate development to provide for the housing needs of all economic segments of the community;
- (b) Implement the Housing Element of the General Plan, which calls for the adoption of an inclusionary housing program;
- (c) Facilitate the development of affordable housing units within a project; and
- (d) Assist in the dispersal of affordable housing units throughout the downtown.

**Section 1.02 Definitions.**

In this chapter, unless the context requires otherwise:

- (a) "Affordable rent" means a rental rate that results in monthly housing costs, including utilities, that collectively do not exceed the following:
  - (1) For a very low income household, one-twelfth of the product of 30% times 50% of the area median income adjusted for family size appropriate for the unit.
  - (2) For a low income household, one-twelfth of the product of 30% times 80% of the area median income adjusted for family size appropriate for the unit.
- (b) "Affordable sales price" means a sales price that results in monthly housing costs, including mortgage (principle and interest), property taxes, utilities, property insurance and homeowner association fees, that collectively do not exceed the following:
  - (1) For a very low income household, one-twelfth of the product of 35% times 50% of the area median income adjusted for family size appropriate for the unit.
  - (2) For a low income household, one-twelfth of the product of 35% times 80% of the area median income adjusted for family size appropriate for the unit.
  - (3) For a moderate income household, one-twelfth of the product of 35% times 110% of the area median income adjusted for family size appropriate for the unit.
- (c) "Area median income" means the combined salaries, wages or other sources of income of a single household, based upon household size, for Contra Costa County as published annually by the State of California Department of Housing and Community Development.
- (d) "Downtown" means the area within the boundaries of the Downtown Specific Plan map.
- (e) "Inclusionary housing agreement" means a document that has been reviewed and approved by the Planning & Building Director that delineates the exact requirements that a developer shall meet to fulfill the requirements under this chapter.
- (f) "Inclusionary unit" means a dwelling unit that has an affordable sales or rental price for a household at the applicable income level under the requirements of this chapter.
- (g) "Low income household" means a household whose annual income does not exceed 80% of Area Median Income, adjusted for household size as published by the State of California Department of Housing and Community Development for Contra Costa County

- (h) "Moderate income household" means a household whose annual income does not exceed 110% of Area Median Income, adjusted for household size as published by the State of California Department of Housing and Community Development for Contra Costa County.
- (i) "Project" means a residential or mixed-use development creating a net increase of two or more for sale dwelling units. This excludes a legal second unit unless that unit is built to satisfy the requirements of this chapter.
- (j) "Very low income household" means a household whose annual income does not exceed 50% of Area Median Income, adjusted for household size as published by the State of California Department of Housing and Community Development for Contra Costa County

**Section 1.03 Basic Provisions.**

- (a) Geographic area. The provisions of this chapter apply to the Downtown.
- (b) Development size threshold. The provisions of this chapter apply to all projects creating a net increase of 2 or more for-sale residential units.
- (c) The State of California calculates annual income limits for very-low, low and moderate income households that may vary from the definitions for such households contained in this chapter. In applying Sections 6-3702(a), (b), (g), (h) and (j) above to a proposed project, applicants may use the higher of the household income limits established in this chapter (50% of area median income for very low, 80% of area median income for low, and 110% of area median income for moderate), or the household income limits established by the State of California for the same income categories

**Section 1.04 Inclusionary Percentage.**

- (a) Single-Family. For projects in the Downtown creating single family dwellings, 15% of the units must be inclusionary units sold at an affordable sales price to moderate income households.
- (b) Multi-Family. For projects in the Downtown creating multiple family dwellings, 15% of the total units must be inclusionary units, with 9% sold at an affordable sales price to low or moderate income households and 6% sold at an affordable sales price to very low income households.

**Section 1.05 Calculation of Inclusionary Units.**

- (a) To calculate the number of inclusionary units required, multiply 15% with the total number of units in the project.
- (b) When 6% and 9% are multiplied with the total units to determine the number for each respective income category and the result is less than one unit for each income category, then the total combined percentage may be affordable to low or moderate income households.
- (c) Notwithstanding (a) and (b) above, a project with 2-6 units may elect to pay the applicable in-lieu fees and is not required to build inclusionary units.
- (d) Notwithstanding (a) and (b) above, a project with 7-20 units may elect to make all of the inclusionary units affordable at moderate-income.

**Section 1.06 Fractional Units.**

If multiplying the required 15% with the total number of units results in other than a whole number, a result equal to or greater than .5 shall be rounded up to the next whole unit. An in-lieu fee shall be paid for a result less than .5.

**Section 1.07 In-Lieu Fee.**

This chapter establishes provisions under which an in-lieu fee is collected for inclusionary units. The City Council shall establish the amount based on an appropriate fee study and shall update the fee over time. The in-lieu fee requirements of this chapter shall be effective only after the City Council has adopted or updated the fee by resolution.

**Section 1.08 Segmentation.**

Segmentation of a project in order to avoid the requirements of this chapter is not permitted. Construction of proximate dwelling units within any five year period for which there is evidence of common ownership, control or interest, and whether or not covered by the same land use entitlements, shall be subject to the regulations of this chapter. However, nothing herein shall prohibit the phased development of a project, as approved by the City.

**Section 1.09 Term of affordability.**

- (a) For-sale inclusionary units shall be restricted to the applicable income level for a period not less than 45 years.
- (b) The term of affordability resets upon sale of the unit(s).
- (c) Any inclusionary units proposed as rentals under 6-3712 of this ordinance shall be restricted to the applicable income level for a period not less than 55 years.

**Section 1.10 Design.**

Inclusionary units must be dispersed throughout the project and be comparable in terms of bedroom count and exterior design to the market rate units. The inclusionary units must have access to all amenities available to the market rate units.

**Section 1.11 Timing.**

Inclusionary units must be constructed prior to or concurrently with the construction of the market rate units. The developer shall complete construction of all inclusionary units prior to final inspection of the final market rate unit. In phased developments, inclusionary units may be constructed and occupied in proportion to the number of units in each phase.



**Section 1.12 Alternatives.**

(a) **Offsite development.** Instead of providing inclusionary units on-site to satisfy the requirements of this chapter, a developer may propose providing all or a portion of the inclusionary units off-site.

1. In order to approve such a proposal, the City Council must find that on-site production of such units is infeasible or that greater public benefit will result from the units being off-site.
2. The City Council shall require the provision of a minimum of one and may require up to two off-site units for every unit not provided on-site.
3. Regardless of the number of offsite units that are required, 40% of the offsite units shall be affordable to very low-income households and 60% shall be affordable to low- or moderate-income households.
4. Nothing in this section shall obligate the Council to allow any offsite units.
5. A developer proposing to provide the inclusionary units offsite must provide a relocation plan for any current tenants that may be displaced by the development of affordable units at the offsite location.
6. All other provisions of this chapter apply, whether the units are produced on-site or off-site.

**(b) For-Rent Alternative to Fees or Sale**

1. Ownership Projects. An applicant for a residential ownership project may elect to provide all or a portion of the inclusionary units required for the residential project at affordable rent to lower income households rather than provide for-sale units. Fifteen percent of the total units must be affordable to lower incomes, with 9% rented at an affordable rent to low income households and 6% rented at an affordable rent to very low income households.
2. Regulatory Agreement Required. To ensure compliance with the Costa-Hawkins Act (Civil Code Section 1954.50 et seq.), the City may approve an affordable rental alternative only if the applicant agrees in a rent regulatory agreement with the City to limit rents in consideration for a direct financial contribution or a form of assistance specified in the Density Bonus Law (Government Code Section 65915 et seq.).
3. Sale of Affordable Rental Units. If the owner of the residential ownership project later determines to offer the affordable units in the residential project for sale at an affordable sales price, any subsequent regulatory agreement shall include provisions for sale of the affordable units, as well as relocation benefits for tenants of the affordable rental units.

**Section 1.13 Inclusionary Housing Agreement.**

(a) An inclusionary housing agreement between the developer and the City shall be required for any project subject to the provisions of this chapter in a form approved by the Planning & Building Director. The agreement shall be executed prior to issuance of a building permit.

- (b) The inclusionary housing agreement shall contain the following information:
  - (1) the calculations used to determine the number of inclusionary units;
  - (2) a floor plan or site plan depicting the location of the inclusionary units;
  - (3) the affordability level for each inclusionary unit;
  - (4) the term of affordability;
  - (5) a phasing plan for phased developments;
  - (6) a description and details of any requested incentives, waivers or exemptions;
  - (7) the process by which eligibility of qualified households will be reviewed and selected to purchase affordable units;
  - (8) an annual reporting schedule and requirements;
  - (9) priority to first time home buyers and/or large families; and
  - (10) additional information as requested by the Planning & Building Director.

**Section 1.14 Allowances.**

In approving an inclusionary housing agreement, the City may, at its sole discretion, include one or more of the following allowances:

- (a) Unit size reduction. The size of the required inclusionary units may be smaller than the market rate units, consistent with all other provisions herein.
- (b) Interior finishes. Inclusionary units may have different interior finishes than market rate units so long as the interior features are durable, of good quality and consistent with current State building code standards for new housing.

**Section 1.15 Reductions, Adjustments, or Waivers.**

- (a) A developer of a project subject to the requirements in this chapter may petition the City Council for a reduction, adjustment, or waiver of these requirements based upon substantial evidence showing the absence of any reasonable relationship or nexus between the impact of the development and the inclusionary requirements.
- (b) A project subject to the requirements of this chapter and which has received approval for a tentative subdivision or parcel map, use permit or other discretionary approval and submits a new or revised application for the same property may petition for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously approved.
- (c) Any such petition shall be made in writing and filed with the Planning & Building Department, along with the required fee established by City Council resolution, not later than ten days before the first public hearing on any discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the developer is protesting an action taken pursuant to this ordinance after the first public hearing on such permit or approval, then the petition shall be filed within ten days after the date of the action objected to by the developer. The petition shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment.

- (d) The City Council shall consider the petition at the public hearing on the permit application or at a separate hearing within sixty days after the filing of the petition, the appellant shall bear the burden of presenting substantial evidence to support the petition including comparable technical information to support petitioner's position.
- (e) No waiver shall be granted by the City Council for a new project where a prior project was approved within the last three years unless the City Council finds that:
  - (1) The new project is superior to the approved project both in its design and its mitigation of environmental impacts, or.
  - (2) Adequate affordable housing already exists in that the aggregate of new or substantially rehabilitated dwelling units within the downtown makes available more than 15 percent of such units at affordable housing cost to, and occupied by, persons and families of low and moderate income, and of such 15 percent, not less than 40 percent thereof is available at affordable housing cost to, and occupied by, very low income households, or
  - (3) Exceptions to the affordable housing requirements will result in a better project that better meets the City's housing goals.
- (f) The decision of the City Council shall be final. If a reduction, adjustment, or waiver is granted, any change in the project shall invalidate the waiver, adjustment, or inclusionary requirements unless such change is approved by the City in advance.

