

ORDINANCE NO. 24-20 N.S.

ORDINANCE OF THE CITY OF RICHMOND AMENDING SECTION 15.04.104.020, DEFINITIONS, REPEALING ARTICLE 15.04.603, INCLUSIONARY HOUSING, AND ADOPTING ARTICLE 15.04.603 OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND REGARDING INCLUSIONARY HOUSING AND AFFORDABLE HOUSING LINKAGE FEES

WHEREAS, the State of California has found that local governments have a responsibility to use the powers vested in them to facilitate the development of housing to make adequate provision for the housing needs of all economic segments of the community (Government Code Section 65580(d)); and

WHEREAS, the Regional Housing Needs Allocation (RHNA) assigned to the City by the Association of Bay Area Governments provides that at least 47 percent of new housing in the City over the 2014-2022 period should be affordable to extremely low, very low, lower, and moderate income households; and

WHEREAS, according to the RHNA, the City has a total need for 2,435 units through the year 2022, out of which just over 29 percent is for low and moderate income households and another 18 percent is for very low and extremely low income households. The City believes that these are minimum requirements and that more must be done to meet the community's housing needs; and

WHEREAS, because of the shortage of affordable housing in Richmond, many households in Richmond overpay for their housing. The City's 2015 -2022 Housing Element of the General Plan found that approximately 39 percent of Richmond households who own their homes paid 30 percent or more of income for their mortgage, while 55 percent of renter households paid more than 30 percent of income for housing. These households are overpaying for their housing, according to standards of the United States Department of Housing and Urban Development; and

WHEREAS, it is the lowest income households that spend the most on housing in Richmond. The Housing Element further found that, of low income households, 67 percent of owner-occupied households and 82 percent of renter-occupied households spent more than 30 percent of their income on housing; and

WHEREAS, since the Housing Element was adopted in 2015, home prices have increased by 67 percent, according to Zillow.com, whereas median incomes have increased only 28 percent, according to the California Department of Housing and Community Development, and are likely to have declined from that number due to the COVID-19 pandemic, likely increasing the number of households overpaying for housing; and

WHEREAS, based on these findings, the City has determined that there is a critical shortage of housing opportunities available to very low, low, and moderate-income households. Goal #1 of the Housing Element is to achieve a balanced supply of housing available for all income groups. Increasingly, persons with very low, low and moderate incomes who work and or live within the City are unable to locate housing at prices they can afford and are increasingly excluded from living in the City; and

WHEREAS, the City also finds that the high cost of newly constructed housing in Richmond does not, to any appreciable extent, provide housing affordable by very low, low, and moderate households, and that continued new residential and non-residential development that does not include nor contribute toward lower cost housing will serve to further aggravate the current housing problems by reducing the supply of developable land while generating additional needs for affordable housing; and

WHEREAS, Housing Element Programs H-1.3.1 and H-1.3.2 provide that the City will conduct an inclusionary housing ordinance study and will consider revisions to the inclusionary ordinance based on court decisions and the study, so long as those revisions do not constrain the overall production of housing in Richmond; and

WHEREAS, legislation adopted in 2017 (AB 1505; Government Code Sections 65850(g) and 65850.01) authorizes inclusionary requirements for rental residential developments, provided that such ordinance provides alternative means of compliance, and the proposed ordinance provides such alternative means of compliance; and

WHEREAS, Keyser Marston Associates has prepared three reports on the inclusionary ordinance, including a Financial Feasibility Analysis dated April 2019; and a Residential Nexus Analysis and a Non-Residential Jobs-Housing Nexus Analysis dated July 2016 (together the "Keyser Marston Reports"); and

WHEREAS, the Financial Feasibility Analysis is consistent with the requirements of Section 65850.01(b), in that Keyser Marston Associates is a qualified entity with demonstrated expertise preparing economic feasibility studies; the Analysis was made available for at least 30 days on the City's website and was considered by the City Council at a regularly scheduled meeting; and the study followed best professional practices and is sufficiently rigorous to allow an assessment of whether rental inclusionary requirements are economical feasible; and

WHEREAS, the City further finds that the housing shortage for persons of very low, low, and moderate incomes is detrimental to the public health, safety and welfare and that it is a public purpose of the City, and a public policy of the State of California as mandated by the requirements for a Housing Element of the City's General Plan, to make available an adequate supply of housing for persons of all economic segments of the community, and the City desires to modify the inclusionary housing ordinance to achieve the most affordable housing while not constraining housing development in the City.

NOW, THEREFORE, the Council of the City of Richmond, California, do ordain as follows:

Section 1. Amendment of Section 15.04.104.020 Key Terms and Definitions (Affordable-Housing Related Terms). Section 15.04.104.020 of the Richmond Municipal Code, "Affordable-Housing Related Terms," is hereby amended to read as follows:

Affordable-Housing Related Terms

Accessible. Usable by persons with disabilities and compliant with the building standards published in the California Building Standards Code relating to access for persons with disabilities and the other regulations adopted pursuant to Government Code Section 4450 that are in effect on the date of application for a building permit.

Affordable Housing Cost. Affordable rent or affordable sales price, as defined in this section.

Affordable Housing Units. Dwelling units affordable to moderate, low, very low, or extremely low income persons.

Affordable Housing Fund. A fund or account designated by the City to maintain and account for all monies received pursuant to Article 15.04.603.

Affordable Rent. The maximum monthly rent, including an allowance for tenant paid utilities, calculated at the specified income level in accordance with the Health and Safety Code Section 50053.

Affordable Sales Price. The maximum purchase price that will be affordable to the specified household at the specified income level, calculated in accordance with California Health and Safety Code Section 50052.5. The affordable sales price shall include a reasonable down payment, and monthly housing payments (including interest,

principal, mortgage insurance, property taxes, homeowner's insurance, homeowner's association dues, and a reasonable allowance for property maintenance, repairs, and utilities), all as determined by the City.

Common Ownership or Control. Property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent (10%) or more of the interest in the property.

Contiguous Property. Any parcel of land that is (1) touching another parcel at any point; (2) 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 (3) separated from another parcel only by other real property which is in common ownership or control of the applicant which is not subject to the requirements of Article 15.04.603 at the time of a project application by a developer.

Density Bonus. A density increase over the otherwise maximum allowable density permitted by the City of Richmond pursuant to California Government Code Section 65915 and Article 15.04.602.

Density Bonus Units. Dwelling units approved in a residential development project or mixed-use development project pursuant to California Government Code Section 65915 and Article 15.04.602 that are in excess of the maximum allowable residential density otherwise permitted by the City of Richmond.

Housing Unit. A dwelling unit.

Inclusionary Housing Agreement. An agreement in conformance with Section 15.04.603.110 between the City and a developer, governing how the developer shall comply with Article 15.04.603.

Inclusionary Unit. A dwelling unit intended for sale or rental, required by Article 15.04.603 to be affordable to very low, low, or moderate-income households.

Initial Subsidy. An amount equal to the fair market value of a dwelling unit at the time of initial sale minus the initial sale price, plus the amount of any down payment assistance or mortgage assistance.

Low Income Household. Households whose income does not exceed the low-income limits applicable to Contra Costa County as defined in California Health and Safety Code Section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

Market Rate Unit. A new dwelling unit in a residential development project that is not an inclusionary unit.

Mixed-Use Development Project. Any development that includes both a non-residential development project and a residential development project.

Moderate Income Household. Households whose income does not exceed the moderate-income limits applicable to Contra Costa County as defined in California Health and Safety Code Section 50093 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

Non-Residential Development Project. Any development for which a discretionary approval for non-residential development or building permit is required that includes the creation of net new floor area for non-residential purposes. For purposes of Article 15.04.603, a live-work unit is not a non-residential purpose.

Ownership Residential Development. Any residential development that includes the creation of one or more additional dwelling units that may be sold individually. A residential ownership development also includes the conversion of a residential rental development to a residential ownership development.

Proportionate Share of Appreciation. An amount equal to the ratio of the initial subsidy to the fair market value of a dwelling unit at the time of initial sale.

Rental Residential Development. Any residential development that creates one or more additional dwelling units that cannot be lawfully sold individually in conformance with the Subdivision Map Act.

Resale Control. A recorded document applied to an affordable housing unit or an inclusionary unit that, for a specified term, requires sale of the unit to a very low, low, or moderate-income household at an affordable sales price.

Residential Development Project. Any development for which a discretionary approval for residential development or a building permit is required that includes the creation of one or more additional dwelling units, conversion of nonresidential uses to dwelling units, or the conversion of a use from a residential rental development to a residential ownership development. For purposes of Article 15.04.603, a live-work unit is counted as a residential dwelling unit.

Senior Citizen. A person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

Senior Citizen Housing Development. A senior citizen housing development as defined in California Civil Code Sections 51.3 and 51.12, that is developed, substantially rehabilitated, or substantially renovated for senior citizens. A senior citizen housing development must include at least 35 dwelling units

Very Low Income Household. Households whose income does not exceed the very low-income limits applicable to Contra Costa County as defined in California Health and Safety Code Section 50105 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

Section 2. Repeal and Adoption of Article 15.04.603. Article 15.04.603 of the Richmond Municipal Code, Inclusionary Housing, is hereby repealed, and Article 15.04.603, Inclusionary Housing and Affordable Housing Linkage Fee, is hereby adopted to read as follows:

15.04.603.010 Purpose

- A. The purpose of this Article is to enhance the public welfare by establishing policies to increase the production of housing units affordable to persons and households of very low, low, and moderate-income. These requirements implement the Housing Element of the General Plan through assisting in meeting the City's regional housing obligations, providing funding for the City's affordable housing programs, and affirmatively furthering fair housing by ensuring that affordable housing is constructed in all parts of the City.
- B. The City Council desires to provide and maintain affordable housing opportunities in the community through an inclusionary housing program for both ownership and rental housing, and, in furtherance of that goal, includes rental affordable housing requirements in this chapter consistent with Government Code Sections 65850(g) and 65850.01.
- C. The City's inclusionary housing requirements will assist in alleviating the use of available residential land solely for the benefit of households that are able to afford market rate housing, because such market-rate development will be required to contribute to the provision of affordable housing for the entire Richmond community. The requirements will also assist in alleviating the impacts of the demand for new affordable housing

created by new market-rate residential development by making additional affordable housing available in Richmond.

- D. The City Council desires to provide and maintain affordable housing opportunities in the community through an affordable housing linkage fee program for non-residential development consistent with Government Code Sections 66000 *et seq.*
- E. The City's affordable housing linkage fee requirements will assist in alleviating the impacts of the demand for new affordable housing created by new non-residential development by providing funds for the development and preservation of housing affordable to employees.

15.04.603.020 Applicability

- A. The provisions of this Article shall apply to any residential development project, non-residential development project, and mixed-use project unless exempt under Section 15.04.603.030.
- B. Residential development projects and the residential components of mixed-use development projects shall comply with the inclusionary housing requirements specified in Section 15.04.603.040.
- C. Non-residential development projects and the non-residential components of mixed-use development projects shall comply with the affordable housing linkage fee requirements specified in Section 15.04.603.090.
- D. A developer of a residential development project, non-residential development project, or mixed-use development project shall not avoid the requirements of this Article by submitting piecemeal project applications. At the time of the application for first approval for a project, the developer shall identify all contiguous property under common ownership or control. The developer shall not be required to construct dwelling units upon the contiguous property at the time of the application for first approval; however, the developer shall be required to include the contiguous property under common ownership or control in its affordable housing plan and its inclusionary housing agreement. The inclusionary housing agreement shall be recorded against the project and all contiguous property under common ownership or control and shall require compliance with this Article upon development of each contiguous property at such time as there are development applications that would authorize a total of ten or more residential units and/or 5,000 square feet of non-residential floor area for the development and the contiguous property under common ownership or control or as otherwise specified in the inclusionary housing agreement.

15.04.603.030 Exemptions

The following projects are exempt from the provisions of this Article:

- A. Residential development projects and the residential components of mixed-use development projects with fewer than ten dwelling units or lots, unless subject to this Article under Section 15.04.603.020(D) above.
- B. Non-residential development projects and the non-residential components of mixed-use development projects with less than 5,000 square feet of net new floor area.
- C. Developments developed in accordance with the terms of a development agreement adopted by ordinance pursuant to the authority and provisions of California Government Code Section 65864 *et seq.*, and that is executed prior to the effective date of the ordinance codified in this Article, provided that such developments shall comply with any requirements included in the development agreement or any predecessor ordinance in effect on the date the development agreement was executed.
- D. Developments exempted by California Government Code Section 65589.5, 66474.2 or 66498.1, provided that such developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date that the application for the development was deemed substantially complete under Government Code Section 65943 or successor provision.

- E. Developments exempted by California Government Code Section 65589.5(o) or successor provision, provided that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date that a preliminary application for the development containing all of the information required by Government Code Section 65941.1 was submitted to the City.
- F. Developments exempted by another state law or by final judgement of a court of competent jurisdiction.
- G. Non-residential development projects shall be subject to any non-residential linkage fee in effect on the date that the application for a building permit is submitted.
- H. Residential development projects that have submitted a complete application or that have been approved prior to the effective date of the ordinance codified in this Article have the option of complying with this Article or the policies in effect on the date the application for the development was deemed substantially complete under Government Code Section 65943 or successor provision.

15.04.603.040 Inclusionary Housing Requirements for Residential Development Projects

All new residential development projects and residential components of mixed-use development projects, unless exempt under Section 15.04.603.030, shall provide inclusionary units upon the same site or comply with an alternative that is approved as described in Section 15.04.603.080.

- A. The developer of an ownership residential development shall provide either:
 - 1. Seven percent (7%) of the dwelling units in the residential development project made available at an affordable sales price to low-income households; or
 - 2. Ten percent (10%) of the dwelling units in the residential development project made available at an affordable sales price to moderate-income households.
- B. The developer of a rental residential development shall provide either:
 - 1. Nine percent (9%) of the dwelling units in the residential development project made available at an affordable rent to very low-income households; or
 - 2. Ten percent (10%) of the dwelling units in the residential development project made available at an affordable rent to low-income households.
- C. Calculations of the number of inclusionary units required by this section shall be based on the number of dwelling units in the residential development project, excluding any density bonus units.
- D. In calculating the number of required inclusionary units, any decimal fraction equal to or greater than 0.50 shall be construed as requiring one inclusionary unit. For any decimal fraction less than 0.5, the applicant must either provide one inclusionary unit or pay the City an in-lieu fee calculated in accordance with Section 15.04.603.070.
- E. When a residential development project includes both ownership and rental dwelling units, the provisions of this Article that apply to ownership residential developments shall apply to that portion of the development that consists of ownership dwelling units, while the provisions of this Article that apply to rental residential developments shall apply to that portion of the development that consists of rental dwelling units.

15.04.603.050 Inclusionary Housing Standards and Incentives.

- A. Inclusionary units shall be comparable in exterior appearance and overall quality of construction to market-rate units in the same housing development project. Interior finishes, features, and amenities may differ from those provided in the market rate units, so as long as the finishes, features, and amenities are durable, of good quality, and consistent with contemporary standards for new housing.
- B. The number of bedrooms and the size of the inclusionary units shall be comparable to or greater than the average number of bedrooms and average size of the market rate units.
- C. The inclusionary units shall be distributed throughout the residential development project located so as not to create a concentration of inclusionary units within the residential development project.

- D. The inclusionary units shall have the same amenities as the market rate units included within the affordable rent or affordable sales price for the inclusionary unit. For example, residents of the inclusionary units shall have the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential development project, and residents of the inclusionary units shall not be charged more than affordable rent or affordable sales price for the use of such facilities and amenities.
- E. A developer of a residential development project providing all required inclusionary units upon the same site as the market-rate units may, at the developer's election, use the following incentives:
 1. Apply for a density bonus and other regulatory incentives pursuant to Government Code Section 65915 and the provisions of Article 15.04.602 if the residential development project contains sufficient inclusionary units or other affordable units to qualify for a density bonus.
 2. If required by the funding source (e.g., tax credit financing) or legal requirements imposed on the type of project (e.g., senior housing), the inclusionary units may be concentrated within a portion of the building or site containing the residential development project.
 3. The developer may provide inclusionary units within the residential development project that are of a different unit type or size than the market rate units within the residential development project, if the decision-making body finds that a smaller size or different type will provide adequate and decent housing and will result in at least five percent (5%) more affordable units than required under this Article. The inclusionary units shall continue to have the same average bedroom count as the market rate units.

15.04.603.060 Timing of Construction of Inclusionary Units.

All required inclusionary units shall be made available for occupancy concurrently with the market rate units. For the purposes of this subsection, "concurrently" means one of the following:

- A. Inclusionary units must be constructed in proportion to construction of the market-rate units, at a ratio of one inclusionary unit to each nine market-rate units.
 1. A building permit may not be issued for any market-rate unit unless a proportional number of building permits have been issued for inclusionary units.
 2. A certificate of occupancy or final inspection may not be issued for market-rate units unless a proportional number of certificates of occupancy or final inspections have been issued for inclusionary units.
- B. In-lieu fees, if required, have been paid in accordance with Section 15.04.603.070.
- C. The applicant has met, or made arrangements satisfactory to the City to meet, an alternative requirement as permitted by Section 15.04.603.080, or the City has approved an alternative phasing plan for the inclusionary units as part of the affordable housing plan and inclusionary housing agreement.

15.04.603.070 In-Lieu Fee

Except for ownership residential developments proposed south of interstate highway 580 and on the Point San Pablo peninsula, at the developer's election, the inclusionary housing requirements in Section 15.04.603.040 may be satisfied by the payment of a fee to the City in-lieu of constructing the inclusionary units within the residential development project in accordance with the following requirements:

- A. No building permit shall be issued by the City for any market rate unit in the residential development project until all in-lieu fees due have been paid to the City, unless the conditions of approval allow the fees to be paid at occupancy. Fees for fractional units shall be paid at issuance of the first building permit in the project.
- B. Prior to recordation of any final or parcel map for the development, notice of this requirement shall be recorded against each lot in the subdivision. The developer shall

provide specific written notice to any purchaser of any dwelling unit prior to the acceptance of any offer to purchase, and shall obtain executed acknowledgment of the receipt of such notice, that the purchaser shall not have any right to occupy the dwelling unit until such time as all in-lieu fees owing for the residential development are paid to the City.

- C. All in-lieu fees shall be deposited in the affordable housing fund described in Section 15.04.603.130.
- D. In-lieu fees may be established from time-to-time by resolution of the City Council.

Ownership residential developments proposed south of interstate highway 580 and on the Point San Pablo Peninsula are prohibited from electing to pay an in-lieu fee and must instead provide on-site inclusionary housing or another alternative approved under Section 15.04.603.080.

15.04.603.080 Alternative Compliance Options

- A. The inclusionary housing requirement for ownership residential developments in Section 15.04.603.040.A may be satisfied by providing ten percent (10%) of the dwelling units in the residential development project at affordable rent to very low income households. The inclusionary housing agreement shall include provisions to allow for the sale of the inclusionary units at an affordable sales price and relocation benefits for tenants of the inclusionary units if the owner of the ownership residential development later determines to offer any inclusionary units in the residential development project for sale. At sale, appropriate documents shall be recorded to ensure affordability of the inclusionary units to very low income households for a 45 year term.
- B. The developer, or an entity controlled by the developer, or another entity that has entered into an agreement with the developer to provide affordable housing, may propose to construct the inclusionary units required by Section 15.04.603.040 on another site in the City of Richmond. Two or more developers may also jointly propose off-site construction of affordable units on a single site. The City shall grant a credit for off-site construction if the proposal meets all of the following conditions:
 - 1. Financing or a viable financing plan, which may include public funding, shall be in place for the off-site inclusionary units;
 - 2. The off-site location is suitable for the proposed inclusionary housing, consistent with any adopted guidelines and the Housing Element, will not tend to cause residential segregation or concentrations of poverty, and is located within one mile of the residential development project with appropriate infrastructure and services; and
 - 3. Construction of the off-site inclusionary units may not have commenced prior to the first approval of the residential development.

Final inspections for occupancy of the market-rate units in the residential development project will be granted only after final inspections are completed for the off-site affordable units related to those market-rate units. However, the timing requirements set forth in this subsection may be modified by the approval body. The City may require that completion of off-site affordable units be further secured by the applicant's agreement to pay in-lieu fees in the amount due under Section 15.04.603.070 in the event the off-site units are not timely completed.

- C. The developer may propose to meet the requirements of Section 15.04.603.040 by dedicating property to the City in-lieu of constructing inclusionary units within the residential development project. The City shall approve property dedication under this subsection only if the proposal meets all of the following conditions:
 - 1. The number of affordable units to be constructed on the dedicated property shall be at least 10 percent greater than the number of inclusionary units otherwise required under this Article;
 - 2. Financing or a viable financing plan, which may include public funding, shall be in place for construction of the affordable units on the dedicated property; and

3. The property to be dedicated is suitable for the proposed inclusionary housing, consistent with any adopted guidelines and the Housing Element, will not tend to cause residential segregation or concentrations of poverty, and is located within one mile of the residential development project with appropriate infrastructure and services.

The property shall be dedicated to the City prior to issuance of any building permit for the residential development project.

- D. Other Alternative Compliance Methods. The developer may propose an alternative compliance method to provide inclusionary units through other means. The approval body may approve or conditionally approve such an alternative only if the approval body determines, based on substantial evidence, that such alternative compliance will provide as many or more affordable units at the same or lower income levels, will not tend to cause residential segregation or concentrations of poverty, and will otherwise provide greater public benefit than would provision of the inclusionary units on site. The affordable units to be created shall conform with all other requirements of this Article except as modified by the approval body.

15.04.603.090 Non-Residential Linkage Fee

- A. Non-residential linkage fees may be established from time-to-time by resolution of the City Council.
- B. No building permit shall be issued by the City for any non-residential development project until all linkage fees have been paid to the City, unless the conditions of approval allow the fees to be paid at occupancy.
- C. All linkage fees shall be deposited in the affordable housing fund described in Section 15.04.603.130.

15.04.603.100 Application Requirements

- A. An application for the first approval of a residential development project or mixed-use project shall include an affordable housing plan describing how the project will comply with the provisions of this Article, either with on-site units, payment of in-lieu fees, or an alternative measure consistent with Section 15.04.603.080.
- B. Any adopted guidelines or City application form may specify the contents of the affordable housing plan. No application for a first approval for a residential development may be deemed complete unless an affordable housing plan is submitted in conformance with this Article.
- C. The affordable housing plan shall be processed concurrently with all other permits required for the residential development. Before approving the affordable housing plan, the approval body shall find that the affordable housing plan conforms to this Article.

15.04.603.110 Inclusionary Housing Agreement

Prior to the issuance of a building permit or approval of a final or parcel map for any residential development project subject to this Article that includes inclusionary units, the developer shall enter into a written agreement with the City for the duration of affordability. An agreement is not required for developers who pay an in-lieu fee. The terms and conditions of the agreement shall be binding upon any successor in interest of the developer and shall be recorded in the Contra Costa County Clerk Recorder's Office, County Recorder Division prior to issuance of the building permit or recordation of the final or parcel map. The agreement shall be in a form approved by the City Attorney and executed by the City Manager and shall include provisions for the following:

- A. The number and proportion of housing units affordable to moderate-income, lower-income, very low income, and extremely low income households by type, location and number of bedrooms;
- B. The party responsible for certifying rents and sales prices of inclusionary housing units and certifying incomes of tenants or purchasers of the inclusionary housing units (the City may specify the party certifying rents, sales prices, and incomes);

- C. The financing of ongoing administrative and monitoring costs;
- D. The manner in which vacancies will be marketed and filled, including the screening and qualifying of prospective renters and purchasers of the affordable units;
- E. Deed restrictions including resale control mechanisms and rent limitations, as applicable;
- F. Provision allowing sale of ownership units to a nonprofit housing organization, nonprofit land trust, or governmental agency, which may rent the units to eligible households;
- G. Enforcement mechanisms to ensure that the affordable units are continuously occupied by eligible households and are not sold, rented, leased, sublet, assigned, or otherwise transferred to non-eligible households (unless owned by a nonprofit housing organization, nonprofit land trust, or governmental agency); and
- H. Project phasing, including the timing of completions, and rental or sale of the inclusionary housing units, in relation to the timing of the market-rate units.

The agreement shall be subject to administrative review by the Community Development Department for the affordability term for the purpose of verifying that the inclusionary units are maintained at affordable rates within the affordability category originally established for the project. For each inclusionary unit, the owner may be required to pay to the City an annual monitoring fee for the term of required affordability that does not exceed the City's costs to monitor the affordable unit, if such a fee is adopted by resolution of the City Council or is otherwise included in the City's master fee schedule.

15.04.603.120 Continued Affordability

In order to maintain the availability of inclusionary units constructed pursuant to this Article, the following requirements shall apply:

- A. Any adopted guidelines may include standard documents for execution by the City Manager, in a form approved by the City Attorney, to ensure the continued affordability of the inclusionary units approved for each residential development project. The documents shall be recorded against the residential development project, all inclusionary units, and any site subject to the provisions of this Article.
- B. All inclusionary units to be sold shall remain affordable at an affordable sales price to the targeted income group for 45 years, unless a longer term is required in connection with State law or financing requirements.
- C. All inclusionary units to be rented shall remain affordable at the affordable rent to the targeted income group for 55 years, unless a longer term is required in connection with State law or financing requirements.
- D. Any eligible household that occupies an inclusionary unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third party eligible household for a limited period of time due to household hardship, as may be specified in any adopted guidelines.
- E. No household may begin occupancy of an inclusionary unit until the household has been determined to be eligible to occupy that unit by the City or designee. Any adopted guidelines may establish standards for determining household income, affordable sales price, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.
- F. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an inclusionary unit. Any adopted guidelines shall include conflict of interest provisions relating to the administration of this Article and the eligibility of persons to occupy inclusionary units.

15.04.603.130 Affordable Housing Fund

- A. All in-lieu fees, linkage fees, or other funds collected under this Article shall be deposited into the City's Affordable Housing Fund.

- B. The moneys in the Affordable Housing Fund and all earnings from investment of the moneys in the Fund shall be expended on activities that provide housing affordable to extremely low-income, very low-income, lower-income, moderate-income households and any special needs populations in the City consistent with the goals and policies contained in the City's Housing Element, which may include without limitation land acquisition, predevelopment costs, rehabilitation of existing units to extend their useful life and add affordability restrictions, and construction of new residential units, and for administration and compliance monitoring of the affordable housing program, as approved by the City Council.

15.04.603.140 Reductions, Adjustments, or Waivers

- A. Any request for a waiver, adjustment, or reduction under this Article shall be submitted to the City concurrently with an application for a first approval for a residential development project based upon a showing that applying the requirements of this section would result in an unconstitutional taking of property or would result in any other unconstitutional result. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
- B. The request for a waiver, adjustment, or reduction shall be processed concurrently with all other permits required for the residential development project, including the affordable housing plan. The body with the authority to approve the residential development project shall have the authority to act on the request for a waiver, adjustment, or reduction, subject to any appeals otherwise authorized for the residential development project.
- C. The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and substantial evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification under this section.

15.04.603.150 Article Administration and Enforcement

- A. The City Council, by resolution, may establish fees for the ongoing administration and monitoring of the affordable units, which fees may be updated periodically, as required.
- B. The City Council, by resolution, may adopt guidelines to implement this Article. The City may review this chapter as frequently as appropriate to evaluate its effectiveness in creating affordable housing and shall review the effectiveness of this chapter as part of each adoption of the City's housing element of the general plan.
- C. The City Attorney shall be authorized to enforce the provisions of this Article and all inclusionary housing agreements, regulatory agreements, and all other covenants or restrictions placed on inclusionary units, by civil action and any other proceeding or method permitted by law.
- D. Failure of any official or agency to fulfill the requirements of this Article shall not excuse any developer or owner from the requirements of this Article. No permit, license, map, or other approval or entitlement for a residential development project shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Article have been satisfied.
- E. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

Section 3. California Environmental Quality Act. This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately, in that changing the affordability of residences has no potential for resulting in a physical change in the environment, either directly or indirectly;

and a project does not include the creation of a government funding mechanism that does not involve any commitment to any specific project (CEQA Guidelines section 15378). In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the Ordinance would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

Section 4. **Severability.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. 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 unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause, or phrase.

Section 5. **Effective Date.** This Ordinance shall become effective 30 days after its adoption.

First read at a meeting of the Council of the City of Richmond held on October 20, 2020, and finally passed and adopted at a regular meeting thereof held on November 10, 2020, by the following vote:

AYES: Councilmembers Choi, Johnson III, Martinez, Myrick, Vice Mayor Bates, and Mayor Butt.
NOES: None.
ABSTENTIONS: None.
ABSENT: Councilmember Willis.

PAMELA CHRISTIAN

CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT

Mayor

Approved as to form:

TERESA STRICKER

City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 24-20 N.S.** passed and adopted by the City Council of the City of Richmond at a regular meeting held on November 10, 2020.



Pamela Christian, City Clerk of the City of Richmond

