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ZONING ORDINANCE

City of

RICHMOND, CALIFORNIA

Looseleaf Supplement

This copy of the Richmond Zoning Ordinance is issued as a "replacement" copy and contains all ordinances deemed advisable to be included at this time through Ord. No. 1-10 N.S. of the Municipal Code of Richmond, California.

This copy replaces all existing copies of the Zoning Ordinance as published through November 2009.

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15.04.810.060 Inclusionary Housing.**SECTIONS****15.04.810.061 Applicability.****15.04.810.062 Definitions.****15.04.810.063 Standards and Requirements.****15.04.810.064 Incentives.****15.04.810.065 Procedures.****15.04.810.066 Resale Controls on Ownership Units.****15.04.810.067 Impact on Density Bonus Law.****15.04.810.068 Adjustment.**15.04.810.061 Applicability.

- A. Findings. The City of Richmond finds that there is a critical shortage of housing opportunities available to very low-, low- and moderate-income household. Further, the City finds that the Inclusionary Housing ordinance is part of a broad strategy to ensure that the lower end of the housing spectrum continues to be represented.
- B. Purpose. This Chapter will assist in meeting our regional housing obligations by constructing affordable housing and providing funding for the City's in-fill program. The purpose of these regulations is to enhance the public welfare and assure compatibility between future housing development and the Housing Element of the Richmond General Plan through increasing the production of housing units affordable to persons and households of very low-, low- and moderate-income. In order to ensure that the City's remaining developable land is utilized in a manner consistent with local housing policies and needs, the City declares that all new residential or mixed use developments consisting of ten (10) or more housing units (including contiguous parcels developed by the same entity and/or phased projects), shall contain a proportion of housing units affordable to very low-, low- and/or moderate-income households.

15.04.810.062 Definitions.

The following terms are hereby defined for the purposes of this Section:

- A. **Affordable** means housing that is affordable to average or below average income households as required, regulated, and allowed by this Chapter.
- B. **Affordable housing cost**, for the purposes of this ordinance, shall be defined in accordance with California Health and Safety Code section 50052.5 for owner-occupied housing and section 50053 for rental housing:
1. For owner-occupied housing made available for very low-income households, affordable housing cost shall not exceed the product of 30 percent of 50 percent of the area median income unit adjusted for family size appropriate for the unit.
 2. For owner-occupied housing made available for low-income households whose gross incomes exceed the maximum income for very low-income households and do not exceed 70 percent of the area median income adjusted for family size, affordable housing cost shall not exceed the

product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.

3. For owner-occupied housing made available for moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.
 4. For rental housing made available for very low-income households, "affordable housing cost" shall not exceed the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.
 5. For rental housing made available for low-income households whose gross incomes exceed the maximum income for very low income households, "affordable housing cost" shall not exceed the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those low-income households with gross incomes that exceed 60 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.
 6. For rental housing made available for moderate-income households, "affordable housing cost" shall not exceed the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those moderate-income households whose gross incomes exceed 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.
- C. **Adjusted for family size**, For purposes of this Chapter, and provided there are no pertinent federal statutes applicable to a project or program, "adjusted for family size appropriate to the unit" means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit and five persons in the case of a four-bedroom unit.
- D. **Applicant** means a person or entity submitting an application to the City for a residential or mixed use development of ten (10) or more housing units, including contiguous parcels developed by the same entity and/or phased projects, including applications current as of the date of adoption of this Section with the exception of applicants who had obtained a Design Review approval, Conditional Use Permit approval, or Tentative Map approval of a subdivision prior to the date of the adoption of this Section.
- E. **Area median household income** means the current U.S. Department of Housing and Urban Development (HUD) area median household income limits for Contra Costa County as amended from time to time.

- F. **Construction costs** means the estimated cost per square foot of construction, as established by the Building Regulations Department of the City of Richmond for use in the setting of regulatory fees and building permits, multiplied by the total square footage, minus any garage or carport floor area, to be constructed.
- G. **Density bonus**, in accordance with Chapter 15.04.810.050 of the Richmond Municipal Code, means an increase of at least 25 percent, unless a lesser percentage is elected by the developer, over the otherwise maximum allowable residential density under the zoning ordinance and land use element of the Richmond General Plan. Granting of the density bonus shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.
- H. **Housing unit** means a dwelling unit as defined in Section 15.04.020 of the Richmond Municipal Code.
- I. **Inclusionary unit** means a housing unit which is intended for sale or rental, with a purchase price or rent which is affordable, as defined herein.
- J. **In-lieu fee** means a fee paid as an alternative to the provision of inclusionary units as herein defined. In-lieu fees paid to the City under this Section shall be deposited in a separate City account to be used solely for the provision of new or rehabilitated housing units in the City which are affordable to very low-, low- or moderate-income households.
- K. **Low-income households** means persons and families whose income does not exceed the qualifying limits for low-income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. In the event such federal standards are discontinued, this chapter shall utilize the limits established by regulation of the California Department of Housing and Community Development for lower income households for Contra Costa County at 80 percent of area median income, adjusted for family size and revised annually.
- L. **Moderate-income household** means persons and families whose income does not exceed the qualifying limits for moderate-income households but does not exceed 120 percent of area median income, adjusted for family size by the California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.
- M. **Project** means an application for a residential or mixed use development consisting of ten (10) or more dwelling units, including contiguous parcels developed by the same entity and/or phased projects.
- N. **Resale control** means a mechanism by which affordable housing units will be retained in the very low-, low- or moderate-income housing stock for a specified term as defined in this Section.
- O. **Senior citizen household** means a family in which the head of the household is 60 years of age or older, a single person who is 60 years of age or older. The age may be adjusted to facilitate participation in other municipal, state or federal programs.
- P. **Senior housing project** means a project consisting primarily of housing units for senior citizen households.

- Q. Very low-income households** means persons and families whose incomes do not exceed the qualifying limits for very low-income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. In the event such federal standards are discontinued, this Chapter shall utilize the limits established by regulation of the California Department of Housing and Community Development for very low-income households for Contra Costa County at 50 percent of area median income, adjusted for family size and revised annually.

15.04.810.063 Standards and Requirements.

- A. Every project must fulfill as least one of the following inclusionary housing requirements:
1. At least 17 percent of the new total housing units shall be available to moderate-income households at an affordable housing cost; or
 2. A least 15 percent of the new total housing units shall be available to low-income households at an affordable housing cost; or
 3. At least 10 percent of the new total housing units shall be available to very low-income households at an affordable housing cost; or
 4. At least 12.5 percent of the new total housing units shall be available to a combination of very low- and low-income households at an affordable housing cost; including at least two (2) affordable to very low-income households; or
 5. In the case of a senior housing project, at least 25 percent of the new total housing units shall be available to very low- or low- income senior citizen households at an affordable housing cost; or,
 6. The applicant shall pay an in-lieu fee towards the City's low- and very-low income affordable housing program. The in-lieu fee shall be charged on percentage basis of the projected construction costs of non-inclusionary dwelling units. Construction costs shall be calculated separately for each dwelling unit subject to this Section and the appropriate fee shall be paid for each unit within the project. The percentage basis shall be established by resolution of the City Council.
- B. In computing the number of inclusionary units required in a project, fraction of units shall be rounded to the next higher number if the fraction is 0.5 or greater.
- C. For projects receiving a density bonus in accordance with Chapter 15.04.810.050 of the Richmond Municipal Code, the number of inclusionary units required shall be calculated based on the total number of units proposed to be built, including the density bonus units.
- D. A separate exhibit for an application for a Tentative Map or residential development for a project subject to inclusionary housing requirements of this Section shall explicitly identify those residential parcels or units within the project that are intended to fulfill the requirements of this Section. This material shall be used by staff to determine compliance with the provisions of this Section and shall be kept in the project file for reference.
- E. Inclusionary units shall be evenly distributed throughout the project and shall contain not less than the average number of bedrooms as in the non-inclusionary units in the project.

- F. The size of the inclusionary units shall be consistent with the rest of the project.
- G. The parcels on which the inclusionary units are located shall be no smaller than the smallest parcel on which non-inclusionary units in the project are to be located.
- H. Inclusionary units shall be compatible with the non-inclusionary units in the project with regard to siting, placement within buildings, landscaping and exterior appearance and materials.
- I. Subject to the approval of the Planning Director, the inclusionary units required by this Section may be sited in the same general area of the City as the project, such as within the general Hilltop area in the case of a proposed project within Hilltop. In no event shall inclusionary units be located in only one portion of the project or situated in one building of a multi-building project, consistent with the City policy to disperse assisted housing throughout the City to the maximum extent feasible without adversely impacting any building or area, and to avoid further impacting target areas.
- J. All inclusionary "for sale" units shall be sold to very low-, low- or moderate-income households. The household income of a purchaser of an inclusionary unit shall be within 10 percent above or below the affordability standards as defined by this Section.
- K. All inclusionary "for sale" units shall be subject to a deed restriction requiring that the unit be owner-occupied for a continuous period of not less than 30 years starting from the date of initial occupancy.
- L. Developers of inclusionary rental units shall enter into an agreement with the City and shall agree and bind any heirs, assigns, or successors in interest to maintain units at HUD-established very low-, low- or moderate-income rental limits for a continuous period of not less than 30 years, subject to annual review by the City and any other applicable restrictions. This agreement shall be reviewed and approved by the City of Richmond and be recorded in the Contra Costa County Recorder's Office.
- M. Where there is direct financial contribution to a housing development pursuant to Section 65916 of the Government Code through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, inclusionary units shall be kept affordable for a continuous period of not less than 30 years.
- N. In order to give local residents of very low-, low- or moderate-income household the opportunity to purchase or rent inclusionary units, each applicant shall, prior to providing any public listing of the project or conducting any area-wide advertising and marketing for the proposed housing units, give notification of the availability for sale or rent of the inclusionary units required under this Section to a list of community organizations and local agencies to be provided by the City. If rental assistance programs are available, the owner of the inclusionary rental unit may enter into such programs.
- O. The inclusionary housing program shall be administered by the City Housing Division.

15.04.810.064 Incentives.

The City may provide one or more of the following incentives or concessions, as appropriate, based on the type and percentage of inclusionary units provided within the project:

- A. Density bonus, as provided by Section 65915(b) of the Government Code and Chapter 15.04.810.050 of the Richmond Municipal Code;

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- B. Flexibility in development standards including, but not limited to, public and private open space, landscaping, parking, minimum lot sizes and setbacks, as provided for in Sections 15.04.600 (Planned Area District) and 15.04.910 (Conditional Use Permits);
- C. Consideration of approval of mixed use zoning within a housing development in a "PA" zone district where it is demonstrated that commercial, office or other non-residential land uses will reduce housing costs over housing-only uses on a site and are compatible with the existing and planning housing units on the site and the surrounding neighborhood where the proposed development will be located;
- D. Assistance in obtaining any available Federal and State subsidies to be applied to the inclusionary units;
- E. Waiver of building permit fees and other City fees, as approved by the Richmond City Council. The waiver of fees shall apply to affordable units only and shall apply to any City fees that are calculated on a per-unit basis;
- F. Other incentives or concessions proposed by the applicant or City resulting in identifiable cost reductions such as, but not limited to, priority permit processing, use of redevelopment funds or powers or other public local financing where available.

15.04.810.065 Procedures.

Project Review and Conditions of Approval.

- A. Once the application has been found to be complete for processing, it shall be scheduled for public hearing(s) before the Design Review Board and/or the Planning Commission as set forth in the Richmond Municipal Code.
- B. In all cases where incentives other than density bonus are requested, a written request for the specific incentive or incentives pursuant to this Section with a rationale and supporting information to justify the request.
- C. Any project that is subject to covenants, conditions, and restrictions that would increase the proportion of the homeowners association assessment payable by any inclusionary housing unit owner is prohibited.
- D. The request for granting of incentives or concessions other than density bonus, or request for payment of an in-lieu fee to meet the affordable housing requirements shall be made concurrently with the other applicable related planning action requests for the project as specified in this Chapter.
- E. Unless an in-lieu fee is paid to satisfy the requirements of this Section, the conditions of approval of a project providing inclusionary housing units shall require the developer to enter into an agreement with the City to ensure the continuing affordability of inclusionary housing units. This agreement shall be recorded in the Contra Costa County Recorder's Office on a form approved by the City of Richmond. Said agreement shall consist of deed restrictions binding on the heirs, assigns or successors in interest of the property owner and shall include the following:
 - 1. The number of inclusionary units by type, location and number of bedrooms;

2. Standards for maximum qualifying household incomes, as amended periodically;
 3. Standards for maximum rents or sales prices, as amended periodically.
 4. The party responsible for certifying rents and sales prices of inclusionary units and the schedule for providing the City with documentation of same;
 5. The process that will be used to certify incomes of tenants or purchasers of inclusionary units;
 6. The manner in which vacancies will be marketed and filled including screening and qualifying prospective renters and purchasers of inclusionary units;
 7. Enforcement mechanisms to ensure compliance with the provisions of this Section;
 8. Project phasing, the time of completions, and rental or sale of inclusionary units.
- F. The agreement specified in Section 15.04.810.065.E shall be subject to administrative review by the City for at least thirty (30) years for the purpose of verifying that the inclusionary units are maintained at affordable rates within the affordability category originally established for the project.
- G. All inclusionary units in a project or phase of a project must be developed simultaneously with or prior to the development of non-inclusionary units. The City shall not issue a final Certificate of Occupancy or release electrical and gas utilities for any of the non-inclusionary units until construction and final building inspection is completed for all inclusionary units as required by this Section or all in-lieu fees are paid.

15.04.810.066 Resale Controls on Ownership Units.

In order to maintain the availability of inclusionary units constructed pursuant to this Section, one of the following resale controls shall apply to units sold by the original purchaser and all subsequent purchasers:

- A. The resale price of inclusionary unit shall be in the amount equal to the price affordable to a very low-, low- or moderate-income household, as adjusted from time to time based on the consumer price index for Contra Costa County. For example, if the unit was originally sold to a low-income household, the unit must be resold to another low-income household.
- B. Inclusionary units offered for sale pursuant to this section by the original purchaser and all subsequent purchasers shall be offered for sale first to the City of Richmond or its designee.
- C. For the first resale of an inclusionary unit during the 30-year term of the agreement, the unit may be sold as a market-rate unit provided the difference between the inclusionary unit and the market-rate unit price is deposited in the City's affordable housing fund. A purchaser of an inclusionary unit who pays a market-rate price shall not be subject to the provisions of this section.

15.04.810.067 Impact on Density Bonus Law.

Nothing in this section shall undermine the intent of the state law and City ordinance regarding density bonuses and other housing incentives.

15.04.810.068 Adjustment.

- A. A developer of any project subject to the requirements of the section may appeal to the City Council for a reduction, adjustment or waiver of the requirements based upon the absence of any reasonable relationship between the impact of the development and either the amount of the in-lieu fee charged or the inclusionary requirement.

- B. A developer subject to the requirements of this chapter who has received an approved tentative subdivision or parcel map, use permit or similar discretionary approval for the same property may appeal 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 appeal shall be made in writing and filed with the City Clerk not later than ten (10) days after the public hearing granting the discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, then the appeal shall be filed with ten (10) days after payment of the fees objected to by the developer. The appeal 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 appeal at the public hearing on the permit application or at a separate public hearing within sixty (60) days after the filing of the appeal, whichever is later. The appellant shall bear the burden of presenting substantial evidence to support the appeal including comparable technical information to support appellant's position. No waiver shall be approved by the City Council for a new tentative subdivision or parcel map, user permit or similar discretionary approval on property with an approved tentative subdivision or parcel map, use permit or similar discretionary permit unless the City Council finds that the new tentative subdivision or parcel map, user permit or similar discretionary approval is superior to the approved project both in its design and its mitigation of environmental impacts.
- E. The decision of the council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusion-ary requirement.

(Amended by Ordinance Nos. 37-96 N.S., 32-98 N.S., 28-01 N.S., 38-03 N.S. (2), 39-03 N.S., 1-04 N.S., 16-06 N.S. and 9-08 N.S.)