

A DEVELOPER'S GUIDE
TO THE CITY OF CARLSBAD'S
INCLUSIONARY HOUSING ORDINANCE



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A DEVELOPER'S GUIDE TO THE CITY OF CARLSBAD'S INCLUSIONARY HOUSING ORDINANCE

I. INTRODUCTION

This document is intended to provide an overview of the City of Carlsbad's Inclusionary Housing Ordinance.

What is the Inclusionary Housing Ordinance?

The City of Carlsbad adopted the Inclusionary Housing Program in 1993 as an outgrowth of the 1990 Housing Element review. The Program was designed to assist the City in reaching its lower-income housing goals.

To implement the Inclusionary Housing Program, the City Council adopted the Inclusionary Housing Ordinance in May of 1993, and updated it in April of 2000. The ordinance states that not less than fifteen percent (15%) of all residential units in any master plan, specific plan, or residential subdivision be set aside for occupancy by and be affordable to lower income households. Additionally, for those developments that are required to provide ten or more units affordable to lower income households, at least ten percent of the lower income units shall have three or more bedrooms.

Chapter 21.85 of the Carlsbad Municipal Code sets forth specific information on the requirements of the Inclusionary Housing Ordinance, related development standards and provisions to guarantee continued affordability of the units over time.

What is the Purpose of the Inclusionary Housing Ordinance?

The Housing Element of the City of Carlsbad's General Plan concludes that there exists a considerable demand for, yet an inadequate supply, of housing within the City which is affordable to lower income households. The Carlsbad City Council adopted the Inclusionary Housing Ordinance in an effort to meet the housing needs of lower income households. In effect, the Inclusionary Housing Ordinance brings the private sector of the economy into the business of providing affordable housing, making it a fact of the marketplace within Carlsbad.

What is a Lower Income Household?

"Lower Income Household" refers to low, very low and extremely low income households. The City's Inclusionary Housing Ordinance defines lower income households as follows:

Extremely Low: A household whose gross annual income is equal to or less than thirty (30%) percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development (HUD).

Very Low: A household whose gross annual income is more than thirty (30%) percent but does not exceed fifty (50%) of the median income for San Diego County as determined annually by HUD.

Low (rental): A households whose gross annual income is more than fifty (50%) percent but does not exceed seventy (70%) percent of the median income for San Diego County as determined annually by HUD.

Low (for-sale units): A households whose gross income is more than fifty (50%) percent but does not exceed eighty (80%) percent of the median income for San Diego County as determined annually by HUD.

What is an Affordable Housing Cost?

In order for housing costs to be considered affordable, these costs may not exceed 30% of the gross annual household income of any given income group. For example, under current standards (year 2000), a low income family of four with a gross annual income of \$40,600 should pay no more than \$1,015 per month for housing. For a *rental* unit, total housing costs include the monthly rent payment as well as consideration for a utility allowance. With *for-sale* units, total housing costs include the mortgage payment (principal and interest), homeowners association dues, taxes, mortgage insurance and any other related assessments.

The U.S. Department of Housing and Urban Development (HUD) provides income charts that identify the annual and monthly maximum incomes for lower income households as well as the monthly housing expenditure that lower income households within San Diego County can afford to pay. These income and related rent charts are shown in EXHIBIT B, and are available at the Carlsbad Housing and Neighborhood Services Department.

II. INCLUSIONARY HOUSING REQUIREMENTS

Residential Units Subject to the Inclusionary Housing Requirements

Generally, all residential market rate dwelling units resulting from new construction or conversion are subject to one of the City's Inclusionary Housing Requirements as follows:

An **Inclusionary Housing In-Lieu Fee** applies to residential projects of 6 or fewer dwelling units. The In-Lieu Fee amount is currently \$4,515 (year 2000) per market-rate dwelling unit. The fee is subject to change by resolution of the City Council. The fee is paid at the time of building permit issuance, or for conversion of existing apartments to condominiums prior to the recordation of a final map and/or issuance of a certificate of compliance.

An **Inclusionary Housing Impact Fee** applies to any residential project for which the application for discretionary approval was deemed complete prior to May 21, 1993 (the effective date of the ordinance). The Housing Impact Fee amount is currently \$2,925 (year 2000) per market-rate dwelling unit. The fee is subject to change by resolution of the City Council. The fee is paid at the time of building permit issuance, or for conversion of existing apartments to condominiums prior to the recordation of a final map and/or issuance of a certificate of compliance.

The **construction of new inclusionary housing units** applies to all residential projects of 7 or more units. Subject to adjustments for incentives, the required number of lower-income inclusionary units shall be fifteen (15%) percent of the total residential units, approved by the final decision-making authority of the City. If the inclusionary units are to be provided within an offsite combined or other project, the required number of lower income inclusionary units shall be fifteen (15%) percent of the total residential units to be provided both onsite and/or offsite. Subject to the maximum density allowed per the growth management control point or per specific authorization granted by the Planning Commission or City Council, fractional units for both market rate and inclusionary units of .5 will be rounded up to a whole unit. If the rounding calculation results in a total residential unit count which exceeds the maximum allowed, neither the market rate nor the inclusionary unit count will be increased to the next whole number.

Example 1:

Total residential units = 15% Inclusionary units plus 85% Market rate units. If the final decision making authority approves 100 total residential units, then the Inclusionary requirement equals 15% of the "Total" or 15 units ($100 \times .15 = 15$). The allowable market rate units would be 85% of the "Total" or 85 units (for a more detailed example, please see EXHIBIT D).

Example 2:

If the inclusionary units are to be provided offsite, the total number of inclusionary units shall be calculated according to the total number of market rate units approved by the final decision-making authority. If 100 market rate units are approved, then this total is divided by .85, which provides a total residential unit count ($100 \div .85 = 117$). The 15% requirement is applied to this "Total" (117 units), which equals the inclusionary unit requirement ($117 \times .15 = 17.6$ units).

An Affordable Housing Agreement (see below) must be executed, and a Site Development Plan (SDP) must be approved, to outline the manner in which a developer will meet an obligation to construct new inclusionary housing units. A developer will not be allowed to proceed with development of market rate units within any given housing project until the City approves the Affordable Housing Agreement and related SDP.

III. INCLUSIONARY HOUSING STANDARDS

Whenever reasonably possible, inclusionary units shall be built within the residential development project (on-site) and be constructed concurrently with market-rate units. The actual construction phasing of the inclusionary (affordable) units shall be set forth in the approved affordable housing agreement. Every effort should be made to locate the inclusionary units on sites that are in close proximity to, or will provide access to, employment opportunities, urban services, or major roads or other transportation and commuter rail facilities and are compatible with adjacent land uses. The design of the inclusionary units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality. Inclusionary projects shall provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demand priorities of the City.

Inclusionary **RENTAL UNITS** shall remain restricted and affordable to the designated income group for not less than 55 years. With regards to mixed income rental projects, inclusionary units

may not be rented for an amount which exceeds ninety (90%) percent of the actual rent charged for a comparable market rate unit in the same development.

After the initial sale of inclusionary **FOR-SALE UNITS** at a price affordable to the target income level group, inclusionary for-sale units shall remain affordable to subsequent income eligible buyers pursuant to a resale restriction with a term of thirty (30) years. As an alternative, for-sale units may be sold at a market price to other than targeted households provided that the sale shall result in the recapture by the City or its designee of a financial interest in the units equal to the amount of subsidy necessary to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the City shall be used to assist other eligible households with home purchases at affordable prices at other location within the City. To the extent possible, projects using for-sale units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs including secondary market requirements.

IV. INCENTIVES/ALTERNATIVES

Certain types of affordable housing are relatively more desirable in satisfying the City's state-mandated affordable housing requirement as well as the City's Housing Element goals, objectives and policies, and these may change over time. As an **INCENTIVE** to assist the City in providing this housing, Developers may receive additional (more than one unit) credit for each of such units provided, thereby reducing the total inclusionary housing requirement to less than fifteen (15%) percent of all residential units approved. A schedule of inclusionary housing incentive credit specifying how credit may be earned shall be adopted by the City Council and may be changed from time to time. The current "credit" chart is shown as EXHIBIT C to these guidelines.

Prior to April of 1999, there was only one way to satisfy the Inclusionary Housing Ordinance requirement for providing affordable units. Developers were required to construct new units. However, with the revisions to the Inclusionary, the City Council now has the discretion to determine that an **ALTERNATIVE** to the construction of new inclusionary units is acceptable. The City Council may approve alternatives to the construction of new inclusionary units where the proposed alternative supports specific Housing Element policies and goals and assists the City in meeting its state housing requirements. Such determination shall be based on findings that new construction would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, developer capability, and financial subsidies available. Alternatives may include, but are not limited to, acquisition and rehabilitation of affordable units, conversion of existing market units to affordable units, construction of special needs housing projects or programs (shelters, transitional housing, etc.), and the construction of second dwelling units (with the income and rent limitations set forth in the Ordinance).

V. AFFORDABLE HOUSING AGREEMENTS

An Affordable Housing Agreement is a legally binding agreement between a Developer and the City to ensure that the inclusionary requirements of a particular residential development are satisfied. The agreement establishes, among other things, the number of required inclusionary units, the unit sizes, location, affordability tenure, terms and conditions of affordability and unit production schedule. Agreements that do not involve requests for offsets and/or incentives shall be reviewed by the Affordable Housing Policy Team and approved by the Community Development Director.

Agreements that involve requests for offsets and/or incentives shall require the recommendation of the Housing Commission and action by the City Council as the final decision-maker. Following the approval and execution by all parties, the affordable housing agreement with the approved SDP shall be recorded against the entire development, including market-rate lots/units and the relevant terms and conditions filed and subsequently recorded as a separate deed restriction or regulatory agreement on the affordable project individual lots or units of property which are designated for the location of affordable units. The approval and execution of the Affordable Housing Agreement shall take place prior to final map approval and shall be recorded upon final map recordation, or, where a map is not being processed, prior to the issuance of building permits for such lots/units. The Affordable Housing Agreement shall bind all future owners and successors in interest for the term of years specified therein.

VI. PRELIMINARY REVIEW

Prior to the formal submission of an application for an affordable housing project, it is strongly recommended that the project proponent utilize the preliminary project review process. Preliminary Review is an early, informal review of a project by the Housing and Neighborhood Services, Planning and Engineering Departments. Preliminary review allows a project developer to obtain early project direction, reduce development costs, shorten processing time and alleviate costly redesigns. Preliminary Review applications may be submitted to the Housing and Neighborhood Services or Planning Departments. Preliminary Review applications and submittal requirements may be obtained at the Housing and Neighborhood Services or Planning Departments.

Within thirty (30) days of receipt of the preliminary application, City staff will provide a letter that identifies project issues of concern, the offsets and incentive adjustments that the Community Development Director can support when making a recommendation to the final decision-making authority, and the procedures for compliance Inclusionary Housing Ordinance.

VII. SUMMARY

The above information is provided as a basic and general summary of the City of Carlsbad's Inclusionary Housing Program. If you would like more information on the details of the program or assistance with processing of an Inclusionary Housing Project, please contact the Housing and Neighborhood Services Department at (760) 434-2810.

EXHIBIT A – EXAMPLES

The City of Carlsbad's Inclusionary Housing Ordinance was adopted in 1993. Since that time, there have been several affordable housing projects that have been approved and developed in the City. The following information discusses various types of affordable housing product types, financial resources and examples of successful affordable housing projects.

Homeownership

The first for-sale affordable housing project in the City was the Cherry Tree Walk Project. The 42 -unit townhome project included 2 and 3 bedroom homes affordable to household earning 80% or less of the San Diego County Area Median Income. The project, developed to satisfy the inclusionary housing requirement for the Sambli Seaside Heights subdivision, is an example of how a well-designed affordable housing project can be successfully integrated into a market rate development.

With a for-sale inclusionary project, after the initial sale of the inclusionary units, the units must remain affordable to subsequent income eligible buyers pursuant to a resale restriction for a term of thirty (30) years. However, these units may be sold at a market price to other than targeted households provided that the sale results in the City recapturing the subsidy that was necessary to make the unit affordable to the original buyer, plus a proportionate share of any appreciation.

With projects of this type, there are limited subsidy programs available. In this project, the most common financing included FHA insured loan combined with "silent second" subsidies provided by the developer and the City of Carlsbad. In many cases, first time homebuyers were also able to use the Carlsbad Homebuyer Assistance Program (CHAP), which provided up to \$20,000 in down payment assistance. Finally, some first time buyers were also able to utilize the Mortgage Credit Certificate Program (MCC). The MCC program entitles borrowers to receive a federal tax credit of 15% of the annual interest paid on their mortgage, thus increasing the buyer's loan amount.

Rental Housing

Rental housing has been the most common product type developed to satisfy the requirements of the Inclusionary Housing Ordinance. In general, there are more subsidy and debt financing programs available to affordable rental housing than for for-sale projects. Some of the more common programs include tax credits, tax-exempt bonds, redevelopment "set-asides", the Federal Home Loan Bank's AHP program, and HUD HOME funds.

The Villa Loma Apartments was the first affordable project developed under the City's Inclusionary Housing Ordinance. The project was developed to satisfy the inclusionary housing requirement of the Aviara Master Plan. The 344 unit project consists of one to four bedroom units that are affordable to very low income households. The primary subsidy sources included the equity from the sale of 9% tax credits and developer and City financial assistance.

The Rancho Carrillo Apartments are a 116 unit apartment complex that is affordable to low and very low income residents. Rancho Carrillo subsidies sources include equity derived from the 4% tax credit program and tax exempt bonds issued by the California Housing Finance Agency (CHFA).

Alternatives

As stated earlier in this document, the City Council may determine that an alternative to the construction of new inclusionary units is acceptable. The Council may approve alternatives that support specific Housing Element policies and goals and assists the City in meeting its state housing requirements. Alternatives may include, but not be limited to, acquisition and rehabilitation of affordable units, conversion of existing market units to affordable units, construction of special needs housing projects or programs (shelters, transitional housing, etc.), and the construction of second dwelling units.

Several smaller projects have previously utilized **Second Dwelling Units** (SDU's). Generally, SDU's are acceptable on a limited basis and in situations such as small projects with difficulty building on-site affordable housing. In practice, this option has required no subsidy and may have added value to a market unit to cover mortgage costs.

Second dwelling units constructed to satisfy an inclusionary housing requirement shall be rent restricted to affordable rental rates, renters shall be income-qualified, and the units are subject to the requirements of the Second Dwelling Unit Ordinance (CMC Section 21.15.015). In no event will a developer be allowed to construct more than a total of 15 second dwelling units in any given development to satisfy an inclusionary requirement.

An **Acquisition and Rehabilitation** project involves the purchase of an existing market development and restricting futures rents at a level affordable to a low income household for the useful life of the property. In addition, any necessary building improvements would be performed. To date, no developer has utilized this option as a means to satisfying an inclusionary housing requirement.

While this option has not yet been utilized, there are several potential benefits. First, the acquisition and rehabilitation of existing housing can be a lower cost alternative to the construction of new units. In addition, the same financing subsidies that are available to the construction of new rental housing are available to Acquisition/Rehabilitation projects. Finally, the City of Carlsbad Housing and Neighborhood Services Department and area non-profit housing agencies may be aware of properties that would lend themselves to this type of arrangement.