



CITY COUNCIL

Linda R. Maio
Councilmember District 1

CONSENT CALENDAR

December 9, 2003

TO: Honorable Mayor and
Members of the City Council

FROM: Councilmember Linda Maio

SUBJECT: The possibility of establishing a preference for our inclusionary units for Berkeley residents, those who work in Berkeley, public service employees, seniors and the permanently disabled.

RECOMMENDATION:

Refer to the manager a request that staff study and make a recommendation regarding the establishment of a priority point system that would give preference in renting or purchasing inclusionary units to Berkeley residents, those who work in Berkeley, to public service employees, to seniors, and to those permanently disabled as a high priority.

BACKGROUND:

At this time the offer of inclusionary units to prospective residents is made at the discretion of the developer. The City of Dublin has developed a priority point system, which gives preference to prospective residents of these units. The preferences are established for five groups:

1. Employees within the boundaries of the City of Dublin (3 points, one per household)
2. Public Service employee working in the City of Dublin (1 additional point)
3. Dublin residents (3 points, one per household)
4. Seniors (1 point, one per household)
5. Permanently disabled (1 point, one per household)

All would have to meet the income guidelines and requirements. This item requests that our Housing staff review the Dublin program, consider what provisions might be suitable for Berkeley, and return to the Council with a recommendation for suitable

implementation in Berkeley. There is no mention of a project-based Section 8 in the Dublin ordinance. Staff would have to consider how Section 8 vouchers might be accommodated in such an ordinance.

FINANCIAL IMPLICATIONS:

Unknown at this time.

CONTACT PERSON:

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Council District 1

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CHAPTER 8.68 INCLUSIONARY ZONING REGULATIONS

8.68.010. Purpose. The purpose of this chapter is to:

- A. enhance the public welfare and assure that further housing development contributes to the attainment of the City's housing goals by increasing the production of residential units affordable by households of very-low-, low-, and moderate income.
- B. assure that the limited remaining developable land in the City's planning area is utilized in a manner consistent with the City's housing policies and needs.

8.68.020. Definitions. As used in this chapter, each of the following terms shall be defined as follows:

- A. "Affordable Unit" means an ownership or rental-housing unit, including senior housing, affordable to households with very-low-, low-, or moderate incomes as defined in this chapter.
 - 1. Rental units are deemed affordable units if the annual rent does not exceed 30% of maximum income level for very-low-, low-, and moderate-income households, adjusted for household size and as defined below.
 - 2. Owner-occupied units are deemed affordable units if the sales price results in annual housing expenses that do not exceed 35% of maximum income level for very-low-, low-, and moderate-income households, adjusted for household size and as defined below.
- B. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks city real property development permits or approvals.
- C. " Dwelling unit" means a dwelling designed and intended for occupancy by one household.
- D. "Very-low-, low-, and moderate-income levels" means those income and eligibility levels determined periodically by the California Department of Housing and Community Development based on Alameda County median income levels adjusted for family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members, and all other sources of household income and will be recertified as set forth by local standards, and state and federal housing law.
 - 1. "Very-low income" means 50% or less of the median income, adjusted for actual household size.
 - 2. "Low income" means more than 50% to 80% of the median income, adjusted for actual household size.
 - 3. "Moderate income" means more than 80% to 120% of the median income, adjusted for actual household size.
- E. "Resale controls and or rent restrictions" means legal restrictions by which the affordable units shall be restricted to ensure that the unit remains affordable to very-low-, low-, or moderate-income

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households, as applicable, for a period of not less than 55 years. With respect to rental units, such rent restrictions shall be in the form of a regulatory agreement recorded against the applicable property. With respect to owner-occupied units, such resale controls shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the applicable property.

- F. "Residential development" includes, without limitation, detached single-family dwellings, multiple-dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

8.68.030. General Requirements

- A. **12.5% Affordability Requirement.** All new residential development projects of 20 units or more designed and intended for permanent occupancy shall construct 12.5% of the total number of dwelling units within the development as affordable units, except as otherwise provided by this chapter. The foregoing requirement shall be applied no more than once to an approved development (and generally at the tentative map stage), regardless of the changes in the character or ownership of the development, provided the total number of units does not change. In applying and calculating the affordability requirement, any decimal fraction less than or equal to 0.50 may be disregarded, and any decimal fraction greater than 0.50 shall be construed as one unit.

- B. **Allocation of Units to Income Levels.** Affordable units provided pursuant to this section shall be allocated to households with very-low, low-, and moderate-income levels as follows:

| | |
|----------------------------|-----|
| Very-low-income households | 30% |
| Low-income households | 20% |
| Moderate-income households | 50% |

Where the calculation of the allocation results in fewer units that would otherwise be required pursuant to subdivision A above, one additional unit should be allocated to the income level with a decimal fraction closest to 0.50.

- C. **Conditions of Approval:** Any tentative map, conditional use permit, or site development review approving residential development projects subject to this chapter shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall detail the number of affordable units required, specify the schedule of construction of affordable units, set forth the applicant's manner of compliance with this chapter, and require the execution of an agreement imposing appropriate resale controls and/or rental restrictions on the affordable units.
- D. **Concurrent Construction.** All affordable units in a project or phase of a project shall be constructed concurrently with market-rate units, unless the City Manager determines in writing that extenuating circumstances exist that make concurrent construction infeasible or impractical.
- E. **Design and Distribution of Affordable Units.** All affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole and shall not be distinguished by exterior design, construction, or materials. Affordable units may be of smaller size than the units in the project

and may have fewer amenities than the market rate units in the project. All affordable units shall be reasonably dispersed throughout the project.

8.68.040. Exceptions to 12.5% Affordability Requirement. Developers of projects subject to 8.68.030.A shall construct 12.5% of the total number of dwelling units within the development as affordable units, unless subject to an exception set forth in this section. All exceptions require City Council approval, which shall be obtained at or prior to the last discretionary approval for the project.

- A. **Payment of Fees In-Lieu of Creation of Affordable Units.** Upon request of the applicant, the City Council shall permit the applicant to pay a fee in lieu of constructing up to 40 percent of the affordable units that the developer would otherwise be required to construct pursuant to section 8.68.030.A. The amount of the fee shall be as set forth in a resolution of the City Council, which may be amended from time to time to reflect inflation and changed conditions in the City and the region. In-lieu fees shall be paid at and the time and in the amount set forth in the in-lieu fee resolution in effect at the time of issuance of the building permit.
- B. **Off-Site Projects.** An applicant may construct the affordable units not physically within the development in lieu of constructing some or all of the affordable units within the development, with the approval of the City Council, if the City Council finds:
1. that construction of the units off-site in lieu of constructing units on-site is consistent with the chapter's goal of creating, preserving, maintaining, and protecting housing for very low-, low- and moderate-income households.
 2. that the units to be constructed off site are consistent with section 8.68.030.E above
 3. that it would be infeasible or impractical to construct affordable units on-site.
 4. that conditions of approval for the project require that the off-site affordable units would be governed by the terms of a deed restriction and, if applicable, rental restrictions similar to that used for the on-site affordable units.
 5. that the conditions of approval for the project, or other security such as a cash deposit, bond, or letter of credit, are adequate to require the construction of the off-site affordable units concurrently with the completion of the construction of the residential development or within a reasonable period (not to exceed 5 years).
- C. **Land Dedication.** An applicant may dedicate land to the City or city-designated local non-profit housing developer in lieu of construction of some or all of the required affordable units, if the council finds that:
1. that dedication of land in-lieu of constructing units is consistent with the chapter's goal of creating, preserving, maintaining, and protecting housing for very-low, low- and moderate-income households.
 2. that the dedicated land is large enough and appropriately zoned to accommodate the number of units that the applicant would otherwise be required to construct by section 8.68.030.A, is useable for its intended purpose, is free of toxic substances and contaminated soils, and is

fully improved, with infrastructure, adjacent utilities, grading, and all development-impact fees paid excluding any inclusionary zoning ordinance fees.

3. that the proposed land dedication is of sufficient size to meet the following requirements:
 - a. the dedication includes land sufficient to construct the number of units that the applicant would otherwise be required to construct by Section 8.68.030.A, based on the size of lots in the subdivision for which the applicant is meeting its obligation; and
 - b. in addition, the dedication includes such additional land the market value for which is equal to or exceeds the difference between the value of a market-rate 1200-square foot unit and the price at which such a unit could be sold as an Affordable Unit (\$72,176) times the number of units required.
- D. **Credit transfers.** An applicant may fully or partially satisfy the requirements of section 8.68.030.A through the use of transfer credits created pursuant to section 8.68.060. Credit certificates shall be presented to the Community Development Director, who shall note at the time of project approval the credit certificate by number. Credit certificates may only be used to satisfy the requirements for Inclusionary Units for the income category (i.e., very low, low, or moderate) and number of bedrooms for which they are issued.
- E. **Waiver of Requirements.** The City Council, at its discretion, may waive, wholly or partially, the requirements of this ordinance and approve alternate methods of compliance with this chapter if the applicant demonstrates, and the City Council finds, that such alternate methods meet the purposes of this chapter.

8.68.050. General Procedures for Implementing Inclusionary Zoning Requirements

- A. **Agreements.** Prior to the issuance of a building permit for an affordable unit, resale restrictions or rental controls, or both, as the case may be, shall be set forth in an agreement between the City and the developer, in a form consistent with the City Council-adopted form agreement, which agreement shall be recorded against the property containing the affordable units. The agreement shall be executed by the City Manager, and its requirements shall run with the land and bind the applicant's successors.
- B. **Rental Units; Occupancy; Annual Report.** Agreements involving rental units shall require the owner of the affordable units to ensure that the units are occupied by tenants whose monthly income levels do not exceed moderate income levels and shall preclude tenants from subletting or subleasing the unit. The agreement shall also require the owner of the affordable unit to submit an annual report to the City Manager, in a format approved by the City. The report shall include, but not be limited to the following information: an identification of the affordable units within the project; the monthly rents charged and proposed to be charged; vacancy information for the prior year; and the monthly income for tenants of each affordable unit throughout the prior year.
- C. **Ownership Units; Occupancy; City's Right of First Refusal.** Agreements for ownership units shall specify that the inclusionary units must be occupied by the owner or owners and may not be leased or rented without the written approval of the City. The resale restrictions shall provide that in

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the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupant unit at the maximum price that could be charged to an eligible household.

- D. **Selection Criteria.** No household shall be permitted to occupy a unit that is required under this chapter to be affordable unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics for Alameda County published periodically by the California Department of Housing and Community Development, all sources of household income and assets, the relationship between household size and the size of available units, and any further criteria required by law. The developer shall use an equitable selection method established in conformance with the terms of this chapter. The selection criteria may not distinguish between adults and children. Selection of qualified person should be based on priorities established in the City's Affordable Housing Program as noted below:

- Employed within the boundaries of the City of Dublin (3 points, one per household)
- Public Service employee working in the City of Dublin (1 additional point)
- Dublin resident (3 points, one per household)
- Seniors (1 point, one per household)
- Permanently disables (1 point, one per household)

To qualify as "Employed within the boundaries of the City of Dublin," the person shall have been employed with the City of Dublin for at least six months.

To qualify as a "Dublin resident," the person shall have been a resident of the City of Dublin for at least a one-year period prior to the eligibility determination.

8.68.060. Affordable Unit Credits.

- A. **Creation.** Affordable unit credits may be created by the City Council. One affordable unit credit certificate shall be issued for each affordable unit constructed in excess of the number of affordable units required to be constructed for the project by Section 8.68.030.A. The certificate shall designate a specific income category (i.e., very-low-, low-, or moderate income) and number of bedrooms for which they are issued.
- B. **Ownership and use of credits.** Affordable unit credit certificates are issued to and become the possession of the project owner, who may then use them to satisfy the requirements of this chapter for another project in the City. If a project owner proposes to sell credit certificates, the parties shall first obtain the consent of the Community Development Director, who will document the transfer by certificate number.

- 8.68.070. Incentives to Encourage On-Site Construction of Affordable Units.** The City may, but shall not be required to, offer incentives or financial assistance to encourage the on-site construction of affordable units in excess of 12.5% of the total number of units in the project to the extent resources for this purpose are available and approved for such use by the City Council or City Manager. Such incentives may include, but shall not be limited to, the following:

A. Fee Deferral.

1. **Development Processing Fees.** The City Manager may approve deferred payment of City processing fees applicable to the review and processing of the project. The terms and payment schedule of the deferred fees shall be subject to the approval of the City Manager.
2. **Development Impact Fees.** The City Council may authorize the deferred payment of development impact fees applicable to the affordable units. Approval of this incentive requires demonstration by the Applicant that the deferral increases the project's feasibility. The applicant must provide appropriate security to ensure future payment of such fees.

B. Design Modifications. The City Council may approve design modifications to affordable units that increase the feasibility of the construction of affordable units, including but not limited to, the following:

1. Reduced lot size.
2. Reduced setback requirements.
3. Reduced open space requirements.
4. Reduced landscaping requirements.
5. Reduced interior or exterior amenities.
6. Reduction in parking requirements.
7. Height restriction waivers.

8.68.080. Inclusionary Zoning In-Lieu Fee Fund. In-lieu Fees shall be deposited into a fund known as the "Inclusionary Zoning In-Lieu Fees Fund" ("Fund").

- A. **Use.** All monies in the Fund, together with any interest earnings on such monies less reasonable administrative charges, shall be used or committed to use by the City for the purpose of providing very-low-, low-, and moderate-income ownership or rental housing in the City of Dublin.
- B. **Annual report.** The City Manager shall prepare an annual report to the City Council identifying the balance of monies in the Fund and the affordable units provided and any monies committed to providing very-low-, low-, and moderate-income housing. The annual report shall also include a review of administrative charges.

8.68.090. Violations. It shall be unlawful for any person, firm, corporation, partnership or other entity that is subject to this ordinance pursuant to section 8.68.030.A to violate any provision or to fail to comply with any of the requirements of this chapter. A violation of any of the provisions or failing to comply with any of the requirements of this Chapter shall constitute a misdemeanor; except that notwithstanding any other provisions of this Code, any such violation constituting a misdemeanor under this chapter, may in the discretion of the enforcing authority, be charged and prosecuted as an infraction. Any person convicted of an infraction under the provisions of this Code shall be punishable as provided by the Government Code of the State of California.

8.68.100. Enforcement.

- A. **General.** The City Manager shall enforce this chapter, and its provisions shall be binding on all agents, successors, and assigns of an applicant. The City Manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. No land-use approval, building permit, or certificate of occupancy shall be issued for any residential development unless exempt from or in compliance with this chapter. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.
- B. **Excessive rents/legal action.** If the City Manager determines that rents in excess of those allowed by operation of this chapter have been charged to a tenant residing in an affordable unit, the City may take appropriate legal action to recover, and the project owner shall be obligated to pay to the tenant, or to the City in the event the tenant cannot be located, any excess rents charged.

8.68.110. Appeals. Decisions of the City Manager under this Chapter may be appealed as provided in Chapter 8.136.