

Chapter 17.138: Inclusionary Housing Requirements

Sections:

- 17.138.010 – Purpose
- 17.138.020 – Applicability and Exclusions
- 17.138.030 – Definitions
- 17.138.040 – Inclusionary Housing Requirements
- 17.138.050 – Standards for Inclusionary Units
- 17.138.060 – In-Lieu Housing Fee
- 17.138.070 – Inclusionary Housing Proposal
- 17.138.080 – Procedures
- 17.138.090 – Eligibility Requirements
- 17.138.100 – Shared Equity Purchase Program
- 17.138.110 – Administration, Management, and Monitoring
- 17.138.120 – Enforcement

**17.138.010 – Purpose**

The purpose and intent of this Chapter are: 1) to promote the public welfare by increasing the production and availability of affordable housing units; 2) to establish an inclusionary housing requirement which implements General Plan policies guiding land use and housing development; and 3) to ensure that affordable housing units established pursuant to the provisions of this Chapter are located in a manner that provides for their integration with market rate units.

**17.138.020 – Applicability and Exclusions**

- A. This Chapter shall apply to residential development projects consisting of five or more residential lots or new dwelling units.
- B. The following types of residential development projects are exempt:
  1. Residential projects of four new units or less;
  2. Residential additions, repairs, or remodels, provided that such work does not increase the number of existing dwellings by five or more dwelling units;
  3. The addition or inclusion of Accessory Dwelling Units associated with an existing or proposed residential or mixed-use development;
  4. Affordable housing projects in which 100 percent of the dwellings to be built will be sold or rented in conformance with the City's Affordable Housing Standards (excluding any on-site manager unit);
  5. Housing projects that include a density bonus.
  6. Emergency projects or projects which the Council determines are necessary to protect public health and safety;
  7. Development projects which the Director determines are essentially noncommercial or nonresidential in nature, which provide educational, social, or related services to the community and which are proposed by public agencies, nonprofit agencies, foundations, and other similar organizations;

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- 8. Projects which replace or restore a structure damaged or destroyed by fire, flood, earthquake, or other disaster within three years prior to the application for the new structure(s) (see Chapter 17.92 Nonconforming Structure);

**17.138.030 – Definitions**

For the purposes of this Chapter, the following words and phrases shall have the meaning set forth below. For all other definitions, the provisions of Article 9 (Definitions) of this Title shall apply.

- A. “Administrator” means Below Market Rate Program Administrator which may either be the City itself or a third-party administrator acting as an agent for the City in connection with all aspects of the operation of the City’s Below Market Rate program pursuant to an Agreement entered into between the City and the Administrator, as such agreement may be amended or replaced from time to time.
- B. “Affordable” means housing which can be purchased or rented by a household with very low-, low-, or moderate- income, as described in the City’s affordable housing standards.
- C. “Below Market Rate (BMR)” means that the affordability level of an inclusionary unit is below the cost of what a current market rate unit would be and is affordable to extremely low-, very low-, low-, or moderate-income households.
- D. “Borrower” shall be defined as one who meets the eligibility requirements for purchasing an inclusionary affordable unit.
- E. “Commercial Linkage Fee” means the fee paid by the applicant of commercial development projects to mitigate the impacts that such developments have on the demand for affordable housing in the City (see Municipal Code Chapter 4.60).
- F. “Density bonus” means a density increase over the maximum density otherwise allowable under the Zoning Regulations, Chapter 17.140.
- G. “Early resale” shall mean the sale, lease, or transfer of property within seven years of the initial close of escrow for Equity Share Inclusionary Units.
- H. “Equity Share” shall mean the shared equity of appreciation between the City and the Borrower on inclusionary units when agreements specifically allow for affordable units to be sold at market-rate after a 7-year period.
- I. “Fee Schedule” means fees that for-sale and for-rent units are subject to and are paid to either the City or the Administrator for associated costs related to but not limited to eligibility screening, income verification, marketing of affordable units, and the close of escrow or completion of new lease agreements for affordable units.
- J. “Inclusionary housing unit” means a dwelling unit required under the provisions of this Chapter, and which meets the City’s affordable housing standards.
- K. “Low-” or “lower-income households” shall have the meaning set forth in Health and Safety Code Section 50079.5; provided the income of such persons and families shall not exceed 80 percent of the median income within the City as published and periodically updated by the State Department of Housing and Community Development.

**Deleted:** <#>Projects for which an approved tentative map or vesting tentative map exists, or for which a construction permit was issued prior to the effective date of the ordinance codified in this Chapter and the permittee has performed substantial work and incurred substantial liabilities and which continue to have unexpired permits. ¶

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**Deleted:** <#>“Building valuation” shall mean the total value of all construction work for which a construction permit is required, as determined by the Chief Building Official using the Uniform Building Code. ¶

**Deleted:** <#>“Development project” shall mean an activity for which a subdivision map or construction building permit is required, including new buildings and building additions or remodels, but not including changes in ownership, occupancy, management, or use. ¶

**Deleted:** <#>“Expansion area” means a land area proposed for annexation to the City or annexed after the adoption date of the ordinance codified in this Chapter.¶  
“Housing Authority” refers to the Housing of Authority of San Luis Obispo (HASLO). ¶

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- L. "Market rate" shall mean the highest price a willing buyer would pay and a willing seller would accept, both being fully informed and in an open market, as determined by an appraiser.
- M. "Moderate-income households" shall have the meaning set forth in Health and Safety Code Section 50079.5; provided the income of such persons and families exceed 80 percent but are less than or equal to 120 percent of the median income within the City as published and periodically updated by the State Department of Housing and Community Development.
- N. "Commercial development project" shall mean development projects which result in the subdivision of land and/or the construction or conversion of structures for the purpose of conducting business, including but not limited to retail sales, restaurants, offices, gas stations, manufacturing, etc.
- O. "Residential development project" shall mean development projects which result in the subdivision of land and/or the construction or conversion of structures, including, but not limited to, single-unit attached or detached homes, apartments, condominiums, live/work units, mixed-use, mobile homes, transitional housing or supportive housing, and group housing.
- P. "Very low-income" shall have the meaning set forth in Health and Safety Code Section 50079.5; provided the income of such persons and families shall not exceed 50 percent of the median income within the City as published and periodically updated by the State Department of Housing and Community Development.

**17.138.040 – Inclusionary Housing Requirements**

**A. General Requirements.** All non-exempt residential development projects shall include inclusionary units as required by this chapter. If the calculated number of units results in a fraction, the number shall be rounded as described in Section 17.138.080(A).

- 1. Construct the required number of inclusionary units for Residential or Mixed-Use projects;
- 2. Pay an in-lieu fee for Residential or Mixed-Use projects; or
- 3. Pay a commercial linkage fee (see Municipal Code Chapter 4.60) for new Non-Residential or Non-Residential portions of Mixed-Use project(s).

**B. Residential Requirements**

- 1. **Ownership Dwelling Units.** Ten (10) percent of the dwelling units (see Section 17.138.080.A) shall be made available for sale to eligible households with five (5) percent for low-income households (fractional units may be rounded down to the next whole number) and five (5) percent for moderate-income households (fractional units may be rounded up to the next whole number). See Section 17.138.080.A for more information regarding fractional numbers.
- 2. **Rental Dwelling Units.** Six (6) percent of the dwelling units (see Section 17.138.080.A: Fractional Numbers) shall be made available for rent to eligible households with three (3) percent for very low-income households (fractional units may be rounded down to the next whole number) and three (3) percent for low-income households (fractional units may be rounded up to the next whole number).

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**A. Methods of Meeting Requirements.** New development projects shall satisfy the inclusionary housing requirements, as specified in Tables 2 and 2A of the General Plan Housing Element (also included below) which require that all nonexempt development projects shall contribute toward the production of affordable housing by constructing at least one affordable dwelling unit or paying an in-lieu fee. To meet the requirements, the developer shall comply with one or more of the following methods:

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**Deleted:** 2. Pay an in-lieu fee as described in Table 2, as adjusted by Table 2A. For development projects in which the adjustment factor under Table 2A equals zero ("0"), the minimum adjustment factor shall be 0.25 (resulting in a minimum in-lieu fee of 1.25 percent of the building valuation for development projects and commercial developments in expansion areas, and 3.75 percent of building ...

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**3. In-Lieu Housing Fees.** An applicant may pay in-lieu fees to the City rather than construct inclusionary units on site for residential projects that would create five (5) or more dwelling units or parcels (see Section 17.138.060: In-Lieu Housing Fee).

**C. Non-Residential Requirements**

**1. Commercial, Office, Service, Hotel, Retail, Industrial, and Institutional Uses.** An applicant shall pay a commercial linkage fee based on the gross square footage of the non-residential space in accordance with Municipal Code Chapter 4.60.

**D. Mixed-Use Development Requirements**

**1. Dwelling Units & Commercial Space.** For mixed-use development, with five or more dwelling units, the inclusionary housing requirement is determined in accordance with subsection B of this Section for all dwelling units in addition to subsection C of this Section for all new commercial square footage within the development project. For example, a for-rent mixed-use project includes twenty (20) residential units and 5,000 square feet of commercial space: the inclusionary requirement would be two (2) affordable units (20 x 6% = 1.2 rounded to 2) and a commercial linkage fee would be applied to the 5,000 square feet of commercial space.

**2. Commercial Space.** For mixed-use development, with four or less residential units, only the base inclusionary housing requirement for non-residential square footage shall be provided in accordance with subsection C of this Section. For example, a for-rent mixed-use project includes four (4) residential units and 5,000 square feet of commercial space: a commercial linkage fee would be applied to the 5,000 square feet of commercial space.

**E. Residential Final Maps or Parcel Maps**

**1. Residential Subdivisions.** Tentative Maps as defined in Chapter 16.10 "Tentative Maps" of the Municipal Code, that result in five (5) or more residential lots or parcels, which do not include any associated or required development plan, and are intended for independent development, shall pay the In-Lieu Housing Fee (see Section 17.138.060: In-Lieu Housing Fee) at the time of building permit submittal.

**17.138.050 – Standards for Inclusionary Units**

**A. Standards.** Inclusionary units must meet the following standards:

- Inclusionary units shall be dispersed throughout the residential development projects to prevent a concentration of affordable units within the development project.
- Inclusionary units shall be consistent with the design of market rate units in terms of exterior appearance, materials, and finished quality.
- The applicant may reduce square footage of inclusionary units as compared to the market rate units as long as the minimum square footage of the affordable units are no less than seventy-five percent of the average size of all market rate units in the residential development project with the same bedroom count. For the purpose of this subsection, the "average size" of a unit with a certain bedroom count equals the total square footage of all market rate units with that bedroom count in the residential development project divided by the total number of market rate units

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with the same bedroom count in the residential development project.

- 4. For residential development projects with multiple market rate unit types containing differing numbers of bedrooms, inclusionary units shall be representative of the market rate unit mix. For example, a for sale, residential project includes fifty (50) dwelling units; ten (10) three-bedroom units, twenty (20) two-bedroom units, and twenty (20) one-bedroom units. To represent the units within the residential project, the five (5) required inclusionary units would be one (1) three-bedroom, two (2) two-bedrooms and two (2) one-bedrooms.
- 5. The required inclusionary units shall be constructed concurrently with market rate units, unless an alternative development schedule is otherwise stipulated by the applicable Review Authority of the residential development project.
- 6. Inclusionary units shall be subject to the City's and/or the Administrator's Fee Schedule in accordance with Section 17.138.110.

**17.138.060 – In-Lieu Housing Fee**

- A. **Payment of In-Lieu Fee.** The developer may, at their discretion, choose to pay a fee, as established by a resolution of the City Council, to the City in lieu of constructing affordable units to meet their inclusionary housing requirement.
- B. **In-Lieu Fee Calculation.** In-lieu fees shall be calculated using the total square footage of new, habitable square footage, as defined by California Building Code, included within the residential development project. In-lieu fees shall be calculated using the new, habitable square footage, as defined by California Building Code, included within the residential development project. Final Maps or Parcel Maps in-lieu fees shall be calculated at time of individual lot development using the new, habitable square footage included within the residential development project.
- C. **Affordable Housing Fund.** All in-lieu fees collected shall be deposited into the Affordable Housing Fund. The fund shall be administered by the Finance Director and shall be used exclusively to provide funding for the provision of affordable housing and for reasonable costs associated with the development of affordable housing, at the discretion of the Council.
- D. **Timing.** In-lieu fees shall be paid prior to building permit issuance. For projects constructed in phases, in-lieu fees shall be paid in the proportion that the phase bears to the overall project.

**Deleted: D. Timing.** The inclusionary housing requirement shall be met prior to issuance of a certificate of occupancy for the first unit in a building, or the first building in a complex to be constructed or remodeled; or for subdivisions, prior to Final Map approval; or prior to building permit issuance, for projects for which a certificate of occupancy is not issued; or as otherwise agreed to by the Director as part of tentative map, rezoning, Minor Use Permit, Conditional Use Permit, or other development approval. ¶

**E. Affordable Housing Agreement.** To meet the requirement, the developer may enter into an agreement with the City, the Housing Authority of San Luis Obispo (HASLO), nonprofit housing provider, or other qualified housing provider approved by the Director to construct, refurbish, convert, operate, and maintain the required affordable housing. Such affordable housing agreements shall be to the approval of the Director and shall be in a form approved by the City Attorney. ¶

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**A. Method of Application.**

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**17.138.070 – Inclusionary Housing Plan**

- A. **Application Requirements.** An applicant proposing a project for which inclusionary housing is required shall submit a statement with their planning application, or building permit (whichever applies), describing the project's inclusionary housing plan. The statement shall include:
  - 1. A project description that includes details regarding the proposed residential development project such as, but not limited to total number of dwelling units, number of bedrooms per dwelling unit, square footage of all units (both residential and commercial), type of project (rental or ownership), etc.;

- 2. A description of the inclusionary housing plan for each construction phase, including the method chosen to meet the inclusionary housing requirement, and including all of the following information including but not limited to:
  - a. Whether the unit is for sale or rental;
  - b. The number, location, unit type, tenure, number of bedrooms and baths, floor plan, construction schedule of all inclusionary units;
  - c. Preliminary calculation of in-lieu fees, or commercial linkage fee as applicable;
  - d. Other information which the Director determines necessary to adequately evaluate the proposal.

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 3. Plans and other exhibits showing preliminary site layout, grading, building elevations, parking and other site features, location of affordable dwelling units, and (where applicable) market value dwelling units;¶  
 4. Description of incentives requested, including exceptions from development standards, density bonuses, fee waivers or other incentives; and¶  
 5.

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**17.138.080– Procedures**

**A. Fractional Numbers.** In determining the number of dwellings that are required to be built pursuant to Section 17.138.040.B fractional units shall be rounded up to the next higher whole number unit. If a project contains 10 units or less and the number of required inclusionary dwellings results in a fractional unit, an applicant may pay the in-lieu fee for the fractional unit or provide one Moderate affordable unit in the project. For example, a residential project proposes to construct six (6) dwelling units for rent. Per Section 17.138.040, the project would have an inclusionary housing requirement of 0.36. The applicant may pay an in-lieu fee for the fractional amount or deed restrict one of the six (6) dwelling units for Moderate-income households.

**B. Affordable Housing Agreement.** The applicant shall complete and sign an Affordable Housing Agreement.

- 1. **Submittal of an Affordable Housing Agreement.** Applicants of residential development projects subject to this Chapter shall submit an affordable housing agreement on forms provided by the City and pay a processing and recordation fee.
- 2. **Timing.** All building permits for inclusionary units in a residential development project shall be issued concurrently with, or prior to, issuance of building permits for the market rate units.
- 3. **Construction Schedule.** The inclusionary units shall be constructed concurrently with, or prior to, construction of the market rate units, unless otherwise stipulated by the applicable Review Authority of the residential development project. Occupancy permits and final inspections for inclusionary units in a residential development shall be approved concurrently with, or prior to, approval of occupancy permits and final inspections for the market rate units.
- 4. **Review and Approval.** The draft agreement shall be reviewed by the Director and City Attorney for compliance with project approvals, City policies and standards, and applicable codes. Following approval and signing of the agreement by the parties, the final agreement shall be recorded, and relevant terms and conditions shall be recorded as a deed restriction on those lots or affordable units subject to affordability requirements. The affordable housing agreement shall be binding to all future owners and successors in interest.
- 5. **Term.** The affordable housing agreement shall ensure that affordability is maintained for the longest period allowed or required by State law, but not less

than 45 years for ownership and 55 years for rental.

- 6. **Exemption for In-Lieu Fee Payment.** An affordable housing agreement shall not be required for projects which meet their inclusionary housing requirement through the payment of in-lieu fees.

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**17.138.090 – Eligibility Requirements**

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- A. **Program Requirement.** Only households qualifying as extremely low-, very low-, low-, or moderate income, pursuant to the affordable housing standards, shall be eligible to rent, purchase, or occupy inclusionary units developed or funded in compliance with this requirement. For-sale inclusionary housing units shall be owner-occupied for the term of the affordable housing agreement.
- B. **Eligibility Screening.** The City or an Administrator designated by the City shall screen prospective renters or buyers of affordable units. Buyers of affordable units shall enter into an agreement with the City. Occupants must be selected by means of an open, public process which ensures that individuals of a group of interested participants are selected in accordance with the City’s BMR Ownership and Rental Housing Guidelines. Private selection of individuals by project owners is not permitted for any affordable units.

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**17.138.100 – Shared Equity Purchase Program**

When a residential development project includes affordable housing units for sale in excess of the inclusionary housing requirement for the project, the additional units may be offered under the Shared Equity Purchase Program.

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Developers of affordable units for sale shall specify the type of affordability restriction to be applied. The developer shall choose to either: (1) participate in a shared equity purchase program, as described in Section 17.138.150, or (2) enter into an affordable housing agreement to ensure that affordability is maintained for the longest period allowed or required by State law. ¶  
17.138.150

- A. Under this program, the qualified buyer of a designated affordable dwelling unit shall enter into a shared equity agreement with the City. Said agreement shall be recorded as a lien against the purchased property, at no interest, securing and stating the City’s equity share in the property. The City’s equity share shall be calculated by the Director, and shall be the decimal percentage of the property’s value resulting from:
  1. The difference between the property’s market value and the actual price paid by the homeowner, divided by the market value; and/or, when applicable
  2. The amount of subsidy provided by the City to the homeowner to purchase the property, divided by the property’s market value.
- B. Upon sale, the City’s equity share shall be repaid to the City from the proceeds of the sale, less the City’s percentage share of title insurance, escrow fees, and documentary transfer taxes, at the close of escrow. The proceeds from the sale shall be deposited into the City’s Affordable Housing Fund and shall be used for the purposes set forth in Health and Safety Code § 33334.2(e).
- C. In the event of “early resale,” owners of properties subject to the Shared Equity Purchase Program shall either: (1) pay an equity recapture fee to the City as described in the schedule below, in addition to the City’s equity share, or (2) sell the property to another eligible household. If the owner chooses to pay the equity recapture fee, the recapture fee shall be paid to the City upon resale at close of escrow, based on the following schedule:

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<b>Year</b>	<b>% of Equity Build-up</b>
0 – 3	100%
4	75% + <u>City's Equity Share</u>
5	50% + <u>City's Equity Share</u>
6	25% + <u>City's Equity Share</u>
7 and after	0% + <u>City's Equity Share</u>

The recapture amount shall be determined prior to the calculation of escrow closing costs.

**17.138.110 – Administration, Management, and Monitoring**

Inclusionary rental and owner units shall be managed and operated by the property owner, or the owner's agent, for the term of the affordable housing agreement. Sufficient documentation shall be submitted to ensure compliance with this Chapter, to the satisfaction of the Director.

A. Duties of Program Administrator. The City may either handle in-house or contract for administration of the BMR Ownership Housing Program and monitoring compliance with the requirements of this Chapter to a program Administrator pursuant to an agreement executed between the City and the Administrator in accordance with the approved fee schedule. At a minimum, the Administrator shall perform the following services:

1. Maintain and administer the City's BMR Ownership and Rental Housing Guidelines and Affordable Housing Standards.
2. Screen and select qualified buyers and renters according to the City's Ownership and Rental Housing Guidelines and Affordable Housing Standards and maintain qualified owner and renter eligibility list;
3. Maintain a list of eligible mortgage lenders for financing the purchase of inclusionary units in accordance with the BMR Ownership Housing Guidelines;
4. Market new and vacant BMR for-sale and rental units within the City's affordable housing inventory.
5. Monitoring compliance with terms and conditions of the occupancy and sale restrictions;

**17.138.120 – Enforcement**

**A. Enforcement.** No final subdivision map shall be approved, nor building permit issued, nor shall any other development entitlement be granted for a residential development project subject to this Chapter that does not meet these requirements. No inclusionary unit shall be rented or sold except in accordance with these requirements and the affordable housing standards.

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**Deleted: B. Appeals.** The Director shall administer and interpret these requirements, subject to applicable codes and City procedures. Decisions of the Director are appealable, subject to the Zoning Regulations Chapter 17.126 (Appeals). ¶ **17.138.190 – Severability**¶  
If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the remainder of the Chapter and the application of the provision to other persons or situations shall not be affected thereby.