

Chapter 17.138: Inclusionary Housing Requirements

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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 ~~rental~~ 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 ~~development all residential development except projects consisting of five or more residential lots or new dwelling units, and to commercial development projects consisting of 2,500 square feet or more of gross floor area.~~

~~The~~ the following types of residential development projects are ~~excluded~~exempt:

- ~~1. Residential developments of four units or less;~~
- ~~2. New commercial developments of less than 2,500 square feet of gross floor area;~~
- ~~3.1. Residential and commercial building additions, repairs, or remodels, provided that such work does not increase the number of existing dwellings by four or more units or result in an increase in commercial gross floor area of 2,500 square feet or more;~~
2. The addition or inclusion of Accessory Dwelling Units associated with an existing or proposed residential or mixed-use development;
- ~~4. The conversion of less than five dwelling units to condominiums within any five year period;~~
- ~~5.3. Commercial condominium conversions which do not result in the creation of new dwellings;~~
- ~~6.4. Affordable housing projects in which 100 percent of the dwellings to be built will be sold or rented in conformance with the City's aAffordable hHousing sStandards (excluding any on-site manager unit);~~
5. Housing projects that include a density bonus.

- ~~7.6.~~ Emergency projects or projects which the Council determines are necessary to protect public health and safety;
- ~~8.7.~~ 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;
- ~~9.8.~~ 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);
- ~~10. 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.~~

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.~~
- ~~A.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.
- ~~B. "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.~~
- ~~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).~~
- ~~G.F.~~ "Density bonus" means a density increase over the maximum density otherwise allowable under the Zoning Regulations, Chapter 17.140.
- ~~D. "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.~~
- ~~E. "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.~~
- ~~F. "Housing Authority" refers to the Housing of Authority of San Luis Obispo (HASLO).~~
- ~~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.

G.J. "Inclusionary housing unit" means a dwelling ~~which is built~~ unit required under the provisions of this Chapter, and which meets the City's affordable housing standards.

H.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 ~~County~~ City as published and periodically updated by the State Department of Housing and Community Development.

I.L. "Market ~~value~~ 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 or other qualified professional.~~ fully informed and in an open market, as determined by an appraiser.

J.M. "Moderate-income households" shall ~~include those~~ have the meaning set forth in Health and Safety Code Section 50079.5; provided the income of such persons and families ~~whose incomes~~ exceed 80 percent but are less than or equal to 120 percent of the median income within the ~~County~~ City as published and periodically updated by the State Department of Housing and Community Development.

~~K. "Real property" shall mean land and improvements, if any, including anything permanently affixed to the land, such as buildings, walls, fences, and paved areas.~~

N. "~~Non-residential~~ Commercial development project" shall mean development projects which result in 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.

L.O. "Residential development project" shall mean development projects which result in the ~~subdivision of land and/or the~~ construction or conversion of ~~dwelling~~ structures, including, but not limited to, single-unit attached or detached homes, apartments, condominiums, live/work ~~studios~~ units, mixed-use, mobile homes, transitional housing or supportive housing, and group housing.

M.P. "Very low-income" shall have the meaning set forth in Health and Safety Code Section ~~50105, defined as~~ "50079.5; provided the income of such persons and families ~~whose incomes do~~ shall not exceed ~~the qualifying limits for very low income families as established and amended from time to time in compliance with Section 850~~ percent of the ~~United States Housing Act of 1937, and~~ median income within the City as published ~~in the California Administrative Code.~~ and periodically updated by the State Department of Housing and Community Development.

17.138.040 – General Standards Inclusionary Housing Requirements

~~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:~~

A. 1. General Requirements. All non-exempt residential development projects shall include inclusionary units as required by this ~~section~~ chapter. If the calculated number of units results in a fraction, the number shall be rounded as described in Section 17.138.080(A) ~~: Fractional Numbers, unless otherwise specified.~~

1. Construct the required number of affordable dwelling units, as specified in Table 2 of the Housing Element, as adjusted by Table 2A of the Housing Element; or inclusionary units for Residential or Mixed-Use projects;
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 valuation for residential developments in expansion areas); or
3. Dedicate real property for affordable housing; or
4. Provide for the rehabilitation of existing housing units that are vacant and in poor physical condition or are

otherwise uninhabitable; or

5. Use a combination of the above methods, to the approval of the Director.

Housing Element Table 2—Inclusionary Housing Requirement			
Type of Housing Development			
		Residential—Adjust Requirements per Table 2A below	Commercial
Location	In-City Limits	Build 3% low ⁵ or 5% moderate income Affordable Dwelling Units (ADUs ²), but not less than 1 ADU per project; or ³ —pay in lieu fee equal to 5% of building valuation. ⁴	Build 2 ADUs per acre, but not less than 1 ADU per project; or ³ —pay in lieu fee equal to 5% of building valuation
	In-Expansion Area	Build 5% low ⁵ —and 10% moderate income ADUs, but not less than 1 ADU per project; or pay in lieu fee equal to 15% of building valuation.	Build 2 ADUs per acre, but not less than 1 ADU per project; or pay in lieu fee equal to 5% of building valuation.

Notes:

1. Residential developments of four or less dwellings, and commercial developments of 2,500 gross square feet of floor area or less are exempt from these requirements.
2. Affordable Dwelling Units must meet City affordability criteria listed in Goal 2.1 of the Housing Element.
3. Developer may build affordable housing in the required amounts, pay in lieu fee based on the above formula, or dedicate real property, or a combination of these, to City approval.
4. "Building valuation" shall mean the total value of all construction work for which a permit would be issued, as determined by the Chief Building Official.
5. Low income includes the subsets of extremely low and very low income categories.

Housing Element Table 2A—Inclusionary Housing Adjustment Factors						
Project Density— (Density— Units/Net Acre) ¹	Inclusionary Housing Requirement Adjustment Factor ²					
	Average Unit Size (square feet)					
	Up to 1,100	1,101—1,500	1,501—2,000	2,001—2,500	2,501—3,000	>3,000
36 or more	0	0	0.75	1.0	1.25	1.5
24—35.99	0	0	0.75	1.0	1.25	1.5
12—23.99	0	0.25	1.0	1.25	1.5	1.75
7—11.99	0	0.5	1.0	1.25	1.5	1.75
<7	0	0.5	1.25	1.5	1.75	2.0

Notes:

1. Including allowed density bonus, where applicable.
2. Multiply the total base Inclusionary Housing Requirement (either housing or in lieu percentage) by the adjustment factor to determine requirement. At least one enforceably restricted affordable unit is required per development of five or more units.

B. Affordable Housing Standards. Affordable dwelling units constructed must meet City affordable housing standards and must be consistent with affordability policies in the General Plan Housing Element.

C. Concurrent Development. The required inclusionary units shall be constructed concurrently with market value units unless the developer and the Director agree within an affordable housing agreement to an alternative development schedule.

17.138.050—Procedures

A. Fractional Numbers. In determining the number of dwellings that are required to be built pursuant to Table 2, fractional units shall be rounded up to the next higher whole number unit.

B. Determining Adjustment Factor Using Project Density and Average Unit Size. To determine the adjustment factor in Table 2A, project density shall be calculated by dividing the total number of density units proposed (including density bonus where applicable) by the development project site's net area. Average floor area shall be calculated by dividing the total gross floor area of all dwellings (excluding garages) within the development project by the total number of dwellings. Dedicated open space shall not be included in a site's net area.

2. Pay an in-lieu fee for Residential or Mixed-Use projects; or

3. Pay a commercial linkage fee (see Municipal Code Chapter 4.6056: Development Impact Fees) 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: Fractional Numbers) 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 (Fractional Numbers) 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).
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 (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 ~~within the development project that result in an increase in gross floor area of 2,500 square feet in accordance with Municipal Code Chapter 4.60.~~

D. ~~G.~~ Mixed-Use Development Projects Requirements

1. **Dwelling Units & Commercial~~Non-Residential~~ Space.** For mixed-use development ~~projects with five or more dwellings or 2,500 square feet or more of new non-residential square footage,~~ the inclusionary housing requirement is determined by: (1) using Table 2 to calculate the base inclusionary requirement for the commercial use, and (2) using Table 2A to adjust the base requirement based on project density and average unit size, ~~as described in accordance with subsection (B) of this Section. 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 ($20 \times 6\% = 1.2$ rounded to 2) and a commercial linkage fee would be applied to the 5,000 square feet of commercial space ~~times the commercial linkage fee.~~

17.138.050 – Standards for Inclusionary Units**A. Standards.** Inclusionary units must meet the following standards:

1. Inclusionary units shall be dispersed throughout the residential ~~or mixed-use development projects~~ to prevent a concentration of affordable units within the development project.
2. Inclusionary units shall be consistent with the design of market rate units in terms of exterior appearance, materials, and finished quality.
3. 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 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.

- ~~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.~~

17.138.060 – In-Lieu Housing Fee

- ~~A. **A. Payment of In-Lieu Fee.** The developer may, at his or her~~their~~ discretion, choose to pay a fee as established by a resolution of the City Council, to the City in lieu of constructing affordable dwellings~~units~~ to meet this~~their~~ inclusionary housing requirement.~~
- ~~B. **Amount and Method of Payment.** The dollar amount and method of payment of the in lieu fee shall be as described in Table 2 of Appendix N of the General Plan Housing Element, and where applicable, as adjusted by Table 2A in Appendix N of the General Plan Housing Element, to the approval of the Director. For subdivisions in which the construction valuation is not known, the Director shall estimate the average construction valuation based on lot area, land value, and applicable City development standards. The developer shall use the estimated average construction valuation to determine the amount of in lieu fees.~~
- ~~B. **C. 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. In-lieu fees for Final Maps or Parcel Maps which are subject to Inclusionary Housing Requirements.~~
- ~~Timing. In-lieu fees shall be paid prior to release of occupancy of the first dwelling within a residential development; or for residential subdivisions to be built out by others, prior to final subdivision map approval; or prior to occupancy for new commercial buildings or remodels; or prior to building permit issuance, for projects for which a certificate of occupancy is not issued; or as otherwise provided by written agreement between the developer and City, to the approval of the Director. For mixed-use developments, these regulations shall apply to whichever occupancy release is first issued.~~

~~B. 17.138.070 – Affordable Housing Fund~~Established

- ~~C. **The City hereby establishes an.** 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. In-lieu fees collected shall be deposited into the Affordable Housing Fund, to the satisfaction of the Director of Finance.~~

C.

- 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. release of occupancy of the first dwelling within a residential development; or for residential subdivisions to be built out by others, prior to final subdivision map approval; or prior to occupancy for new commercial buildings or remodels; or prior to building permit issuance, for projects for which a certificate of occupancy is not issued; or as otherwise provided by written agreement

~~between the developer and City, to the approval of the Director. For mixed-use developments, these regulations shall apply to whichever occupancy release is first issued.~~
17.138.080 – Real Property Dedication

~~A. — Irrevocable Offer to Dedicate Real Property. At the discretion of the Council, an irrevocable offer to dedicate real property equal or greater in value to the in-lieu fee which would otherwise be required may be offered to the City, or to an affordable housing provider designated by the City, instead of providing the required number of affordable dwellings or paying in-lieu fees. The City shall have the option of negotiating with the applicant regarding dedications of properties with greater value than the in-lieu fee to achieve an equitable dedication. In considering an offer to dedicate real property, the Council must find that the dedication of real property will provide equal or greater public benefit than constructing affordable units or paying in-lieu fees, based on the following criteria and additional criteria set forth in Government Code Section 65915(g)(2)(A-H):~~

- ~~1. — Valuation of the land and/or improvements to be dedicated relative to other methods of meeting the requirement;~~
- ~~2. — Suitability of the land and/or improvements for housing, including General Plan conformity, size, shape, topography, and location; and~~
- ~~3. — Feasibility of developing affordable housing, including General Plan consistency, and availability of infrastructure.~~

~~B. — Real Property Valuation. The valuation of real property offered in-lieu shall be determined by the Director, based upon an appraisal made by a qualified appraiser mutually agreed to by the developer and the City. Costs associated with the appraisal, title insurance and transfer, recordation, and related costs shall be borne by the developer.~~

~~C. — Agreement and Timing. The real property dedication shall be by deed or other instrument acceptable to the City and shall be completed by recordation through of the Office of County Clerk Recorder prior to occupancy release of the first residential unit or commercial building in the development; or prior to building permit issuance, for projects for which a certificate of occupancy is not issued; or as otherwise provided by written agreement between the developer and the City.~~

17.138.090 – Incentives

~~A. — Eligibility for Incentives. The developer may be eligible to receive or to request development incentives in return for constructing affordable housing in connection with a development project, pursuant to Chapter 17.140 (Affordable Housing Incentives), as part of a City planning application. Incentives or other forms of financial assistance may be offered by the City to the extent that resources are available for this purpose and to the degree that such incentives or assistance will help achieve the City's housing goals.~~

~~B. — Affordable Housing Agreement. Any incentives provided by the City, beyond those incentives to which a developer may be automatically entitled to under Chapter 17.140 (Affordable Housing Incentives) shall require approval by the appropriate review authority and shall be set out in an affordable housing agreement. The form and content of such agreement shall be to the approval of the City Attorney and the Director. Developers are further encouraged to utilize other local, State or Federal assistance, when available, to meet the affordable housing standards.~~

17.138.070 – Inclusionary Housing Plan

17.138.100 – Project Application

~~A. A. Method of Application. Requirements.~~ An applicant/developer proposing a project for which ~~affordable/inclusionary~~ housing is required shall submit a statement with ~~the standard~~their planning application, ~~or building permit (whichever applies),~~ describing the project's inclusionary housing ~~proposal~~plan. The ~~developer's~~ statement shall include:

- ~~1. 1. — A brief~~project description of the ~~proposal~~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, ~~type and location of affordable, unit type, tenure, number of bedrooms and baths, floor plan, construction schedule of all inclusionary units; term of affordability; preliminary~~

~~a-c. Preliminary calculation of in-lieu fees; or offer of land dedication or commercial linkage fee as applicable;~~

~~2. How the proposal meets General Plan policies and inclusionary housing requirements;~~

~~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~~

~~b-d. 5. Other information which the Director determines necessary to adequately evaluate the proposal, including but not limited to the method proposed to award occupancy of the affordable units.~~

17.138.110080 – Required Agreements Procedures

A. Fractional Numbers. In determining the number of dwellings that are required to be built pursuant to Section 17.138.040.B Table 2, 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. A. Affordable Housing Agreement. The applicant shall complete and sign an Affordable Housing Agreement.

1. Submittal of an Affordable Housing Agreement. Applicants ~~and developers for of residential~~ development projects subject to this Chapter shall, ~~as a condition of development approval,~~ 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, ~~or final recordation of a final or parcel map, whichever occurs first.~~

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.

1-4. 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. B. 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.

2-6. Exemption for In-Lieu Fees Payment. An affordable housing agreement shall not be required for projects which meet their inclusionary housing requirement through the payment of in-lieu fees.

17.138.120–090 – Eligibility Requirements

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.-

~~17.138.130~~

- B. **Eligibility Screening.** The ~~Housing Authority City~~ or ~~other housing provider~~ an Administrator designated by the City shall screen prospective renters or buyers of affordable units. ~~Renters or b~~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 have equal probability of selection 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.-

~~17.138.140~~—Affordability Restrictions

~~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~~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.

- 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).

~~17.138.160~~—Early Resale of Shared Equity Properties

- C. In the event of "early resale," owners of properties subject to the ~~shared equity purchase program~~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. "Early resale" shall mean the sale, lease, or transfer of property within seven years of the initial close of escrow. 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:

Table 8-1: Percent of Equity Build-up Recaptured	
Year	% of Equity Build-up Recaptured
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.

17.138.179110 – ~~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;

17.138.180120 – Enforcement and Appeals

A. **Enforcement.** No ~~final subdivision map shall be approved, nor~~ building permit shall be issued, nor shall any other development entitlement be granted for a residential development project ~~which 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.

~~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.~~