

Ordinance Form Sheet

TO: CITY COUNCIL

DATE: JUNE 25, 2001

FROM: CITY ATTORNEY

SUBJECT: AN ORDINANCE REQUIRING THAT RESIDENTIAL AND MIXED-USE PROJECTS OF 10 OR MORE UNITS INCLUDE A SHARE OF HOUSING UNITS THAT ARE AFFORDABLE TO LOW AND MODERATE-INCOME HOUSEHOLDS (INCLUSIONARY UNITS)

TITLE OF PROPOSED ORDINANCE:

AN ORDINANCE OF THE CITY OF PASADENA AMENDING TITLE 17 (THE ZONING CODE) TO REQUIRE INCLUSIONARY HOUSING

PURPOSE OF ORDINANCE:

This Ordinance implements and codifies the Inclusionary Housing Code Amendment approved by the City Council on June 25, 2001. The Inclusionary Housing Code Amendment to Title 17 requires newly constructed residential development projects and mixed-use housing projects with ten or more units to include a share of units that are affordable to low and moderate-income households (inclusionary units). The Amendment requires that the number of inclusionary units equal fifteen percent of the total number of units. As alternatives to constructing inclusionary units on the primary development site, an applicant may choose: (1) to construct the units on another site, (2) to pay a fee in lieu of constructing or providing the units, or (3) to donate a site for development.

ALTERNATIVE PROVISIONS OF PROPOSED ORDINANCE:

The City Council on June 25, 2001 also requested, for its consideration, preparation of alternative provisions to the proposed ordinance consistent with the following Planning Commission recommendations: (1) newly constructed or substantially rehabilitated residential or mixed-use projects of ten or more units include a share of units that are affordable to very low, low and moderate-income households (inclusionary units) and

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(2) the number of inclusionary units equal fifteen percent of the total units for projects of 10-200 units and twenty percent of the total units for projects of 201 units or more. The alternative provisions have been prepared should the City Council choose to substitute these conditions for the proposed fifteen percent low and moderate-income inclusionary requirement. Based on a review of the financial implications of the alternative provisions staff is not recommending these changes. The impact on land value and housing development cost is significantly greater than the proposed fifteen percent low and moderate-income inclusionary housing requirement.

REASON WHY LEGISLATION IS NEEDED:

This legislation is needed to amend the Zoning Code in order to substantially advance the interest of affordable housing. Presently, the vast majority of new market rate multi-family rental developments and for-sale ownership units in Pasadena are not affordable to lower and moderate-income households. Moreover, market conditions, including the high cost of residential land, construction costs and financing costs make development of affordable housing difficult. This legislation requires newly constructed residential development projects and mixed-use housing projects with ten or more units to include a share of units that are affordable to low and moderate-income households (inclusionary units) and thus promote the provision of affordable housing opportunities.

PROGRAM, DEPARTMENTS, OR GROUPS AFFECTED:

The Planning and Permitting Department and Housing and Development Department will collectively implement the proposed ordinance.

ENVIRONMENTAL:

The Environmental Administrator has determined on the basis of an initial study on file with the Planning Division Office that the proposed Amendment could not have a significant effect on the environment. A Negative Declaration has been prepared.

REGULATIONS, IN-LIEU FEES AND AFFORDABLE HOUSING COST:


Transmitted for review under a separate cover are the draft Inclusionary Housing Code Amendment Regulations, In-Lieu Fee Schedule and Affordable Housing Cost Chart. The Regulations set forth the procedures for implementing the Inclusionary Housing Code Amendment and fully define each alternative including the specific criteria/standards necessary for their application. The In-Lieu Fee Schedule provides for the payment in lieu constructing the inclusionary units by tenure (ownership & rental), geographic area and project size (small projects - 10-50 units; large projects - 51+ units). The Affordable Housing Cost Chart stipulates the estimated affordable sale prices and rents in accordance with the Area Median Income for Los Angeles County by both number of bedrooms and household size. These items shall be presented to the

Planning Commission for review and comment on June 27, 2001 and submitted to City Council on July 9, 2001 for approval at the second reading of the Ordinance.

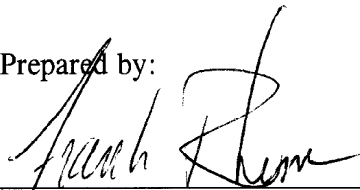
FISCAL IMPACTS:

It is anticipated that the land value for properties being marketed for residential development may decline from current sale prices based on the associated cost for compliance with the proposed Inclusionary Housing Code Amendment. The proposed cost of providing inclusionary units equates to a potential 23-29% reduction in land prices, an amount which is likely to be regained in 2.5-3 years by the continued appreciation of land values. Two financial alternatives are the dedication of land or payment of a fee in-lieu of constructing the inclusionary units. The actual payment of the applicable in-lieu fee or dedication of land is at the discretion of the Developer(s). The potential amount of new revenue or the value of real estate assets dedicated to the General Fund (Inclusionary Housing Trust Fund) cannot be determined at this time.

Respectfully Submitted By,


Michele Beal Bagneris
City Attorney

Prepared by:


Frank Rhemrev
Assistant City Attorney

Concurred by:

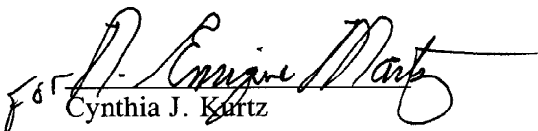

Cynthia J. Kurtz
City Manager

EXHIBIT I

INCLUSIONARY HOUSING ORDINANCE

(STAFF VERSION)

Introduced by Council member _____

**AN ORDINANCE OF THE CITY OF PASADENA AMENDING
TITLE 17 (REVISED ZONING ORDINANCE) OF THE
PASADENA MUNICIPAL CODE TO REQUIRE INCLUSIONARY
HOUSING**

**THE CITY COUNCIL OF THE CITY OF PASADENA DOES ORDAIN AS
FOLLOWS:**

Section 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance reads as follows:

“Summary

The purpose of this ordinance is to require that residential and mixed use projects include a share of housing that is affordable to low and moderate income households. It is intended to supplement other programs that assist and encourage affordable housing in the city. The requirements would apply to projects of ten or more units. This ordinance would require that 15 percent of newly constructed units be affordable. The ordinance provides alternatives to constructing the required units on the primary development site. The three alternatives are: construct the units on another site, donate another site, or pay a fee in lieu of building the units. To accommodate projects that have begun the review and approval process, the ordinance would establish an interim requirement that six percent of units be affordable. The interim requirement would be in effect for one year, after which the full 15 percent share is required. In addition, the ordinance provides certain exemptions for projects that have received discretionary approvals or are subject to the requirements of certain specified agreements.

Ordinance No. _____ shall take effect upon its publication by title and summary.”

Section 2. A new Chapter 17.71, entitled Inclusionary Housing, is hereby added to Title 17 (Revised Zoning Ordinance) of the Pasadena Municipal Code to read as follows:

**“Chapter 17.71
INCLUSIONARY HOUSING**

Sections:

17.71.010	Purpose
17.71.020	Definitions
17.71.030	Applicability
17.71.040	Inclusionary Unit Requirement
17.71.050	Alternatives
17.71.060	Exemptions
17.71.070	Procedures
17.71.080	Standards
17.71.090	Enforcement
17.71.100	Regulations
17.71.110	Inclusionary Housing Trust Fund
17.71.120	Administrative Fees
17.71.130	Appeal
17.71.140	Taking Determination

17.71.010 Purpose

The provisions of this Chapter establish standards and procedures that encourage the development of housing affordable to a range of households with varying income levels. The purpose of this Chapter is to encourage the development and availability of such housing by ensuring that the addition of affordable housing units to the City’s housing stock is in proportion with the overall increase in new housing units.

17.71.020 Definitions

As used in this Chapter, the following terms shall have the following meanings:

“Adjusted for Household Size Appropriate for the Unit” means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

“Affordable Housing Cost” means the Total Housing Costs paid by a qualifying household, which shall not exceed a specified fraction of their gross income, Adjusted for Household Size Appropriate for the Unit, as follows:

A. Very Low Income Households, rental units: thirty (30) percent of fifty (50) percent of the Los Angeles County median income.

B. Low Income Households, rental or for-sale units: thirty (30) percent of eighty (80) percent of the Los Angeles County median income.

C. Moderate Income Households, for sale units: forty (40) percent of one hundred and ten (110) percent of the Los Angeles County median income.

D. Moderate Income Households, rental units: thirty (30) percent of one hundred and twenty (120) percent of the Los Angeles County median income.

“Developer” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a Residential Development.

“Development Agreement” means an agreement entered into between the City and a Developer pursuant to Section 65864 of the California Government Code and Chapter 17.102.

“Director” means the City’s Director of Planning and Development.

“Discretionary Approval” means any entitlement or approval pursuant to Title 17 of this Code, including but not limited to a use permit, variance, design approval, and subdivision map.

“Inclusionary Housing Agreement” means a legally binding agreement between a Developer and the City, in form and substance satisfactory to the Director and City Attorney, setting forth those provisions necessary to ensure that the requirements of this Chapter, whether through the provision of Inclusionary Units or through an alternative method, are satisfied.

“Inclusionary Housing Plan” means the plan referenced in Paragraph “A” of Section 17.71.070 and further described in the Regulations, which sets forth the manner in which the requirements of this Chapter will be implemented for a particular Residential Development.

“Inclusionary Housing Trust Fund” shall have the meaning set forth in Section 17.71.110.

“Inclusionary Units” means a dwelling unit that will be offered for rent or sale to Low and Moderate Income Households, at an Affordable Housing Cost, pursuant to this Chapter.

“Low Income Households” means households whose gross income does not exceed eighty (80%) percent of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

“Low Income Units”; “Moderate Income Units”; and “Very Low Income Units” mean Inclusionary Units restricted to occupancy by Low, Moderate, or Very Low Income Households, respectively, at an Affordable Housing Cost.

“Market Rate Units” means those dwelling units in a Residential Development that are not Inclusionary Units.

“Moderate Income Households” means households whose gross income does not exceed one-hundred and twenty (120%) percent of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

“Redevelopment Agreement” means an Owner Participation Agreement, Disposition and Development Agreement, or similar agreement entered into between the Community Development Commission and a Developer.

“Regulations” means the regulations adopted by the City Council pursuant to Section 17.71.100 for the implementation and enforcement of the provisions of this Chapter.

“Residential Development” means the new construction of projects consisting of: (i) ten (10) or more single family units for which a Planned Development (PD) approval is obtained pursuant to Chapter 17.44; and (ii) ten (10) or more multi-family dwelling units.

“Substantial Rehabilitation” or “Substantially Rehabilitated” means the rehabilitation of a dwelling unit(s) that has substantial building and other code violations, and has been vacant for at least six (6) months, such that the unit is returned to the City’s housing supply as decent, safe, and sanitary housing, and the cost of such work exceeds Forty Thousand Dollars (\$40,000) per unit, as that amount may be adjusted for inflation pursuant to the Regulations.

“Total Housing Costs” means the total monthly or annual recurring expenses required of a household to obtain shelter. For a rental unit, total housing costs include the monthly rent payment and utilities. For an ownership unit, total housing costs include the mortgage payment (principal and interest), utilities, homeowner’s association dues, taxes, mortgage insurance and any other related assessments.

“Very Low Income Households” means households whose gross income is equal to fifty (50%) percent or less of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

17.71.030 Applicability

This Chapter shall apply to all Residential Developments, except those that are exempt pursuant to Section 17.71.060.

17.71.040 Inclusionary Unit Requirement

A. Fifteen percent (15%) of all newly constructed dwelling units in Residential Developments shall be developed, offered to and sold or rented to Low and Moderate Income Households, at an Affordable Housing Cost, as follows:

1. If the Residential Development consists of sale units, the Inclusionary Units shall be sold to Low or Moderate Income Households.

2. If the Residential Development consists of rental units, a minimum of ten percent (10%) of all the units shall be rented to Low Income Households; the remaining five percent (5%) shall be rented to Low or Moderate Income Households.

B. Notwithstanding the foregoing, for a period of twelve (12) months from the effective date of this Chapter, six percent (6%) of all newly constructed units in Residential Developments shall be developed, offered to and sold or rented to Low and Moderate Income Households, at an Affordable Housing Cost.

1. If the Residential Development consists of sale units, the Inclusionary Units shall be sold to Low or Moderate Income Households.

2. If the Residential Development consists of rental units, a minimum of four percent (4%) of the newly constructed units shall be rented to Low Income Households; the remaining two percent (2%) shall be rented to Low or Moderate Income Households

C. The Inclusionary Unit requirement set forth in Paragraphs "A" and "B" of this Section may be reduced as follows:

1. If Very Low Income units are provided in lieu of required Low Income units, a credit of 1.5 units to every 1 unit shall be provided.

2. If Very Low Income units are provided in lieu of required Moderate Income units, a credit of 2 units to every 1 unit shall be provided.

3. If Low Income units are provided in lieu of required Moderate Income units, a credit of 1.5 units to every 1 unit shall be provided.

D. In calculating the required number of Inclusionary Units, fractional units of .75 or above will be rounded-up to a whole unit if the Residential Development

consists of ten (10) to twenty (20) units; fractional units of .50 or above will be rounded-up to a whole unit if the Residential Development consists of twenty-one (21) or more units.

17.71.050 Alternatives

In lieu of including the Inclusionary Units in the Residential Development pursuant to Section 17.71.040, the requirements of this Chapter may be satisfied through one of the alternatives set forth in this Section, in accordance with procedures and standards set forth in the Regulations.

A. *In Lieu Fee.* At the discretion of the Developer, payment of an in-lieu fee, as follows:

1. The amount of the fee shall be calculated using the fee schedule established by resolution of the City Council.

2. Notwithstanding the foregoing, for a period of twelve (12) months from the effective date of this Chapter, the amount of the fee shall be forty percent (40%) of the fee set forth in the fee schedule established by resolution of the City Council.

3. One-half of the in-lieu fee required by this subsection shall be paid (or a letter of credit posted) prior to issuance of a building permit for all or any part of the Residential Development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the Residential Development.

4. The fees collected shall be deposited in the Inclusionary Housing Trust Fund.

B. *Off-site units.* Upon application by the Developer and at the discretion of the Director, the Developer may satisfy the requirement of providing Inclusionary Units as part of the Residential Development, in whole or in part, by constructing or Substantially Rehabilitating the required Inclusionary Units at a site different than the site of the Residential Development.

C. *Land Donation.* Upon application by the Developer and at the discretion of the Director, the Developer may satisfy the requirement of providing Inclusionary Units as part of the Residential Development, in whole or in part, by a conveyance of land to the City for the construction of the required Inclusionary Units.

17.71.060 Exemptions

The following Residential Developments are exempt from the requirements of this Chapter:

A. Residential Developments that obtain a variance, conditional use permit, or design review approval (pursuant to Chapters 17.82, 17.88, and 17.92 of this Title 17, respectively) from the City prior to the effective date of this Chapter, which obtain a building permit pursuant to that discretionary approval within one year of the effective date of this Chapter, and which obtain a certificate of occupancy pursuant to that same discretionary approval.

B. Residential Developments that are exempt from this Chapter pursuant to State Law, including but not limited to those for which the City enters into a Development Agreement.

C. Residential Developments for which the Commission enters into a Redevelopment Agreement so long as the Redevelopment Agreement is in full force and effect at the time the Residential Development would otherwise be required to comply with the requirements of this Chapter, and there is no uncured breach of the Redevelopment Agreement prior to issuance of a certificate of occupancy for the Residential Development.

17.71.070 Procedures

A. At the times and in accordance with the standards and procedures set forth in the Regulations, Developers shall:

1. Submit an Inclusionary Housing Plan for approval by the Director, setting forth in detail the manner in which the provisions of this Chapter will be implemented for the proposed Residential Development.

2. Execute and cause to be recorded an Inclusionary Housing Agreement [unless Developer is complying with this Chapter pursuant to paragraphs "A" (in lieu fee) or "C" (land donation) of Section 17.71.050].

B. No Discretionary Approval shall be issued for all or any portion of a Residential Development subject to this Chapter until the Developer has submitted an Inclusionary Housing Plan.

C. No building permit shall be issued for all or any portion of a Residential Development subject to this Chapter unless the Director has approved the Inclusionary Housing Plan, and the Inclusionary Housing Agreement [if required] recorded.

D. No certificate of occupancy shall be issued for all or any portion of a Residential Development subject to this Chapter unless the approved Inclusionary Housing Plan has been fully implemented.

17.71.080 Standards

A. All Inclusionary Units shall be reasonably dispersed throughout the Residential Development; shall be proportional, in number, bedroom size and location, to the Market Rate Units; and shall be comparable with the Market Rate Units in terms of the base design, appearance, materials and finished quality.

B. All Inclusionary Units in a Residential Development shall be constructed concurrently with or prior to the construction of the Market Rate Units. In the event the City approves a phased project, the Inclusionary Units required by this Chapter shall be provided within each phase of the Residential Development.

C. Inclusionary Units shall be reserved for Low and Moderate Income Households at the ratios established pursuant to Section 17.71.040, and shall be provided at the applicable Affordable Housing Cost.

1. An Inclusionary Unit that is for rent shall remain reserved for the target income level group at the applicable Affordable Housing Cost in perpetuity.

2. An Inclusionary Unit that is for sale shall remain reserved for the target income level group at the applicable Affordable Housing Cost for a period of thirty (30) years.

D. Notwithstanding paragraph C (2) of this Section 17.71.080, Inclusionary Units for-sale may be sold to an above Moderate Income purchaser in accordance with procedures set forth in the Regulations, provided that the sale shall result in a recapture by the City or its designee of a financial interest in the unit equal to (1) the difference between the initial affordable sales price and the appraised value at the time of the initial sale, and (2) a proportionate share of any appreciation.

17.71.090 Enforcement

A. The provisions of this Chapter shall apply to all Developers and their agents, successors and assigns proposing a Residential Development. All Inclusionary Units shall be rented or sold in accordance with this Chapter and the Regulations adopted pursuant to Section 17.71.100.

B. Any individual who sells or rents a restricted unit in violation of the provisions of this Chapter shall be required to forfeit all monetary amounts so obtained. Recovered funds shall be deposited into the Inclusionary Housing Trust Fund.

C. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; and (2) actions for injunctive relief or damages.

D. In any action to enforce this Chapter or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.

17.71.100 Regulations

The City Council shall by resolution establish regulations for the implementation of this Chapter.

17.71.110 Inclusionary Housing Trust Fund

There is hereby established a separate fund of the City, to be known as the Inclusionary Housing Trust Fund. All monies collected pursuant to Paragraph "A" of Section 17.71.050, Paragraph "D" of Section 17.71.080, or 17.71.090, shall be deposited in the Inclusionary Housing Trust Fund.

17.71.120 Administrative Fees

The City Council may by resolution establish reasonable fees and deposits for the administration of this Chapter.

17.71.130 Appeal

Within fifteen (15) calendar days after the date of the Director's decision, an appeal may be filed pursuant to Section 17.104.030(A) of this Code. The appellant shall follow the appeal procedures set forth in Sections 17.104.040 and 17.104.060 of this Code.

17.71.140 Taking Determination

A. Commencing upon the approval or disapproval of the Inclusionary Housing Plan by the Director pursuant to the Regulations, and within fifteen (15) days thereafter, a Developer may request a determination that the requirements of this Chapter, taken together with the inclusionary incentives, as applied to the Residential Development, would legally constitute a taking of property of the Residential Development without just compensation under the California or Federal Constitutions. The Developer has the burden of providing economic information and other evidence necessary to establish that application of the provisions of this Chapter to the Residential Development would constitute a taking of the property of the proposed Residential Development without just compensation. The Director shall make the determination, which may be appealed in the manner and within the time set forth in Section 17.71.130, except that the City Council shall serve as the review body.

B. In making the taking recommendation or determination, the decision maker shall assume each of the following:

1. application of the inclusionary housing requirement to the Residential Development;
2. application of the inclusionary incentives;
3. utilization of the most cost-efficient product type for the inclusionary units; and
4. external funding where reasonably likely to occur.

C. If it is determined that the application of the provisions of this Chapter would be a taking, the Inclusionary Housing Plan shall be modified to reduce the obligations in the inclusionary housing component to the extent and only to the extent necessary to avoid a taking. If it is determined no taking would occur though application of this Chapter to the Residential Development, the requirements of this Chapter remain applicable.”

Section 3. On or before the date that is forty-two (42) months from the effective date of this Ordinance, the Director shall prepare and present to the City Council an evaluation of the effectiveness of Chapter 17.71 during the first three (3) years of its implementation, and recommendations for changes (if any).

Section 4. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 5. The City Clerk shall certify the adoption of this Ordinance and cause its publication in accordance with applicable law.

Signed and approved this ___ day of _____, 2001.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council at its meeting held _____, 2001, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Published:

Jane L. Rodriguez, CMC
City Clerk, City of Pasadena

EXHIBIT II

INCLUSIONARY HOUSING ORDINANCE

(PLANNING COMMISSION VERSION)

[PLANNING COMMISSION VERSION]

Introduced by Council member _____

**AN ORDINANCE OF THE CITY OF PASADENA AMENDING
TITLE 17 (REVISED ZONING ORDINANCE) OF THE
PASADENA MUNICIPAL CODE TO REQUIRE INCLUSIONARY
HOUSING**

**THE CITY COUNCIL OF THE CITY OF PASADENA DOES ORDAIN AS
FOLLOWS:**

Section 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance reads as follows:

"Summary

The purpose of this ordinance, the Pasadena Inclusionary Housing Ordinance, is to require that residential and mixed use projects include a share of housing that is affordable to low and moderate income households. It is intended to supplement other programs that assist and encourage affordable housing in the city. The requirements would apply to projects of ten or more units. This ordinance would require that from fifteen to twenty percent of newly constructed units be affordable. The ordinance provides alternatives to constructing the required units on the primary development site. The three alternatives are: construct the units on another site, donate another site, or pay a fee in lieu of building the units. To accommodate projects that have begun the review and approval process, the ordinance would establish an interim requirement that six percent of units be affordable. The interim requirement would be in effect for one year, after which the full 15 percent share is required. In addition, the ordinance provides certain exemptions for projects that have received discretionary approvals or are subject to the requirements of certain specified agreements.

Ordinance No. _____ shall take effect upon its publication by title and summary."

Section 2. A new Chapter 17.71, entitled Inclusionary Housing, is hereby added to Title 17 (Revised Zoning Ordinance) of the Pasadena Municipal Code to read as follows:

**“Chapter 17.71
INCLUSIONARY HOUSING**

Sections:

17.71.010	Purpose
17.71.020	Definitions
17.17.030	Applicability
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17.71.110	Inclusionary Housing Trust Fund
17.71.120	Administrative Fees
17.71.130	Appeal
17.71.140	Taking Determination

17.71.010 Purpose

The provisions of this Chapter establish standards and procedures that encourage the development of housing affordable to a range of households with varying income levels. The purpose of this Chapter is to encourage the development and availability of such housing by ensuring that the addition of affordable housing units to the City’s housing stock is in proportion with the overall increase in new housing units.

17.71.020 Definitions

As used in this Chapter, the following terms shall have the following meanings:

“Adjusted for Household Size Appropriate for the Unit” means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

“Affordable Housing Cost” means the Total Housing Costs paid by a qualifying household, which shall not exceed a specified fraction of their gross income, Adjusted for Household Size Appropriate for the Unit, as follows:

- A. Very Low Income Households, rental units: thirty (30) percent of fifty (50) percent of the Los Angeles County median income.

B. Low Income Households, rental or for-sale units: thirty (30) percent of eighty (80) percent of the Los Angeles County median income.

C. Moderate Income Households, for sale units: forty (40) percent of one hundred and ten (110) percent of the Los Angeles County median income.

D. Moderate Income Households, rental units: thirty (30) percent of one hundred and twenty (120) percent of the Los Angeles County median income.

“Developer” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a Residential Development.

“Development Agreement” means an agreement entered into between the City and a Developer pursuant to Section 65864 of the California Government Code and Chapter 17.102.

“Director” means the City’s Director of Planning and Development.

“Discretionary Approval” means any entitlement or approval pursuant to Title 17 of this Code, including but not limited to a use permit, variance, design approval, and subdivision map.

“Inclusionary Housing Agreement” means a legally binding agreement between a Developer and the City, in form and substance satisfactory to the Director and City Attorney, setting forth those provisions necessary to ensure that the requirements of this Chapter, whether through the provision of Inclusionary Units or through an alternative method, are satisfied.

“Inclusionary Housing Plan” means the plan referenced in Paragraph “A” of Section 17.71.070 and further described in the Regulations, which sets forth the manner in which the requirements of this Chapter will be implemented for a particular Residential Development.

“Inclusionary Housing Trust Fund” shall have the meaning set forth in Section 17.71.110.

“Inclusionary Units” means a dwelling unit that will be offered for rent or sale to Low and Moderate Income Households, at an Affordable Housing Cost, pursuant to this Chapter.

“Low Income Households” means households whose gross income does not exceed eighty (80%) percent of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

“Low Income Units”; “Moderate Income Units”; and “Very Low Income Units” mean Inclusionary Units restricted to occupancy by Low, Moderate, or Very Low Income Households, respectively, at an Affordable Housing Cost.

“Market Rate Units” means those dwelling units in a Residential Development that are not Inclusionary Units.

“Moderate Income Households” means households whose gross income does not exceed one-hundred and twenty (120%) percent of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

“Redevelopment Agreement” means an Owner Participation Agreement, Disposition and Development Agreement, or similar agreement entered into between the Community Development Commission and a Developer.

“Regulations” means the regulations adopted by the City Council pursuant to Section 17.71.100 for the implementation and enforcement of the provisions of this Chapter.

“Residential Development” means the new construction of ten (10) or more dwelling units, including but not limited to projects of ten (10) or more single family units for which a Planned Development (PD) approval is obtained pursuant to Chapter 17.44.

“Substantial Rehabilitation” or “Substantially Rehabilitated” means the rehabilitation of a dwelling unit(s) that has substantial building and other code violations, and has been vacant for at least six (6) months, such that the unit is returned to the City’s housing supply as decent, safe, and sanitary housing, and the cost of such work exceeds Forty Thousand Dollars (\$40,000) per unit, as that amount may be adjusted for inflation pursuant to the Regulations.

“Total Housing Costs” means the total monthly or annual recurring expenses required of a household to obtain shelter. For a rental unit, total housing costs include the monthly rent payment and utilities. For an ownership unit, total housing costs include the mortgage payment (principal and interest), utilities, homeowner’s association dues, taxes, mortgage insurance and any other related assessments.

“Very Low Income Households” means households whose gross income is equal to fifty (50%) percent or less of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

17.71.030 Applicability

This Chapter shall apply to all Residential Developments, except those that are exempt pursuant to Section 17.71.060.

17.71.040 Inclusionary Unit Requirement

A. Fifteen percent (15%) of all newly constructed dwelling units in Residential Developments consisting of less than two hundred units for sale shall be developed, offered to and sold to Low or Moderate Income Households, at an Affordable Housing Cost.

B. Twenty percent (20%) of all newly constructed dwelling units in Residential Developments consisting of two hundred units or more for sale shall be developed, offered to and sold to Low or Moderate Income Households, at an Affordable Housing Cost.

C. Fifteen percent (15%) of all newly constructed dwelling units in Residential Developments consisting of less than two hundred units for rent shall be developed, offered to and rented to Low or Moderate Income Households, at an Affordable Housing Cost, as follows

1. Three percent (3%) of all the units shall be rented to Very Low Income Households;
2. Ten percent (10%) of all the units shall be rented to Low Income Households;
3. Two percent (2%) of all the units shall be rented to Moderate Income Households.

D. Twenty percent (20%) of all newly constructed dwelling units in Residential Developments consisting of two hundred units or more for rent shall be developed, offered to and rented to Low or Moderate Income Households, at an Affordable Housing Cost, as follows

1. Four percent (4%) of all the units shall be rented to Very Low Income Households;
2. Thirteen percent (13%) of all the units shall be rented to Low Income Households;
3. Three percent (3%) of all the units shall be rented to Moderate Income Households.

E. Notwithstanding the foregoing, for a period of twelve (12) months from the effective date of this Chapter, six percent (6%) of all newly constructed units in Residential Developments shall be developed, offered to and sold or rented to Low and Moderate Income Households, at an Affordable Housing Cost.

1. If the Residential Development consists of sale units, the Inclusionary Units shall be sold to Low or Moderate Income Households.

2. If the Residential Development consists of rental units, a minimum of four percent (4%) of the newly constructed units shall be rented to Low Income Households; the remaining two percent (2%) shall be rented to Low or Moderate Income Households.

F. The Inclusionary Unit requirement set forth in Paragraphs "A" through "D" of this Section may be reduced as follows:

1. If Very Low Income units are provided in lieu of the required Low Income units, a credit of 1.5 units to every 1 unit shall be provided.

2. If Very Low Income units are provided in lieu of the required Moderate Income units, a credit of 2 units to every 1 unit shall be provided.

3. If Low Income units are provided in lieu of the required Moderate Income units, a credit of 1.5 units to every 1 unit shall be provided.

G. In calculating the required number of Inclusionary Units, fractional units of .75 or above will be rounded-up to a whole unit if the Residential Development consists of ten (10) to twenty (20) units; fractional units of .50 or above will be rounded-up to a whole unit if the Residential Development consists of twenty-one (21) or more units.

17.71.050 Alternatives

In lieu of including the Inclusionary Units in the Residential Development pursuant to Section 17.71.040, the requirements of this Chapter may be satisfied through one of the alternatives set forth in this Section, in accordance with procedures and standards set forth in the Regulations.

A. *In Lieu Fee.* At the discretion of the Developer, payment of an in-lieu fee, as follows:

1. The amount of the fee shall be calculated using the fee schedule established by resolution of the City Council.

2. Notwithstanding the foregoing, for a period of twelve (12) months from the effective date of this Chapter, the amount of the fee shall be forty percent (40%) of the fee set forth in the fee schedule established by resolution of the City Council.

3. One-half of the in-lieu fee required by this subsection shall be paid (or a letter of credit posted) prior to issuance of a building permit for all or any part of the Residential Development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the Residential Development.

4. The fees collected shall be deposited in the Inclusionary Housing Trust Fund.

B. *Off-site units.* Upon application by the Developer and at the discretion of the Director, the Developer may satisfy the requirement of providing Inclusionary Units as part of the Residential Development, in whole or in part, by constructing or Substantially Rehabilitating the required Inclusionary Units at a site different than the site of the Residential Development.

C. *Land Donation.* Upon application by the Developer and at the discretion of the Director, the Developer may satisfy the requirement of providing Inclusionary Units as part of the Residential Development, in whole or in part, by a conveyance of land to the City for the construction of the required Inclusionary Units.

17.71.060 Exemptions

The following Residential Developments are exempt from the requirements of this Chapter:

A. Residential Developments that obtain a variance, conditional use permit, or design review approval (pursuant to Chapters 17.82, 17.88, and 17.92 of this Title 17, respectively) from the City prior to the effective date of this Chapter, which obtain a building permit pursuant to that discretionary approval within one year of the effective date of this Chapter, and which obtain a certificate of occupancy pursuant to that same discretionary approval.

B. Residential Developments that are exempt from this Chapter pursuant to State Law, including but not limited to those for which the City enters into a Development Agreement.

C. Residential Developments for which the Commission enters into a Redevelopment Agreement, whether before or after the effective date of this Chapter, so long as the Redevelopment Agreement is in full force and effect at the time the Residential Development would otherwise be required to comply with the requirements

of this Chapter, and there is no uncured breach of the Redevelopment Agreement prior to issuance of a certificate of occupancy for the Residential Development.

17.71.070 Procedures

A. At the times and in accordance with the standards and procedures set forth in the Regulations, Developers shall:

1. Submit an Inclusionary Housing Plan for approval by the Director, setting forth in detail the manner in which the provisions of this Chapter will be implemented for the proposed Residential Development.

2. Execute and cause to be recorded an Inclusionary Housing Agreement [unless Developer is complying with this Chapter pursuant to paragraphs "A" (in lieu fee) or "C" (land donation) of Section 17.71.050].

B. No Discretionary Approval shall be issued for all or any portion of a Residential Development subject to this Chapter until the Developer has submitted an Inclusionary Housing Plan.

C. No building permit shall be issued for all or any portion of a Residential Development subject to this Chapter unless the Director has approved the Inclusionary Housing Plan, and the Inclusionary Housing Agreement [if required] recorded.

D. No certificate of occupancy shall be issued for all or any portion of a Residential Development subject to this Chapter unless the approved Inclusionary Housing Plan has been fully implemented.

17.71.080 Standards

A. All Inclusionary Units shall be reasonably dispersed throughout the Residential Development; shall be proportional, in number, bedroom size and location, to the Market Rate Units; and shall be comparable with the Market Rate Units in terms of the base design, appearance, materials and finished quality.

B. All Inclusionary Units in a Residential Development shall be constructed concurrently with or prior to the construction of the Market Rate Units. In the event the City approves a phased project, the Inclusionary Units required by this Chapter shall be provided within each phase of the Residential Development.

C. Inclusionary Units shall be reserved for Low and Moderate Income Households at the ratios established pursuant to Section 17.71.040, and shall be provided at the applicable Affordable Housing Cost.

1. An Inclusionary Unit that is for rent shall remain reserved for the target income level group at the applicable Affordable Housing Cost in perpetuity.

2. An Inclusionary Unit that is for sale shall remain reserved for the target income level group at the applicable Affordable Housing Cost for a period of thirty (30) years.

D. Notwithstanding paragraph C (2) of this Section 17.71.080, Inclusionary Units for-sale may be sold to an above Moderate Income purchaser in accordance with procedures set forth in the Regulations, provided that the sale shall result in a recapture by the City or its designee of a financial interest in the unit equal to (1) the difference between the initial affordable sales price and the appraised value at the time of the initial sale, and (2) a proportionate share of any appreciation.

17.71.090 Enforcement

A. The provisions of this Chapter shall apply to all Developers and their agents, successors and assigns proposing a Residential Development. All Inclusionary Units shall be rented or sold in accordance with this Chapter and the Regulations adopted pursuant to Section 17.71.100.

B. Any individual who sells or rents a restricted unit in violation of the provisions of this Chapter shall be required to forfeit all monetary amounts so obtained. Recovered funds shall be deposited into the Inclusionary Housing Trust Fund.

C. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; and (2) actions for injunctive relief or damages.

D. In any action to enforce this Chapter or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.

17.71.100 Regulations

The City Council shall by resolution establish regulations for the implementation of this Chapter.

17.71.110 Inclusionary Housing Trust Fund

There is hereby established a separate fund of the City, to be known as the Inclusionary Housing Trust Fund. All monies collected pursuant to Paragraph "A" of Section 17.71.050, Paragraph "D" of Section 17.71.080, or 17.71.090, shall be deposited in the Inclusionary Housing Trust Fund.

17.71.120 Administrative Fees

The City Council may by resolution establish reasonable fees and deposits for the administration of this Chapter.

17.71.130 Appeal

Within fifteen (15) calendar days after the date of the Director's decision, an appeal may be filed pursuant to Section 17.104.030(A) of this Code. The appellant shall follow the appeal procedures set forth in Sections 17.104.040 and 17.104.060 of this Code.

17.71.140 Taking Determination

A. Commencing upon the approval or disapproval of the Inclusionary Housing Plan by the Director pursuant to the Regulations, and within fifteen (15) days thereafter, a Developer may request a determination that the requirements of this Chapter, taken together with the inclusionary incentives, as applied to the Residential Development, would legally constitute a taking of property of the Residential Development without just compensation under the California or Federal Constitutions. The Developer has the burden of providing economic information and other evidence necessary to establish that application of the provisions of this Chapter to the Residential Development would constitute a taking of the property of the proposed Residential Development without just compensation. The Director shall make the determination, which may be appealed in the manner and within the time set forth in Section 17.71.130, except that the City Council shall serve as the review body.

B. In making the taking recommendation or determination, the decision maker shall assume each of the following:

1. application of the inclusionary housing requirement to the Residential Development;
2. application of the inclusionary incentives;
3. utilization of the most cost-efficient product type for the inclusionary units; and
4. external funding where reasonably likely to occur.

C. If it is determined that the application of the provisions of this Chapter would be a taking, the Inclusionary Housing Plan shall be modified to reduce the obligations in the inclusionary housing component to the extent and

only to the extent necessary to avoid a taking. If it is determined no taking would occur though application of this Chapter to the Residential Development, the requirements of this Chapter remain applicable.”

Section 3. On or before the date that is forty-two (42) months from the effective date of this Ordinance, the Director shall prepare and present to the City Council an evaluation of the effectiveness of Chapter 17.71 during the first three (3) years of its implementation, and recommendations for changes (if any).

Section 4. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 5. The City Clerk shall certify the adoption of this Ordinance and cause its publication in accordance with applicable law.

Signed and approved this ___ day of _____, 2001.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council at its meeting held _____, 2001, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Published:

Jane L. Rodriguez, CMC
City Clerk, City of Pasadena