

## Chapter 18.37 - Inclusionary Housing

## 18.37.010 - Purpose

- A. The purpose of this chapter is to enhance the public welfare by establishing policies which require the development of housing affordable to households of 35% AMI, very low, low, median and moderate incomes, help meet the City's regional share of housing needs, and implement the goals and objectives of the general plan and housing element.
- B. The adoption of a citywide inclusionary housing program will also assist in alleviating the use of available residential land solely for the benefit of households that are able to afford market rate housing, because such market-rate development will be required to contribute to the provision of inclusionary housing for the entire East Palo Alto community, and will assist in alleviating the impacts of the service needs of households in new market-rate residential development by making additional inclusionary housing available.
- C. The City Council also desires to provide and maintain affordable housing opportunities in the community through an inclusionary housing program for both ownership and rental housing, and, in furtherance of that goal, includes rental inclusionary housing requirements in this chapter consistent with Government Code Sections 65850(g) and 65850.01.
- D. The City Council also desires to provide the residential development community with alternatives to construction of the inclusionary units on the same site as the market rate residential development. Therefore, this chapter includes options from which a developer may apply to the City Council to approve an alternative to the construction of inclusionary units on the same site as the market rate residential development.

(Ord. No. 425, § 2, 11-19-2019)

## 18.37.020 - Definitions

The definitions set forth in this section shall govern the application and interpretation of this chapter. Words and phrases not defined in this section shall be interpreted so as to give this chapter its most reasonable application.

- A. **"35% AMI Income Household"** are those households whose income does not exceed 35 percent of the area median income, adjusted for family size and as published annually by the City of East Palo Alto.
- B. **"Affordable Rent"** means the maximum monthly rent, including an allowance for tenant paid utilities, calculated at the specified income level as follows:
  - 1. 35% AMI income households: one-twelfth of 30 percent of 35 percent of area median income adjusted for family size appropriate for the unit or market rent, whichever is less.
  - 2. Very low-income households: one-twelfth of 30 percent of 50 percent of area median income adjusted for family size appropriate for the unit or market rent, whichever is less.
  - 3. Low-income households: one-twelfth of 30 percent of 60 percent of area median income adjusted for family size appropriate for the unit or market rent, whichever is less.
- C. **"Affordable Sales Price"** means the maximum purchase price that will be affordable to the specified household at the specified income level as follows:
  - 1. Median-income households: one-twelfth of 30 percent times 70 percent of area median income adjusted for family size appropriate for the unit.

2. Moderate-income households: Not be less than 28 percent of the gross income of the household, nor exceed twelfth of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.

The affordable sales price shall include a reasonable down payment, and monthly housing payments (including interest, principal, mortgage insurance, property taxes, homeowner's insurance, homeowner's association dues, and a reasonable allowance for property maintenance, repairs, and utilities), all as determined by the City.

- D. **"Applicant"** or **"Developer"** means a person, persons, or entity that applies for a residential development and also includes the owner or owners of the property if the applicant does not own the property on which residential development is proposed.
- E. **"Approval Body"** means the body with the authority to approve the proposed residential development.
- F. **"Area Median Income"** means the annual median income for San Mateo County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of East Palo Alto in the event that such median income figures are no longer published periodically in the California Code of Regulations.
- G. **"Building Permit"** includes full structural building permits as well as partial permits such as foundation-only permits.
- H. **"Common Ownership or Control"** refers to property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent (10%) or more of the interest in the property.
- I. **"Construction Phase"** means either:
1. The area included within one approved tentative subdivision map for residential development where a single final map implements the entire approved tentative map;
  2. The area included within each separate final map for residential development where multiple final maps implement the entire approved tentative map; or
  3. An area designated as a construction phase in an approved inclusionary housing plan.
- J. **"Contiguous Property"** means any parcel of land that is:
1. Touching another parcel at any point;
  2. Separated from another parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or
  3. Separated from another parcel only by other real property of the applicant which is not subject to the requirements of this chapter at the time of the planning permit application by the applicant.
- K. **"Density Bonus Units"** means dwelling units approved in a residential development pursuant to California Government Code Section 65915 et seq., and Chapter 18.36 of the East Palo Alto Municipal Code that are in excess of the maximum allowable residential density otherwise permitted by the City of East Palo Alto.
- L. **"First Approval"** means the first of the following approvals to occur with respect to a residential development after the effective date of this chapter: planning permit or building permit.
- M. **"Housing Element"** means the then-current Housing Element of the City's General Plan prepared in accordance with state housing law (California Government Code Section 65580 et seq.).
- N. **"Housing Fund"** means a fund or account designated by the City to maintain and account for all monies received pursuant to this chapter.

- O. **"Inclusionary Housing Agreement"** means an agreement in conformance with Section 18.37.090.B of this chapter between the City and an applicant, governing how the applicant shall comply with this chapter.
- P. **"Inclusionary Housing Guidelines"** means any requirements for implementation and administration of this chapter adopted by the City Manager in accordance with Section 18.37.090.D of this chapter.
- Q. **"Inclusionary Housing Plan"** means a plan containing all of the information specified in and submitted in conformance with Section 18.37.090.A of this chapter, specifying the manner in which inclusionary units will be provided in conformance with this chapter and any adopted inclusionary housing guidelines.
- R. **"Inclusionary unit"** means a dwelling unit required by this chapter to be affordable to 35% AMI, very low, low, median or moderate-income households and subject to recorded affordability restrictions.
- S. **"Low-Income Households"** are those households whose income does not exceed 60 percent of the area median income, adjusted for family size and as published annually by the City of East Palo Alto.
- T. **"Market Rate Unit"** means a new dwelling unit in a residential development that is not an inclusionary unit subject to recorded affordability restrictions that meet the requirements of this Chapter.
- U. **"Median-Income Households"** are those households whose income does not exceed 80 percent of the area median income, adjusted for family size and as published annually by the City of East Palo Alto.
- V. **"Moderate-Income Households"** are those households whose income does not exceed 120 percent of the area median income, adjusted for family size and as published annually by the City of East Palo Alto.
- W. **"Ownership Residential Development"** means any residential development that includes the creation of one or more additional dwelling units that may be sold individually. A residential ownership development also includes the conversion of a residential rental development to a residential ownership development pursuant to Chapter 18.66 of the East Palo Alto Municipal Code. If dwelling units are approved with a condominium map but are not yet eligible to be sold individually, such development shall be considered a rental residential development subject to the requirements of Section 18.37.050.A.2 until such time as it converts to an ownership residential development, at which time the development shall be subject to the requirements of Section 18.37.050.A.1.
- X. **"Planning Permit"** means any discretionary approval of a residential development including, but not limited to, a general or specific plan adoption or amendment, rezoning, tentative map, parcel map, conditional use permit, variances, design review, or coastal development permit.
- Y. **"Rental Residential Development"** means any residential development that creates one or more additional dwelling units that cannot be lawfully sold individually in conformance with the Subdivision Map Act.
- Z. **"Residential Development"** means any development for which a planning permit or building permit is required that includes:
1. The creation of one or more additional dwelling units;
  2. Conversion of nonresidential uses to dwelling units; or
  3. The conversion of a use from a residential rental development to a residential ownership development.
- AA. **"Very Low-Income Household"** are those households whose income does not exceed 50 percent of the area median income, adjusted for family size and as published annually by the City of East Palo Alto.

(Ord. No. 425, § 2, 11-19-2019)

The provisions of this chapter shall apply to:

- A. All residential development except for any residential development exempt under Section 18.37.040; and
- B. All residential development and contiguous properties that are under common ownership or control.

(Ord. No. 425, § 2, 11-19-2019)

#### 18.37.040 - Exemptions

- A. The following residential developments shall be exempt from the provisions of this chapter:
  - 1. Residential developments which are developed in accordance with the terms of a development agreement adopted by ordinance pursuant to the authority and provisions of California Government Code Section 65864 et seq., and that is executed prior to the effective date of the ordinance codified in this chapter, provided that such residential developments shall comply with any inclusionary housing requirements included in the development agreement or any predecessor ordinance in effect on the date the development agreement was executed.
  - 2. Residential developments exempted by California Government Code Section 66474.2 or 66498.1, provided that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed substantially complete.
  - 3. Residential developments for which a building permit has been issued and substantial work has been completed in good faith reliance on the permit no later than the effective date of this chapter, provided that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was approved.
- B. **Planning permit expiration.** Upon the expiration of any planning permit, and unless otherwise exempted, the residential development shall be subject to the inclusionary housing requirements of this chapter, and shall not proceed until such time as an inclusionary housing plan is approved in conjunction with any other required planning permit or amendment thereto. The provisions of this chapter shall also apply to any residential development which is granted a discretionary extension of a planning permit beyond its initial term, to the extent consistent with state law.

(Ord. No. 425, § 2, 11-19-2019)

#### 18.37.050 - Inclusionary Housing Requirement

All new residential developments, unless exempt under Section 18.37.040, and contiguous property under common ownership and control shall include inclusionary units.

- A. **On-site inclusionary requirement.** Unless exempted from this chapter, or unless an alternative is approved as described in Section 18.37.080, residential developments proposing five or more dwelling units shall provide 20 percent of the dwelling units in the residential development as inclusionary units upon the same site as the residential development as follows:
  - 1. **Ownership residential development.** The applicant shall provide:
    - a. 50 percent of the inclusionary units in the residential development available at an affordable sales price to median-income households.
    - b. 50 percent of the inclusionary units in the residential development available at an affordable sales

price to moderate-income households.

2. **Rental residential development.** The applicant shall provide:
  - a. 25 percent of the inclusionary units in the residential development available at an affordable rent to 35% AMI income households.
  - b. 50 percent of the inclusionary units in the residential development available at an affordable rent to very low-income households.
  - c. 25 percent of the inclusionary units in the residential development available at an affordable rent to low-income households.

In the event only one inclusionary unit is required, or the inclusionary requirement results in a fraction that does not evenly divide by the percentages required above, inclusionary units shall first be provided at the lower required affordability level.

- B. **Residential developments with fewer than five dwelling units.** Unless exempted from this chapter, or unless an alternative is approved as described in Section 18.37.080 of this chapter, residential developments proposing fewer than five dwelling units shall, at the applicant's option, either provide one inclusionary unit or pay a fee to the City in-lieu of constructing the inclusionary unit within the residential development. In-lieu fees may be established from time-to-time by resolution of the City Council or may be determined for a specific residential development through the preparation of an affordability gap analysis that will determine the difference between the inclusionary sales price or rent and the fair market rate price for the unit. If the applicant elects to pay an in-lieu fee, no building permit shall be issued by the City for any market rate unit in the residential development until all in-lieu fees for the residential development have been paid to the City. Prior to recordation of any final or parcel map for the development, notice of this requirement shall be recorded against each lot in the subdivision. The applicant shall provide specific written notice to any purchaser of any dwelling unit prior to the acceptance of any offer to purchase, and shall obtain executed acknowledgment of the receipt of such notice, that purchaser shall not have any right to occupy the dwelling unit until such time as all in-lieu fees owing for the residential development are paid to the City. All in-lieu fees shall be deposited in the housing fund described in Section 18.37.110.
- C. **Calculating the number of inclusionary units.**
  1. Calculations of the number of inclusionary units required by this section shall be based on the number of dwelling units in the residential development, excluding any density bonus units.
  2. In computing the total number of inclusionary units required in a residential development, fractions of an inclusionary unit shall be provided by the payment of an in-lieu fee as established in Section 18.37.050.B.
  3. When a residential development includes both ownership and rental dwelling units, the provisions of this chapter that apply to ownership residential development shall apply to that portion of the development that consists of ownership dwelling units, while the provisions of this chapter that apply to rental residential development shall apply to that portion of the development that consists of rental dwelling units.
- D. **Common ownership and control.** An applicant for a planning permit shall not avoid the requirements of this chapter by submitting piecemeal planning permit applications. At the time of the application for first approval for the residential development, the applicant shall identify all contiguous property under

common ownership and control. The applicant shall not be required to construct dwelling units upon the contiguous property at the time of the application for first approval; however, the applicant shall be required to include the contiguous property under common ownership or control in its inclusionary housing plan. The inclusionary housing agreement shall be recorded against the residential development and all contiguous property under common ownership or control and shall require compliance with this chapter upon development of each contiguous property at such time as there are planning permit applications that would authorize a total of five or more residential units for the residential development and the contiguous property under common ownership or control.

(Ord. No. 425, § 2, 11-19-2019)

#### 18.37.060 - Inclusionary Housing Standards and Incentives

- A. Inclusionary housing units included in a residential development resulting from the conversion of a use from a residential rental development to a residential ownership development shall be considered units resulting from the application of the below market rate housing program provisions pursuant to Section 14.24.090.B of the City's Municipal Code for purposes of determining the affordable housing mitigation fee required pursuant to Section 14.24.090, provided, however, the provision of inclusionary units pursuant to this Chapter shall not relieve any applicant from the obligation to pay the affordable housing mitigation fee required pursuant to Section 14.24.090.
- B. **Construction appearance and quality.** Inclusionary units shall be comparable in exterior appearance and overall quality of construction to market-rate units in the same housing development. Interior finishes, features, and amenities may differ from those provided in the market rate units, so as long as the finishes, features, and amenities are durable, of good quality, compatible with the market rate units, and consistent with contemporary standards for new housing.
- C. **Bedroom Mix and Unit Size.** The number of bedrooms and the size of the inclusionary units shall be comparable to or greater than the average number of bedrooms and average size of the market-rate units consistent with any adopted inclusionary housing guidelines.
- D. **Location.** The inclusionary units shall be located so as not to create a geographic concentration of inclusionary units within the residential development.
- E. **Amenities.** The inclusionary units shall have the same amenities as the market rate units included within the affordable rent or affordable sales price for the inclusionary unit. For example, residents of the inclusionary units shall have the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential development, and residents of the inclusionary units shall not be charged more than affordable rents or affordable sales prices as for the use of such facilities and amenities.
- F. **Density bonus.** The developer of a residential development providing all required inclusionary units upon the same site as the market-rate units may, at the developer's sole option and concurrently with the submittal of the inclusionary housing plan, submit a written request for a density bonus, waivers, modification of parking standards, or other regulatory incentives pursuant to Government Code Section 65915 et seq., and the provisions of Chapter 18.36 of the East Palo Alto Municipal Code, if the residential development meets all of the applicable requirements to qualify for a density bonus in Government Code Section 65915.

(Ord. No. 425, § 2, 11-19-2019)

## 18.37.070 - Timing of Construction of Inclusionary Units

All required inclusionary units shall be made available for occupancy concurrently with the market rate units. For the purposes of this subsection, "concurrently" means one of the following:

- A. The City may not issue building permits for more than fifty percent (50%) of the market rate units until it has issued building permits for all of the inclusionary units, and the City may not approve any final inspections or certificates of occupancy for more than fifty percent (50%) of the market rate units until it has issued final inspections or certificates of occupancy for all of the inclusionary units.
- B. In-lieu fees, if required, have been paid.
- C. The applicant has met, or made arrangements satisfactory to the City to meet, an alternative requirement as permitted by Section 18.37.080.

(Ord. No. 425, § 2, 11-19-2019)

## 18.37.080 - Developers' Alternative Compliance Options

- A. Unless otherwise specified, if the developer applies for, and the City Council approves, any of the compliance options in Paragraphs B through D of this section, the inclusionary housing requirement shall be increased by five percent (5%) over the inclusionary housing requirement for projects with five or more units as described in Section 18.37.050.A of this chapter, as shown below.
  1. **Ownership residential development.** 13 percent of the dwelling units in the residential development available at an affordable sales price to median-income households and 12 percent of the dwelling units in the residential development available at an affordable sales price to moderate-income households.
  2. **Rental residential development.** 7 percent of the dwelling units in the residential development available at an affordable rent to 35% AMI income households, 12 percent of the dwelling units in the residential development available at an affordable rent to very low-income households, and 6 percent of the dwelling units in the residential development available at an affordable rent to low-income households.

The compliance options in Paragraphs B through D of this section do not qualify the residential development for a density bonus or other regulatory incentives unless the dedication of land conforms to the provisions of Government Code Section 65915(g).

- B. The inclusionary housing requirement in Section 18.37.050.A as increased in Paragraph A of this Section may be satisfied by the payment of a fee to the City in-lieu of constructing the inclusionary units within the residential development. In-lieu fees may be established from time-to-time by resolution of the City Council or may be determined for a specific residential development through the preparation of an affordability gap analysis that will determine the difference between the inclusionary sales price or rent and the fair market rate price for the unit. No building permit shall be issued by the City for any market rate unit in the residential development until all in-lieu fees for the residential development have been paid to the City. Prior to recordation of any final or parcel map for the development, notice of this requirement shall be recorded against each lot in the subdivision. The developer shall provide specific written notice to any purchaser of any dwelling unit prior to the acceptance of any offer to purchase, and shall obtain executed acknowledgment of the receipt of such notice, that purchaser shall not have any right to occupy the dwelling unit until such time as all in-lieu fees owing for the residential development are paid to the City. All in-lieu fees shall be deposited in the housing fund described in Section 18.37.110.

C. **Off-site construction of inclusionary units.** The applicant, or an entity controlled by the applicant, or another entity that has entered into an agreement with the applicant to provide inclusionary housing, which agreement is subject to City review and approval, may propose to construct the inclusionary units required by Section 18.37.050 as increased density on Paragraph A of this Section on another site. Two or more applicants may also jointly propose off-site construction of inclusionary units on a single site. The City may grant a credit for off-site construction if the proposal meets all of the following conditions:

1. Off-site inclusionary units shall comply with the standards defined in Sections 18.37.060.A—D and be consistent with any adopted inclusionary housing guidelines;
2. Financing or a viable financing plan, which may include public funding, shall be in place for the off-site inclusionary units;
3. The off-site location is suitable for the proposed inclusionary housing, consistent with any adopted inclusionary housing guidelines and the Housing Element, and will not tend to cause residential segregation; and
4. Construction of the off-site inclusionary units may not have commenced prior to the first approval of the residential development.

Final inspections for occupancy of the market-rate units will be granted only after building permits for the off-site inclusionary units related to those market-rate units have been issued, unless the approval body modifies the timing requirements set forth in this subsection. The City may require that completion of off-site inclusionary units be further secured by the applicant's agreement to pay in-lieu fees in the amount due under Section 18.37.080.B of this chapter in the event the off-site units are not timely completed.

D. **Other alternative compliance methods.** A developer may propose an alternative compliance method to provide inclusionary units through other means consistent with any adopted inclusionary housing guidelines. The approval body may approve or conditionally approve such an alternative only if the approval body determines, based on substantial evidence, that such alternative compliance will provide as many or more inclusionary units at the same or lower income levels or will otherwise provide greater public benefit than would provision of the inclusionary units on-site.

(Ord. No. 425, § 2, 11-19-2019)

#### 18.37.090 - Application and Review Procedures

A. **Inclusionary housing plan.**

1. An application for the first approval of a residential development shall include an inclusionary housing plan describing how the development will comply with the provisions of this chapter. As an alternative to compliance with the basic provisions included in Section 18.37.050 of this chapter, an applicant may propose one of the alternatives listed in Section 18.37.080 of this chapter as part of the inclusionary housing plan.
2. Any proposed density bonus, waivers, modification of parking standards, or other regulatory incentives shall be included in the inclusionary housing plan.
3. Any adopted inclusionary housing guidelines may specify the contents of the inclusionary housing plan. No application for a first approval for a residential development may be deemed complete unless an inclusionary housing plan is submitted in conformance with this chapter.



4. The inclusionary housing plan shall be processed concurrently with all other permits required for the residential development. Before the approval body may approve the inclusionary housing plan, the approval body must affirmatively find that the inclusionary housing plan conforms to the requirements set forth in this chapter. It shall be attached to the first approval of any residential development to require recordation of the inclusion agreement described in Paragraph B of this Section prior to the approval of any final or parcel map or building for the residential development.
5. The approved inclusionary housing plan for a residential development, or for a building phase in a residential development, where phasing has been approved as part of planning permit approvals, may be amended prior to issuance of any building permit for the residential development or building phase, if applicable. A request for a minor modification of an approved inclusionary housing plan may be granted by the City Manager or their designee if the modification is substantially in compliance with the original inclusionary housing plan and conditions of approval. Other modifications to the inclusionary housing plan shall be processed in the same manner as the original plan.
6. Fair Housing and Marketing Plan. The inclusionary housing plan shall describe the applicant's marketing plan, which shall comply with all applicable fair housing laws and shall not discriminate in the sale or rental of inclusionary units on the basis of race, national origin, color, religion, gender, disability, familial status, age, income source, or marital status.

**B. Inclusionary housing agreement.**

1. The applicant shall enter into an inclusionary housing agreement with the City, in a form approved by the City Attorney, to be executed by the City Manager or their designee, to ensure that all the requirements of this chapter are satisfied. The inclusionary housing agreement shall be recorded against the residential development (and contiguous property under common ownership and control in accordance with Section 18.37.050.D or any off-site development sites if an alternative is approved pursuant to Section 18.37.080.C) prior to approval of any final or parcel map, or issuance of any building permit, whichever occurs first.
  2. The inclusionary housing agreement shall specify the number, type, location, size, and phasing of all inclusionary units, provisions for income certification and screening of potential purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved inclusionary housing plan and any adopted inclusionary housing guidelines, as determined by the city manager or designee.
  3. In selecting households for the inclusionary units in accordance with this chapter, the inclusionary housing agreement shall specify that preference shall be given as described in the inclusionary housing guidelines, if any.
- C. The City Council, by resolution, may establish fees for the ongoing administration and monitoring of the inclusionary units, which fees may be updated periodically, as required.
- D. The City Council hereby authorize the City Manager to adopt inclusionary housing guidelines to implement this chapter.

(Ord. No. 425, § 2, 11-19-2019)

18.37.100 - Continued Affordability

- A. All inclusionary units shall remain affordable to the targeted income group in perpetuity.

- B. Any adopted inclusionary housing guidelines may include standard documents such as a resale restriction, deed trust, or regulatory agreement, for execution by the City Manager or their designee, in a form approved by the City Attorney, to secure the continued affordability of the inclusionary units approved for each residential development; provide ongoing maintenance obligations, define rent and sale price increase procedures, and provide formulas for how resale prices for ownership inclusionary units are calculated, including the ability for homeowners to capture or all of the depreciated value of capital improvements they made to the inclusionary unit. Such document(s) shall be recorded against the residential development, all inclusionary units as applicable, and any site subject to the provisions of this chapter.
- C. Any eligible household that occupies an inclusionary unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third-party eligible household for a limited period of time due to household hardship, as may be specified in any adopted inclusionary housing guidelines.
- D. No household may begin occupancy of an inclusionary unit until the household has been determined to be eligible to occupy that unit by the Community and Economic Development Director or that person's designee. Any adopted inclusionary housing guidelines may establish standards for determining household income, affordable housing cost, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.
- E. Officials, employees, or consultants of the City, members of city boards and commissions, and the applicant and the applicant's officials shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an inclusionary unit. Any adopted inclusionary housing guidelines shall include conflict of interest provisions relating to the administration of this chapter and the eligibility of persons to occupy inclusionary units.

(Ord. No. 425, § 2, 11-19-2019)

#### 18.37.110 - Housing Fund

- A. All in-lieu fees, promissory note repayments, or other funds collected under this chapter shall be deposited into the City's Housing Fund.
- B. The moneys in the Housing Fund and all earnings from investment of the moneys in the Fund shall be expended exclusively to provide rental housing affordable to low income households (or below), ownership housing affordable to moderate-income households (or below), and any special needs populations in the City, consistent with the goals and policies contained in the City's Housing Element, and for administration and compliance monitoring of the inclusionary housing program, as approved by the City Council.

(Ord. No. 425, § 2, 11-19-2019)

#### 18.37.120 - Waiver

- A. Notwithstanding any other provision of this chapter, the requirements of this chapter may be waived, adjusted, or reduced by the approval body based upon a showing that applying the requirements of this chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result.
- B. Any request for a waiver, adjustment, or reduction under this section shall be submitted to the City concurrently with the inclusionary housing plan. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
- C. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and

at the same time as the inclusionary housing plan.

- D. In making a determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:
1. That the applicant will provide the most economical inclusionary units feasible, meeting the requirements of this chapter and any adopted inclusionary housing guidelines; and
  2. That the applicant will benefit from the incentives for the residential development as described in this chapter and elsewhere in the City Code.
- E. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section. If a reduction, adjustment, or waiver is granted, any change in the residential development shall invalidate the reduction, adjustment, or waiver, and a new application shall be required for a reduction, adjustment, or waiver pursuant to this section.

(Ord. No. 425, § 2, 11-19-2019)

#### 18.37.130 - Enforcement

- A. The City Attorney shall be authorized to enforce the provisions of this chapter and all inclusionary housing agreements, regulatory agreements, and all other covenants or restrictions placed on inclusionary units, by civil action and any other proceeding or method permitted by law.
- B. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant or owner from the requirements of this chapter. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been satisfied.
- C. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

(Ord. No. 425, § 2, 11-19-2019)