



City of East Palo Alto Inclusionary Housing Guidelines

I. Introduction

On November 19, 2019, the East Palo Alto City Council adopted Ordinance No. 425 (Ordinance), adding Chapter 18.37 to the Municipal Code, titled "Inclusionary Housing." The purpose of the Ordinance 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, which will result in the creation of affordable housing opportunities in the community and further the goals and objectives of the City's General Plan and Housing Element. The Ordinance refers to the adoption of Inclusionary Housing Guidelines (Guidelines), to be adopted by the City Manager, that include requirements for implementation and administration of the Ordinance.

The Guidelines are intended as a reference document and as a complement to, not substitution for, the Ordinance. If there is an express conflict between the Ordinance and the Guidelines, the Ordinance will prevail. The following Guidelines may be amended from time to time with approval by the City Manager.

II. Definitions

- 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 one-twelfth of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.
 - 3. 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 Developer 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 Developer which is not subject to the requirements of this chapter at the time of the planning permit application by the Developer.



- 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. "Dwelling Unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- M. "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.
- N. "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.).
- O. "Housing Fund" means a fund or account designated by the City to maintain and account for all monies received pursuant to this chapter.
- P. "Inclusionary Housing Agreement" means an agreement in conformance with Section 18.37.090.B of this chapter between the City and an Developer, governing how the Developer shall comply with this chapter.
- Q. "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.
- R. "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.
- S. "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.
- T. "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.
- U. "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.



- V. "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.
- W. "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.
- X. "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.
- Y. "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.
- Z. "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.
- AA. "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.
- BB. "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.

Please refer to the City's [Inclusionary Housing website](#) for the current maximum income and rent by household size. These figures are derived from the San Mateo County Income Limits and published by the City of East Palo Alto.

IV. Projects subject to Ordinance (18.37.030)



The effective date of the Ordinance is December 19, 2019. All Residential Developments as defined in the Ordinance and Section II, including contiguous properties under common ownership or control, are subject to the Ordinance and the Inclusionary Housing Guidelines.

The threshold criteria for Residential Developments subject to the Ordinance is the inclusion of a clearly defined residential project, with a number of dwelling units specified, at the time of application. Application types include any formal development application, including, but not limited to: Planning Commission Design Review, Tentative Map, Conditional Use Permit, Special Use Permit, or a Planned Development Permit.

- a) The inclusionary requirement for Residential Developments of 1-4 dwelling units is an In-Lieu Fee payment, as further described in Section X and in Chapter 2.
- b) The inclusionary requirement for Residential Developments of 5 or more dwelling units is the provision of 20% of the dwelling units in the development at the affordability levels described in Section IX.
- c) Market-rate rental developments built prior to the effective date of the Ordinance that are subject to Chapter 14.24 of the East Palo Alto Municipal Code will be considered Residential Developments for the purposes of the Ordinance.
- d) Any developments that contain dwelling units are subject to the Ordinance, including mixed-use developments. The Ordinance shall only apply to the residential portion of the development. The commercial portion of a mixed-use development may be subject to the [Affordable Housing Impact Fee](#).

Exemptions

Residential Developments that claim they are exempt from the requirements of Ordinance must request the consideration and indicate the basis for the exemption in the Inclusionary Housing Plan Application (see Chapter 1) and provide supporting documentation. Exemptions include the following:

- a) Accessory Dwelling Units (ADUs) as defined in California Government Code section 65852.2 and Chapter 18.96 of the of East Palo Alto Development Code are exempt from the Ordinance and Inclusionary Guidelines.
- b) Projects that are subject to Chapter 18.38— Affordable Housing Impact Fee or otherwise exempted pursuant to Section 18.37.040 are not subject to the Ordinance or Inclusionary Guidelines.

Exemption does not apply to a Residential Development for which the Planning permit has expired.



IX. Inclusionary Housing Requirement (18.37.050)

The inclusionary housing requirement is applied to all Residential Developments, as defined in Section II. In Residential Developments involving an existing structure but that result in the creation of additional dwelling units, the inclusionary housing requirement shall be calculated based on the total number of “net new” units created. In this section, “dwelling units” therefore refers to the net new units in a Residential Development.

Residential Developments of Five or More Dwelling Units

For Residential Developments that contain five or more dwelling units, the Developer is required to provide 20% of the dwelling units in the development at the affordability levels described below in Table 1:

Table 1

Residential Development Type	Inclusionary Requirement	Affordability Breakdown
For-Sale	20% of net new	<ul style="list-style-type: none"> - 10% of dwelling units affordable to households at or below 80% AMI (median-income) - 10% of dwelling units affordable to households at or below 120% AMI (moderate-income)
Rental	20% of net new	<ul style="list-style-type: none"> - 5% of dwelling units affordable to households at or below 35% AMI (35% AMI) - 10% of dwelling units affordable to households at or below 50% AMI (very low-income) - 5% of dwelling units affordable to households at or below 60% AMI (low-income)

For any alternative compliance option, as described in Section XI. and further in Chapters 4-6, the inclusionary requirement is 25%. All compliance options are subject to City Council approval.



If the calculation of the inclusionary requirement results in a single dwelling unit, or if the inclusionary requirement does not evenly divide by the above percentages, the requirement shall default to the lowest affordability level.

Ownership/For-Sale Inclusionary Units

Ownership/For-Sale Inclusionary Units shall be built on-site and sold at an affordable sales price as determined by the City. The affordable sales price is the maximum sales price that is affordable to a household at the AMI levels indicated in the chart above, adjusted by household size. Further details on the calculation of the affordable sales price can be found in Chapters 2 and 2A (In-Lieu Fee).

Rental Inclusionary Units

Rental Inclusionary Units shall be built on-site and rented to income-qualified renters. The maximum affordable rent at the AMI levels indicated in the chart above, adjusted by household size, is published annually by the State Department of Housing and Community Development (HCD) and on the City of East Palo Alto website. These units shall maintain their affordability in perpetuity, with the exception of units financed through tax credits.

Residential Developments of Fewer than Five (5) Dwelling Units

For Residential Developments with fewer than five dwelling units, developers may opt to provide one Inclusionary Unit on-site or to pay an In-Lieu Fee equal to the percentage of Inclusionary Units required. For example, a Residential Development of 4 dwelling units results in an inclusionary requirement of .8 units, or .8 times the In-Lieu fee for an Ownership/For-Sale or Rental Inclusionary Unit. Note that the fractional unit is rounded, e.g., a requirement of .85 would be rounded up to .9, whereas a requirement of .84 would be rounded down to .8. If one Inclusionary Unit is provided, it shall be provided at the lowest affordability level.

X. Calculation of Inclusionary Units (18.37.050)

The calculation of the number of Inclusionary Units is based on the number of dwelling units in the proposed Residential Development, as defined in Section II, excluding any density bonus units. To calculate the number of required Inclusionary Units, multiply the number of net new dwelling units in the project by 20%. To calculate the number of Inclusionary Units required at each affordability level, multiply the number of dwelling units in the project by the percentages indicated in the Table 1 above. In developments that result in the creation of additional dwelling units where there is an existing structure, the inclusionary requirement shall be calculated based on the total number of "net new" dwelling units created.

Fractions of Inclusionary Units



If the inclusionary requirement results in a single Inclusionary Unit, or if the inclusionary requirement does not evenly divide into the percentages provided in Section 18.37.050, the requirement shall default to the lowest affordability level.

If the calculation results in a fraction of an Inclusionary Unit, the developer shall pay an In-Lieu Fee for the fractional unit. For example, in a 7-unit project, the inclusionary requirement is 1.4, or 1 Inclusionary Unit and .4 times the In-Lieu fee for a Rental or Ownership/For-sale Inclusionary Unit. Note that the fractional unit will be rounded, as described in Section IX (Residential Developments of Fewer than Five Dwelling Units). The developer may also opt to provide an additional Inclusionary Unit on-site.

Mixed Rental and Ownership Developments

For Residential Developments consisting of both a rental and ownership portion, the respective inclusionary requirement shall apply to the respective portion of the development.

Illustrative Example of a Residential Development with 50 Dwelling Units

OWNERSHIP/FOR-SALE 50 Unit-Project

Build On-Site (20%)	Total # Units	50
	Inclusionary Units (multiplied by 20%)	10
	Units Income Restricted 80% AMI (Median-Income)	5
	Units Income Restricted 120% AMI (Moderate-Income)	5
	Market-Rate Units	40

RENTAL 50-Unit Project

Build On-Site (20%)	Total # Units	50
	Inclusionary Units (multiplied by 20%)	10
	Units Income Restricted 35% AMI (35% AMI)	3
	Units Income Restricted 50% AMI (Very Low-Income)	5
	Units Income Restricted 60% AMI (Low-Income)	2
	Market-Rate Units	40

XI. Alternative Compliance Options (18.37.050, 18.37.080, 18.37.060)

Developers may apply for alternative compliance options, all of which will be subject to approval by City Council. The proposed alternative compliance option must be identified in the Inclusionary Housing Plan that is submitted as part of the Planning application. It is the responsibility of the Developer to bear any costs associated with demonstrating that the compliance option meets the inclusionary requirements. Demonstrating such findings will not result in automatic approval of the proposed compliance option.

If an alternative compliance option other than on-site construction is granted, the inclusionary requirement applicable to the Residential Development is 25%.



a. **Off-Site Construction**

The Inclusionary Units (25% requirement) may be built off-site with approval by the City Council. Off-site construction may be completed by the Developer, an entity controlled by the Developer, or another entity that has entered into an agreement with the Developer to provide the Inclusionary Units, subject to approval by the City. Please see Chapter 5 (Off-Site Construction) for details of the off-site construction option.

b. **In-Lieu Fee Payment**

If approved by City Council, Developers may pay an In-Lieu Fee to fulfill the 25% inclusionary requirement. All In-Lieu Fees are deposited into an affordable housing fund. See Chapter 2, 2A, 2B, and 2C for details on the In-Lieu Fee compliance option.

c. **Other Alternative Compliance Options**

Developers may propose an alternative compliance option not listed here if City Council determines, based on substantial evidence provided by the Developer, that it will provide as many or more Inclusionary Units at the same or lower income levels or will otherwise provide greater public benefit than building on-site.

XII. Inclusionary Units—Standards (18.37.060)

Inclusionary Units shall be comparable in appearance and quality of construction to the market-rate units in the same development. Interior finishes, features, and amenities may differ from those provided in the market-rate units; but they shall be durable, of good quality, compatible with the market-rate units, and consistent with the California Building Codes Standards.

The size of Inclusionary Units shall be comparable to or greater than average size of the market-rate units. Generally, this means that the number of bedrooms in the Inclusionary Units shall represent 20% or greater of the total number of bedrooms in the development, and the average square footage of the Inclusionary Units shall be no less than 85% of the average square footage of the market rate units with the same number of bedrooms.

The Inclusionary Units shall have the same amenities as the market-rate units. Residents of Inclusionary Units shall have equal access to and enjoyment of common open space, parking, storage, and other facilities in the development available to residents of non-Inclusionary Units in the 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.

The Inclusionary Units shall be distributed throughout the development, to avoid geographic concentration or otherwise grouping in a manner that would cause or exacerbate racial, ethnic, or economic segregation. If the Inclusionary Units are



concentrated and not integrated with market rate units, the development will be considered an off-site compliance option and subject to the provisions outlined in Section XI.(a.) Alternative Compliance Options – Off-Site Construction.

XIII. Density Bonus (18.37.060)

The Developer may submit a written request as part of its Inclusionary Housing Plan (see Section XIV) for a density bonus 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 (Density Bonus). If the Developer proposes deed-restricted units in accordance with the requirements of both the Density Bonus and Inclusionary Housing Ordinance, the units may be considered to be in fulfillment of both program requirements. A Developer who receives incentives must build the Inclusionary Units on-site.

XIV. Timing of Construction of Units (18.37.070)

Building Permits for more than 50% of the market-rate units shall not be issued until all Building Permits have been issued for all (100%) of the Inclusionary Units.

Final inspections or certificates of occupancy (including temporary certificates when there are multiple phases or Buildings) shall not be approved for more than 50% of the market-rate units until final inspections or certificates of occupancy have been issued for all (100%) of the Inclusionary Units.

If applicable, no Building Permit shall be issued for any of the market-rate units until all In-Lieu Fees for the Residential Development are paid and/or the Developer has met an alternative requirement pursuant to Section 18.37.080.

XV. Inclusionary Housing Plan (18.37.090)

Developers shall be required to submit an Inclusionary Housing Plan to the Housing Division as part of their application for First Approval, as defined in Section II. The Inclusionary Housing Plan is processed concurrently with all other permits and must be submitted and accepted by the Housing Division two weeks prior to scheduling of an entitlement hearing.

No application for a First Approval shall be deemed complete until the Inclusionary Housing Plan is submitted by the Developer and accepted by the Housing Division, and no First Approval shall be granted until the Inclusionary Housing Plan is approved by the Planning Commission.

The Inclusionary Housing Plan provides basic information on the project and outlines how the Residential Development will comply with the Inclusionary Housing Ordinance. At a minimum, it includes the following:



- a) Project name, address, and APN
- b) Type of development (for-sale or rental/mixed use or residential/rehab, demolition, or conversion)
- c) Number of dwelling units in the development
- d) Location of the dwelling units in the development
- e) Any exemption sought, along with the requisite supporting documentation
- f) Compliance option (on-site, unless alternative compliance option sought)
- g) Any alternative compliance options sought, along with the requisite supporting documentation
- h) Any density bonus or other regulatory incentives requested
- i) A description of the developer's Fair Housing and Marketing plan, which must comply with all applicable fair housing laws and 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.

The Inclusionary Housing Plan application can be found in Chapter 1 and is provided on the City's website.

Minor changes may be made to the Inclusionary Housing Plan with approval by the City Manager prior to the issuance of any Building Permit.

The Housing Division shall charge a processing fee associated with the Inclusionary Housing Plan and the fee amount, once established, shall be stated in the Inclusionary Housing Plan application and updated from time to time.

XV. Inclusionary Housing Agreement (18.37.090)

The Developer shall enter into an Inclusionary Housing Agreement with the City in a form approved by the City Attorney and executed by the City Manager (or his or her designee) prior to the issuance of any Building Permits or approval of any final or parcel map, whichever comes first.

The Inclusionary Housing Agreement codifies the inclusionary housing obligations of the Residential Development and shall be recorded against the entire property (the contiguous property, and any off-site development sites, if applicable).

If applicable, the Inclusionary Housing Agreement shall contain a specific section or exhibit which applies only to the contiguous property under common ownership or control. This anti-piecemealing section lists the number of dwelling units in the Residential Development and provides that, upon submittal of a Planning permit application or applications that would result in the development of five or more dwelling units on the contiguous property under common ownership and control, the Developer shall comply with the Ordinance. The requirements of the Ordinance imposed on the Residential Development, however, shall not be imposed on the contiguous property under common ownership and control by recordation of the Inclusionary Housing Agreement against those parcels.



Once the Housing Division receives a copy of the deed restriction on the Inclusionary Units recorded on the property, the Inclusionary Housing Agreement is rescinded from the market-rate units on the property.

The Inclusionary Housing Agreement may include more than one document. The City may require that the Agreement include the Inclusionary Housing Plan as an attachment.

The Inclusionary Housing Agreement addresses the following:

- a) Number, type, location, size, and phasing of all dwelling units
- b) Certification and screening of buyers and renters of Inclusionary Units
- c) Compliance with the City's Local Preference Policy (guidelines forthcoming) and Fair Housing
- d) Resale control mechanisms, including financing of ongoing administrative and monitoring costs

XVI. Continued Affordability (18.37.100)

All units provided under the Inclusionary Housing Program shall remain affordable in perpetuity, with the exception of projects financed through tax credits. The City shall develop standard documents 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 some or all of the depreciated value of capital improvements they made to the Inclusionary Unit.

These forms shall be executed by the City Manager and his/her designee, in a form approved by the City Attorney, and may include, but are not limited to:

- a) Affordability Agreement
- b) Resale Restriction Agreement
- c) Deed of Trust
- d) A Shared Appreciation Promissory Note permitting the City to capture the difference between market rate value and affordable housing cost plus share of appreciation

The documents shall be recorded against the residential development, all Inclusionary Units as applicable, and any site subject the provisions of this chapter.

XVII. Housing Fund (18.37.110)

All In-Lieu fees, promissory note repayments, and other funds collected shall be deposited into the City's Affordable Housing Fund. Expenditures from the Affordable Housing Fund shall be made exclusively to provide rental housing affordable to low-



income households, 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.

XVIII. Waiver (18.37.120)

Any request for a waiver, adjustment, or reduction under the Inclusionary Housing Ordinance 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. The request for a waiver, adjustment, or reduction will be reviewed and considered in the same manner and at the same time as the Inclusionary Housing Plan, as described in Section 18.37.120.

- Chapter 1 – Inclusionary Housing Compliance Plan**
- Chapter 2 – In-Lieu Fee Compliance Option**
- Chapter 2A – Ownership/For-Sale In-Lieu Fees**
- Chapter 2B – Rental In-Lieu Fees**
- Chapter 2C – In-Lieu Fee Methodology (David Rosen & Associates)**
- Chapter 3 – Pricing and Sale of Inclusionary Units**
- Chapter 4 – Rental of Inclusionary Units**
- Chapter 5 – Off-Site Compliance Option**