



## **Chapter 5 Off-Site Alternative Compliance Option - Section 18.37.080.C**

This attachment to the Guidelines provides more information on the Alternative Compliance Option of building for-sale or rental Inclusionary Units off-site and 1.) transferring those homes or 2.) renting to eligible households. Definitions for capitalized terms may be found in the Guidelines Main Document and in the Ordinance.

### **I. Build Off-Site Alternative Compliance Option - Overview**

Developers seeking approval for an Alternative Compliance Option must submit an Inclusionary Housing Plan indicating such and seek approval from the City Council.

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, may propose to construct the Inclusionary Units on another site. Two or more applicants may also jointly propose off-site construction of Inclusionary Units on a single site. All such agreements are subject to City Council approval.

#### **For-Sale Residential Developments**

For for-sale Residential Developments, Developers who receive approval from City Council to build off-site as an Alternative Compliance Option must build, consistent with the standards as described in the Main Document, and transfer at least twenty-five percent (25%) of the dwelling units built within the Residential Development to income-qualified buyers as follows:

- 13% of dwelling units in the Residential Development must be made available at an affordable sales price to households whose income does not exceed 80 percent of the area median income, adjusted for family size and as published annually by the City (Median-Income Households).
- 12% of the dwelling units in the Residential Development must be made available at an affordable sales price to households whose income does not exceed 120 percent of the area median income, adjusted for family size and as published annually by the City (Moderate-Income Households).

The Inclusionary Units must be made available for purchase at an Affordable Housing Cost for households at the above specified income levels, as published by the City of East Palo Alto on its website on an annual basis. The Income Limit and Affordable Housing Cost will be calculated by the City for each Inclusionary Unit.

#### **Rental Residential Developments**

For Rental Residential Developments, Developers who receive approval from City Council to build off-site as an Alternative Compliance Option shall build, consistent with the standards as described in the Main Document, and rent at least twenty-five percent



(25%) of the dwelling units built within the Residential Development to income-qualified households as follows:

- 7% of the dwelling units in the residential development shall be made available at an affordable rent to households whose income does not exceed 35 percent of the area median income, adjusted for family size and as published annually by the City (35% AMI Households);
- 12% of the dwelling units in the residential development shall be made available at an affordable rent to households whose income does not exceed 50 percent of the area median income, adjusted for family size and as published annually by the City (Very Low-Income Households);
- 6% of the dwelling units in the residential development shall be available at an affordable rent to households whose income does not exceed 60 percent of the area median income, adjusted for family size and as published annually by the City (Low-Income Households).

The Inclusionary Units must be rented at an Affordable Rent to households at the above specified income levels, as published by the City of East Palo Alto on its website on an annual basis. The Income Limit and Affordable Housing Cost (maximum rent) will be determined by the City for each Inclusionary Unit.

When computing the number of dwelling units required to satisfy the 25% off-site obligation, resulting fractions of one-half (1/2) or greater shall be rounded up to the next highest whole number, and fractions of less than one-half (1/2) shall be rounded down to the next lowest whole number.

## **II. Location of Off-Site Inclusionary Units**

The site chosen for the off-site Inclusionary Units (“off-site land”) must have a General Plan designation allowing residential uses, and environmental review shall have been completed with hazards mitigated to the satisfaction of the City prior to the acceptance of the site in the Inclusionary Housing Plan. The location of the Inclusionary Units must not tend to cause residential segregation.

The off-site land must also be zoned for Residential Development at a density that will accommodate at least the number of required Inclusionary Units no later than the approval of the entitlement(s) for the market rate project. Completion of these entitlements and documentation of ownership or control of off-site land must be obtained and provided consistent with the construction schedule that is provided with the Inclusionary Housing Plan.

## **III. Inclusionary Housing Plan Application**

As part of the application for First Approval of any Residential Developments, Developers are required to submit a signed Inclusionary Housing Plan application to the City, and pay the application processing fee.



If an Inclusionary Housing Plan was not submitted and approved at First Approval, it is due when a Developer applies for any other Planning Permit. Additionally, upon the expiration of any Planning Permit, and unless otherwise exempted, the Residential Development shall be subject to the requirements of the Ordinance and shall not proceed until an Inclusionary Housing Plan application is approved in conjunction with any other required Planning Permit or amendment thereto.

Developers who seek approval for the Build Off-Site Compliance Option must provide the following information when submitting the Project's Inclusionary Housing Plan application:

1. General information about the Developer and the Residential Development;
2. Whether the Developer intends to seek a parcel, or tentative and final map for the market-rate project;
3. Affirming that the Developer intends to build Inclusionary Units off-site consistent with the standards in the Inclusionary Guidelines Main Document;
4. Detailed information about the entitlement, timing, and unit makeup for both the market-rate project and the off-site project, including:
  - i. Location of the market rate project and the proposed off-site land,
  - ii. Total number of dwelling units,
  - iii. Total number of market rate and Inclusionary Units by income level of the units,
  - iv. Unit type (e.g. townhouse, detached single-family) and tenure (e.g. for-sale or rental),
  - v. Number of bedrooms and baths,
  - vi. Parcel maps and/or site plan(s) indicating the proposed location and square footage of both the Inclusionary Units and the market rate units,
  - vii. General Plan designation of the off-site land which must allow residential uses,
  - viii. Current phase I environmental review for the off-site land, and if called for, phase II and evidence of completed hazard mitigation,
  - ix. Construction and completion schedule of all Inclusionary and market-rate units, with construction of Inclusionary Units to be completed prior to or concurrent with market rate units. Construction schedule must show ownership or control of the off-site land and that it will be zoned for Residential Development at adequate density no later than the entitlement of the market rate project, and
  - x. Phasing of Inclusionary Units in relation to market rate units consistent with Part V.
5. As part of the Inclusionary Housing Plan application process, Developers shall provide a sales and marketing plan that includes the following:
  - i. Anticipated timeline for the sale of both market rate and Inclusionary Units,
  - ii. The planned approach to offering the Inclusionary Units to the public in a nondiscriminatory and equitable manner,



- iii. (For For-Sale Units only) the use of a California licensed real estate broker, listing homes on the local Multiple Listing Service (MLS), and holding a series of “open houses.”
- 6. Sufficient information to show that the off-site project is likely to be built at about the same time as the market-rate project,
- 7. A comparison of the fixtures and amenities for the market rate units and off-site Inclusionary Units,
- 8. Whether the Developer or any affiliate owns, has an interest in, or controls any property contiguous to the project,
- 9. (For Rental Units) reliable financing mechanism for the ongoing administration and monitoring of Inclusionary Units,
- 10. (For Rental Units) A description of the manner by which a capital reserve for repair, replacement and maintenance shall be maintained for the term of the affordability restriction, with provision for sufficient initial capitalization and periodic contributions to the capital reserve,
- 11. Identify any public funding anticipated in connection with the project with the off-site Inclusionary Units,
- 12. Affirming the off-site Inclusionary Units have been not been sold or rented,
- 13. A title report, and
- 14. Any other information, including a detailed narrative that facilitates the Housing Division’s ability to evaluate the Project’s compliance with the Ordinance and Guidelines.

Interested parties may obtain the Inclusionary Housing Plan application from the City website or by contacting the Housing Division by sending an email to:

[housing@cityofepa.org](mailto:housing@cityofepa.org)

#### **IV. 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 an Alternative Compliance Option is approved).

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

#### **V. Timing of Construction of Off-Site Inclusionary Units (18.37.080)**

##### **For-Sale Inclusionary Units**

Off-site Inclusionary Units must be developed and made available for occupancy either prior to or concurrently with the market rate units. Construction must also be consistent with the phasing plan for Inclusionary Units in relation to market rate units. Final inspections for occupancy of the market rate units shall be granted only after Building permits for all of the off-site Inclusionary Units related to those market-rate units have been issued, unless otherwise approved by City Council.

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. The City may require that completion of off-site Inclusionary Units be further secured by the Developer'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.

If a Developer intends to seek alternative construction timing for off-site Inclusionary Units under Section 18.37.050(D), of the Ordinance the Developer should consult with Housing staff at the timing of submittal of the Inclusionary Housing Plan.

The following information is required in connection to any request for alternative construction timing for off-site units:

- a) Information on redevelopment area of off-site land
- b) Documentation of ownership or control of off-site land
- c) Information on proposed affordable housing developer



- d) An agreement with an approved affordable housing developer that explains gap financing/tax credits
- e) All Planning entitlements
- f) Any other information reasonably required to evaluate request

A marketing plan for the Inclusionary Units is required, including a commitment to provide the Inclusionary Units to the public in a nondiscriminatory and equitable manner. Such a plan should provide for concurrent marketing and the sale of one (1) Inclusionary Unit for every five (5) market rate units.

### **Rental Inclusionary Units**

Off-site Inclusionary Units must be developed and made available for occupancy either prior to or concurrently with the market rate units. Construction must be consistent with the phasing plan for Inclusionary Units in relation to market rate units. Final inspections for occupancy of the market rate units shall be granted only after Building permits for all of the off-site Inclusionary Units related to those market rate units have been issued, unless otherwise approved by City Council.

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. The City may require that completion of off-site Inclusionary Units be further secured by the Developer's agreement to pay In-Lieu Fees in the amount due under Section 18.37.080.(B) in the event the off-site units are not timely completed.

If a Developer intends to seek alternative construction timing for off-site Inclusionary Units under Section 18.37.050(D), the Developer should consult with Housing staff at the timing of submittal of the Inclusionary Housing Plan.

The following information is required in connection to any request for alternative construction timing for off-site units:

- a) Information on redevelopment area of off-site land
- b) Documentation of ownership or control of off-site land
- c) Information on proposed affordable housing developer
- d) An agreement with an approved affordable housing developer that explains gap financing/tax credits
- e) All Planning entitlements
- f) Any other information reasonably required to evaluate request

A marketing plan for the Inclusionary Units is required including a commitment to provide the Inclusionary Units to the public in a nondiscriminatory and equitable manner. Such a plan should provide for concurrent marketing and the rental of one (1) Inclusionary Rental for each five (5) market rate units.





## **VI. Standards for Off-Site Inclusionary Housing Units**

The standards for Inclusionary Units built off-site shall be the same as those provided in the Inclusionary Guidelines Main Document.

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.

## **VII. Pricing and Sale of Inclusionary Units**

See Chapter 3– Pricing and Sale of For-Sale Inclusionary Units

## **VIII. Rental of Inclusionary Units**

See Chapter 4– Rental of Inclusionary Units