

# PLANNING COMMISSION STAFF REPORT



April 24, 2024

## ITEM TITLE

Amend Chula Vista Municipal Code Title 19 (Planning and Zoning) to Update and Add Chapters Related to the Production of Affordable Housing and Associated Policies for Low- and Moderate-Income Households.

**Location:** No specific geographic location.

## Recommended Action

Conduct a public hearing and recommend the City Council of the City of Chula Vista adopt an ordinance: amending Chula Vista Municipal Code Title 19 (Planning and Zoning) Chapter 19.90 (Affordable Housing Incentives) and Section 19.58.460 (Objective Design Standards for Qualifying Multifamily Residential and Mixed-Use Projects); and creating Chapter 19.91 (Inclusionary Housing), Chapter 19.93 (Residential For-Sale Affordable Unit Requirements), and Chapter 19.94 (Marketing, Application, Lottery, and Waitlist Requirements for Affordable Rental Housing Projects).

## SUMMARY

This item consists of a suite of housing-related amendments to Chula Vista Municipal Code (CVMC) Title 19 (Planning and Zoning). The proposed amendment to CVMC Chapter 19.90 (Affordable Housing Incentives) would bring the City into conformance with the current version of the State Density Bonus Law. The proposed creation of Chapter 19.91 (Inclusionary Housing) would codify and update the City's longstanding Balanced Communities Policy, which requires new residential projects to set aside 10% of the units as affordable to low- and moderate-income households. And an amendment to Section 19.58.460 (Objective Design Standards for Qualifying Multifamily Residential and Mixed-Use Projects) would align that section with the proposed updates to CVMC Chapters 19.90 and 19.91.

Additionally, long-standing practices would be codified by the addition of proposed Chapter 19.93 (Residential For-Sale Affordable Unit Requirements) which outlines the buyer selection criteria and establishes the requirement for a Value Recapture Agreement of for-sale affordable units and proposed Chapter 19.94 (Marketing, Application, Lottery, and Waitlist Requirements for Affordable Rental Housing Projects) outlines marketing and leasing requirements as well as a preference system for affordable housing applicants.

## HOUSING IMPACT STATEMENT

No housing units are proposed as part of the project; however, the proposed amendment would provide incentives to applicants using density bonus and assist in increasing the supply of housing through changes to the inclusionary requirements.

## ENVIRONMENTAL REVIEW

The Director of Development Services reviewed the proposed legislative action for compliance with the California Environmental Quality Act (CEQA) and determined that the action qualifies for the “common sense” exemption under State CEQA Guidelines Section 15061(b)(3). The action involves updates, modifications, and organizational changes to the CVMC relating to section titles, definitions, groups covered under density bonus, percentages, etc. Based on an analysis of the nature and type of these procedural and clerical changes to the CVMC, there is a certainty that there is no possibility that the action may have a significant effect on the environment.

## BOARD/COMMISSION/COMMITTEE RECOMMENDATION

On October 25, 2023 the Housing and Homeless Advisory Commission provided input on the proposed conceptual changes to the Density Bonus Ordinance, Inclusionary Policy, and associated in-lieu fee. The Commission provided an advisory recommendation by a vote of 5-0 to approve staff’s recommendations, however recommended that no additional parking concessions be offered beyond state law allowances (this section was subsequently removed from the proposal).

On January 24, 2024 the Housing and Homeless Advisory Commission provided input on the proposed adoption of regulations for marketing/leasing of affordable units and for-sale affordable homebuyer. The Commission provided an advisory recommendation by a vote of 5-0 to approve staff’s recommendations.

## DISCUSSION

Since 1969, California has required that all local governments adequately plan to meet the housing needs of everyone in the community. Cities are provided with a Regional Housing Needs Allocation (RHNA) of the anticipated housing unit need at a variety of affordability levels and must adopt Housing Elements as part of their General Plan to show how the jurisdiction will meet local housing needs.

The [City of Chula Vista’s 2021-2029 Housing Element](#) (the “Housing Element”), adopted on July 13, 2021 and amended on September 13, 2022, identified the need for 11,105 new units to be created in the City to accommodate anticipated population growth and set goals to adopt or update a variety of housing policy tools to better position the City to meet these goals. The set of ordinance updates are being proposed in accordance with specific commitments made in the Housing Element, as follows:

- Implementing Program 3.4, the City committed to reviewing and updating its Balanced Communities Policy within 36 months of adoption of the Housing Element.
- Implementing Program 3.6, the City committed to updating its Affordable Housing Incentives chapter to remain consistent with State law within 24 months of Housing Element adoption.
- Implementing Program 4.1, the City committed to affirmatively furthering fair housing through a range of actions such as promoting the equitable distribution of affordable housing throughout the City.

The proposed Chapters 19.93 and 19.94 are also consistent with the Housing Element’s fair housing goals and will help ensure that affordable housing can be accessed by all demographic groups within Chula Vista.

The proposed actions, if approved, would fulfill the commitments made in the Housing Element and help ensure that a variety of housing options are available throughout the community. Over the past ten months a robust engagement process was undertaken to ensure stakeholders and the public provided input into all proposed amendments to Title 19, as detailed in Table I.

**Table I – Housing Policy Engagement Opportunities**

Topic	Stakeholders Involved	Dates of Engagement
Prototypes for Market Analysis	BIA Development Oversight Committee	June 2023
Draft Concept Changes	Virtual Stakeholder & Public Meetings Housing & Homeless Advisory Commission	October 10 & 11, 2023 October 25, 2023
1 <sup>st</sup> Draft Ordinances	BIA Development Oversight Committee Housing Website	January/February 2024
2 <sup>nd</sup> Draft Ordinances	Virtual Stakeholder & Public Meeting	March 12, 2024

**Amending CVMC Chapter 19.90 (Affordable Housing Incentives)**

In order to increase the supply of “affordable housing units” throughout California, the State adopted an Affordable Housing Law ([Government Code Section 65589.5](#)) and a Density Bonus Law ([Government Code Section 65915](#)) in 1979. Many subsequent amendments were made in the years that followed. The most significant amendments went into effect in January 2005 (SB 1818), January 2021 (AB2345), and January 2023 (AB2334). Density Bonus Law provides financial incentives – i.e., additional market rate units and modification of development standards – to developers if they build a specified amount of affordable housing.

State Density Bonus Law has become a powerful tool for encouraging developers to provide affordable housing in their projects. The allowance of additional units beyond what the zoning may allow can offset the cost of including affordable units in a project. Additionally, development standards, such as height, setbacks, parking, etc. can be waived, allowing for ease in the development process.

The State Density Bonus Law has been consistently updated annually since 2016. Cities are required to have a Density Bonus Ordinance that is consistent with or surpasses State law, Chula Vista adopted [CVMC Chapter 19.90, “Affordable Housing Incentives”](#) (“Chapter 19.90”) via Council Ordinance No. 3250 in 2013, but the constant changes to the law make it difficult to keep the ordinance up to date. Every time an ordinance is changed, City Council approval is required, which can use many hours of staff time.

As such, Policy 3.6 of the 2021-2029 Housing Element identified updating CVMC 19.90 as a priority to comply with State Law. As proposed, this item would amend Chapter 19.90 to defer to State law, and renames Chapter 19.90 to “Density Bonus”, reference proposed redlined amendments in Attachment 2.

## **Adding CVMC Chapter 19.91 (Inclusionary Housing)**

Inclusionary zoning or housing policies, tap the economic gains from rising real estate values to create affordable housing opportunities for low- or moderate-income households by creating a set of local rules or a local government initiative that encourages or requires the creation of affordable housing units, or the payment of fees for affordable housing investments when new development occurs. Throughout the United States various jurisdictions have adopted inclusionary zoning policies, with over 170 in California alone.

Adopted in the 1981 Housing Element as the Balanced Communities Policy, Chula Vista has been a leader in the state in creating affordable units through inclusionary housing. Throughout the years various case law has placed barriers on production, but effective January 1, 2018 California authorized the legislative body of any city or county to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households ([Government Code Section 65850](#)).

The City's policy has been relatively unchanged since 1981, requiring that any new construction of 50 units or more provide 10% of them for affordable households (5% moderate- and 5% low- income) and has allowed alternative compliance. In 2005 an in-lieu fee was established and in 2012 [Balanced Communities Guidelines](#) were adopted to provide better clarity to the policy, establish incentives for providing lower threshold units, and adopt specific measures to adjust to market conditions. The guidelines have been updated a few times, with the most recent on [September 13, 2022](#) to remove variances and exceptions to requirements in western Chula Vista.

Policy 3.4 of the 2021-2029 Housing Element identified reviewing the Balanced Communities/Inclusionary Policy for its feasibility in making progress towards the low- and moderate-income RHNA allocations for the City. The review was to include opportunities to increase the affordable requirement, lowering the threshold of applicability, adopting an Inclusionary Housing Ordinance, and revising the in-lieu housing fee, based upon findings and recommendations of a feasibility analysis. In addition to the review of the obligations, the Housing Element contemplated potential alternatives to new construction of units, including off-site construction, land dedication, preservation of 'at risk' housing, and in-lieu fees (except on sites designated to accommodate housing for very low- and low-income households for RHNA).

In the spring of 2023 Housing staff contracted with RSG to conduct a feasibility analysis, draft an inclusionary ordinance, and take part in the coordinated outreach effort detailed previously in Table I.

Attachment 3 provides a full breakdown of the current policy and proposed changes that were presented to stakeholders. While several options were considered over the 10-month process, as detailed, based on stakeholder feedback and feasibility analysis, most aspects of the Balanced Communities Policy were left unchanged. Written comments submitted from stakeholders on the final proposal have also been provided in Attachment 3.

The most significant elements of the proposed ordinance include:

- Reducing the threshold for inclusionary requirements from 50 units of new residential construction to 10 units or more;
- Maintaining the affordable requirement to 10% of units (5% low- and 5% moderate-income);
- Altering the in-lieu fee to a square footage basis and applying different rates to for-sale and rental products; and
- Providing better clarity to alternative options of compliance.

The Inclusionary Housing Ordinance, as proposed in Attachment 4, would go into effect on June 1, 2024 for any new residential application received that is not otherwise already obligated by a Developer Agreement and/or Sectional Planning Area Plan if City Council approves such in May.

### **Amending CVMC Section 19.58.460 (Objective Design Standards for Qualifying Multifamily Residential and Mixed-Use Projects)**

Administrative amendments, proposed in Attachment 5, to Section 19.58.460 are needed to align with amendments of Chapter 19.90 and the addition of Chapter 19.91, and remove redundant or outdated information.

### **Adding CVMC Chapter 19.93 (Residential For-Sale Affordable Unit Requirements)**

To provide consistency in the implementation of affordable homeownership opportunities, Council Policy No. 453-02 via Council Resolution No. 2003-492 was established and has subsequently been amended, most recently on August 21, 2013, via Council Resolution No. 2013-154, establishing the procedures and guidelines for the development of affordable for sale housing for first-time low- and moderate- income buyers.

The Residential For-Sale Affordable Unit Requirements in the form of an ordinance is proposed to substantiate the policy, as Attachment 6. The ordinance will outline the buyer selection criteria and establish the requirement for a Value Recapture Agreement for for-sale affordable units. The ordinance shall apply to any development of for-sale affordable units within the City, unless otherwise regulated by other funding sources. The City's Value Recapture Agreement will ensure that the unit shall remain affordable to the buyer as long as they reside in the unit, while ensuring the public benefit of the affordable program upon resale. Rather than recording resale restrictions against the property, upon resale, the City will collect the full amount of the difference between the affordable sale price and the market price at the time of the initial sale. In addition to resale, a transfer, cash-out refinance, change in title, or use of the property for rental housing may also trigger value recapture by the City. The proceeds of such value recapture will be recycled into loans to new first-time homebuyers or for future rental projects. In this way, the City will invest the recaptured funds to pass on new affordable housing opportunities in Chula Vista. In staff's experience, recycling the funds through a Value Recapture Agreement is a more efficient and effective process than enforcing resale restrictions.

More detailed guidance to implement the ordinance will be provided via administrative guidelines, to be published separately on the City's website. Such guidelines will describe the income verification requirements of homebuyers, the formula for calculating the equity share agreement, and other administrative details consistent with the purpose of the ordinance, much of which is in the current Council Policy.

### **Adding CVMC Chapter 19.94 (Marketing, Application, Lottery, and Waitlist Requirements for Affordable Rental Housing Projects)**

For several years the City has overseen the process of initial lease-ups for affordable units when they City is a party to a Regulatory Agreement. The City is bringing forth an ordinance regulating the marketing and leasing of affordable housing in order to set standards in accordance with industry best practices and align City requirements with State and federal laws such as Title VI of the Civil Rights Act of 1964, the Federal Fair Housing Act, and California's Fair Employment and Housing Act. While the proposed ordinance will align

with past practices, the proposed ordinance will provide greater focus on assisting those already in our community.

Narrow or informal marketing efforts such as locally distributed flyers and word-of-mouth advertising may limit the ability of the public to be informed about leasing opportunities. Similarly, tenant selection practices such as first-come, first-served waitlists may unfairly advantage one demographic group or applicants with a personal connection to the Developer or management agent. To mitigate concerns and promote equity in the process, the City has been requiring that affordable housing owners with Regulatory Agreements with the City, carry out robust marketing efforts, with special outreach to groups least likely to apply for such housing, and select tenants via a randomized lottery.

Examples of best practices that the proposed ordinance would encourage would include advertising to a diverse range of demographic groups, providing clear information about accommodations for disabilities, and adopting procedures for addressing grievances and complaints by applicants or tenants. Such practices would ensure a smooth, fair, and transparent process for the leasing and management of affordable housing.

The proposed ordinance, in Attachment 7, would also put forth a preference system for affordable housing applicants. A similar system has been used by City staff in Regulatory Agreements with developers in the past, with two new added preferences in italics below:

- First preference would be given to Chula Vista residents displaced due to government action or *individuals referred by the City's Department of Housing and Homeless Services that are currently receiving program services.*
- *Second preference would be given to Chula Vista residents subject to a no-fault just cause terminations of tenancy under Chula Vista Municipal Code Chapter 9.65.*
- Third preference would be given to Chula Vista residents and workers.
- Fourth preference would be given to all other eligible members of the general public.

Such a preference system would help prioritize the needs of Chula Vista's most vulnerable residents and ensure that Chula Vista residents benefit from new production of affordable housing, while still ensuring access for the general public.

#### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the Planning Commission members do not create a disqualifying real property- related financial conflict of interest under the California Political Reform Act (Cal. Gov' t. Code § 87100, et seq.).

Staff is not independently aware and has not been informed by any Planning Commission member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

#### **FISCAL IMPACT**

There is no current fiscal year or ongoing fiscal impact to the General Fund or Development Services Fund as a result of the adoption and implementation of the proposed ordinances.

## CONCLUSION

Staff recommends that the Planning Commission adopt the resolutions and recommend the City Council adopt the ordinances amending CVMC Title 19 (Planning and Zoning) Chapter 19.90 (Affordable Housing Incentives), adding CVMC Chapter 19.91 (Inclusionary Housing), amending CVMC Section 19.58.460 (Objective Design Standards for Qualifying Multifamily Residential and Mixed-Use Projects), and adding CVMC Chapter 19.93 (Residential For-Sale Affordable Unit Requirements) and 19.94 (Marketing, Application, Lottery, and Waitlist Requirements for Affordable Rental Housing Projects). The proposed chapters and chapter amendments will bring the City into conformance with State law, meet two specific goals and align with other commitments made in the Housing Element.

## ATTACHMENTS

1. Planning Commission Resolution
2. Draft Amendment to CVMC Chapter 19.90 “Density Bonus” (formerly “Affordable Housing Incentives”)
3. Attachment 3 - Existing Balanced Communities Policy, RSG Proposed Recommendations, & Public Comment
4. Draft CVMC Chapter 19.91 “Inclusionary Housing”
5. Draft Amendment to CVMC Section 19.58.460 “Objective Design Standards for Qualifying Multifamily Residential and Mixed-Use Projects”
6. Draft CVMC Chapter 19.93 “Residential For-Sale Affordable Unit Requirements”
7. Draft CVMC Chapter 19.94 “Marketing, Application, Lottery, and Waitlist Requirements for Affordable Rental Housing Projects”

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