

ATTACHMENT 4

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA ADDING
CHULA VISTA MUNICIPAL CODE (CVMC) TITLE 19
(PLANNING AND ZONING) CHAPTER 19.91
(INCLUSIONARY HOUSING)

WHEREAS, the Balanced Community Policy was adopted in the 1981 Housing Element as a way to create affordable units through inclusionary housing; and

WHEREAS, in 2005 an in-lieu fee was established as an alternative means of compliance, and in 2012 guidelines were established to provide better clarity to the policy, establish incentives for providing lower threshold units, and adopt specific measures to adjust to market conditions; and

WHEREAS, California Government Code Section 65850 authorizes cities to adopt inclusionary ordinances; and

WHEREAS, Policy 3.4 of the 2021-2029 Housing Element identified reviewing the Balanced Communities/Inclusionary Policy for its feasibility in making progress to low- and moderate-income Regional Housing Needs Allocation for the City; and

WHEREAS, in the spring of 2023 Housing staff contracted with a third-party consultant, RSG, to conduct a feasibility analysis, hold multiple public stakeholder meetings, and draft an inclusionary ordinance; and

WHEREAS, the proposed ordinance was presented in concept form to the Housing and Homeless Advisory Committee, which recommended adoption; and

WHEREAS, 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 Chula Vista Municipal Code (“CVMC”). Furthermore, the action of updating and modifying the CVMC will not result in an intensification of uses or a change in development potential within the City above what already is permitted under the existing land use and zoning policies of the CVMC that are being updated. 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; and

WHEREAS, the Planning Commission held an advertised public hearing on the subject Ordinance and voted _____ to adopt Resolution No. _____, and thereby recommends that the City Council adopt the Ordinance; and

WHEREAS, the City Council set the time and place for a hearing on the subject CVMC amendments and notice of said hearing, together with its purpose, was given by its publication in

ATTACHMENT 4

a newspaper of general circulation in the City, at least ten (10) days prior to the hearing.

NOW THEREFORE the City Council of the City of Chula Vista does hereby find and ordain as follows:

The City Council of the City of Chula Vista finds that the proposed amendments to the CVMC identified in this Ordinance No. ____ 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. Furthermore, the action of updating and modifying the CVMC will not result in an intensification of uses or a change in development potential within the City above what already is permitted under the existing land use and zoning policies of the CVMC that are being updated. 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.

Section I. Amendment of CVMC Chapter 19.91 (Inclusionary Housing). The Chula Vista Municipal Code is hereby amended as follows:

Chapter 19.91

INCLUSIONARY HOUSING

Section:

19.91.010	Determinations
19.91.020	Purpose
19.91.030	Definitions
19.91.040	Applicability and Exemptions
19.91.050	Inclusionary Requirements
19.91.060	Relationship to Density Bonus Provisions
19.91.070	Housing In-Lieu Fees
19.91.080	Alternative Compliance
19.91.090	Inclusionary Unit Development Standards
19.91.100	Inclusionary Housing Plan and Affordability Agreement
19.91.110	Petition for Waiver or Reduction

ATTACHMENT 4

19.91.120 Administration and Enforcement

19.91.010 Determinations

The City of Chula Vista declares that the provision of housing in a suitable living environment for all residents is a priority of the highest order and is consistent with State, regional and national policies. The goal of the City is to achieve a balanced community with housing available for persons of all income levels. There exists within the City a shortage of housing that is affordable to households of lower and moderate incomes. Federal and State housing finance subsidy programs are not sufficient by themselves to satisfy these income housing needs. The City finds that the housing shortage for households of lower and moderate income is detrimental to the public health, safety, and welfare and, further, that it is a public purpose of the City to seek assistance and cooperation from the private sector in making available an adequate supply of housing for persons of all economic segments of the community.

19.91.020 Purpose

The purpose of this Chapter is to enhance the public welfare and assure the compatibility between future housing development and the Housing Element of the City of Chula Vista General Plan through increasing the production of housing units affordable to households of lower and moderate incomes. It is the purpose of this Chapter to meet the City's General Plan goals to expand the supply of housing available to lower and Moderate-Income Households.

19.91.030 Definitions

A. "Affordability Agreement," means a legally binding, written agreement between an Applicant and the City, in form and substance satisfactory to the City Attorney, ensuring compliance with the requirements of this Chapter.

B. "Affordable Housing Cost" shall be as currently defined in Section 50052.5 of the California Health and Safety Code and any subsequent amendments or revisions.

C. "Affordable Rent" shall be as currently defined in Section 50053 of the California Health and Safety Code and any subsequent amendments or revisions. Notwithstanding the foregoing, the City or Housing Authority shall retain discretion to restrict units at Affordable Rents consistent with the maximum rents as published annually by the California Tax Credit Allocation Committee ("CTCAC").

D. "Applicant" means one (1) or more person(s) or entity(ies) that applies for a Residential Development in the City, regardless of whether the person(s) or entity(ies) have an ownership or leasehold interest in the property on which the development is proposed.

E. "Community Care Facilities" means facilities, places or buildings which are maintained and operated, subject to licensing by the California Department of Social Services, to provide nonmedical residential care, which may include home finding and other services, for children

ATTACHMENT 4

and/or adults, including: the physically handicapped; mentally impaired, mentally disordered, or incompetent; developmentally disabled; court wards and dependents; neglected or emotionally disturbed children; the addicted; the aged. Community Care Facilities include continuing care and retirement communities.

F. “Development Agreement” means an agreement entered into between the City and a developer pursuant to California Government Code Section 65864 et seq.

G. “For-Sale” means any dwelling unit, including but not limited to a condominium, townhome, other attached or detached single family dwelling unit, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which the dwelling unit is located for the creation of the unit in accordance with the Subdivision Map Act (California Government Code Section 66410 et seq.).

H. “Health Care Facilities” means facilities, places or buildings other than hospitals which are maintained and operated as a residence for patients and to provide long-term medical care, including nursing homes, intermediate care facilities, extended care facilities, hospice homes, and similar facilities which are licensed by the California State Department of Health Services, and defined in Health and Safety Code, Section 1200, et seq., which may include a lab, radiology, pharmacy, rehabilitation, and other similar services as accessory uses.

I. “Housing Authority” means the Chula Vista Housing Authority.

J. “Housing In-Lieu Fee” means a fee paid by an Applicant as an alternative to providing an Inclusionary Unit or a fraction of an Inclusionary Unit.

K. “Inclusionary Unit” means a newly constructed “Rental” or “For-Sale” dwelling unit which is: (1) provided (or caused to be provided) by an Applicant under the provisions of this Chapter; (2) made available and occupied by a lower-, Low- or Moderate-Income Household, as required under the provisions of this Chapter; (3) subject to occupancy and Affordable Rent for a period of not less than 55 years, or Affordable Housing Cost or sales price controls for a period of not less than 45 years, unless otherwise restricted through a value recapture agreement; (4) compatible with the design of other units in the residential housing development of which it is part in terms of exterior appearance, materials and quality finish; and (5) a similar unit type and bedroom mix to the overall Residential Development.

L. “Low-Income Household” shall have the same definition as “lower income households” in Section 50079.5 of the California Health and Safety Code and any subsequent amendments or revisions.

M. “Low-Income Unit” means a unit restricted to a Low-Income Household and rented or sold at an Affordable Rent or Affordable Housing Cost.

N. “Moderate-Income Household” shall have the same definition as “persons and families of moderate income” in Section 50093 of the California Health and Safety Code and any subsequent amendments or revisions.

O. “Moderate-Income Unit” means a unit restricted to a Moderate-Income Household and rented or sold at an Affordable Rent or Affordable Housing Cost.

ATTACHMENT 4

- P. “Rental” means a dwelling unit that is not a For-Sale dwelling unit.
- Q. “Residential Development” means a project containing at least one residential unit, including mixed use developments. For the purposes of this Chapter, a “Residential Development” also includes a subdivision or Common Interest Development, as defined in Section 4100 of the California Civil Code, approved by the City which consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of California Government Code Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units.
- R. “Review Authority” means the individual or official City body which has the responsibility and authority to review, and approve or disapprove, applications for land use entitlements.
- S. “Single Room Occupancy Unit” is a residential unit with living space with a minimum floor area of 150 square feet and a maximum of 400 square feet restricted to occupancy by no more than two persons. Kitchen and bathroom facilities may be wholly or partially included in each living space or may be fully shared.
- T. “Very Low-Income Household” shall be as currently defined in Section 50105 of the California Health and Safety Code and any subsequent amendments or revisions.
- U. “Very Low-Income Unit” means a unit restricted to a Very Low-Income Household and rented or sold at an Affordable Rent or Affordable Housing Cost.

19.91.040 Applicability and Exemptions

- A. The inclusionary requirements of this Chapter apply to all Residential Developments where the lots or units will be offered for sale or rent, including the residential component of mixed-use developments.
- B. Notwithstanding subsection A, to the following shall be exempt from this Chapter:
1. Projects that are not Residential Developments.
 2. Any project for which the city enters into a Development Agreement pursuant to California Government Code Section 65964 that provides inclusionary housing obligations comparable to this Chapter and alternative community benefits or for any project that is otherwise exempt under State law.
 3. Units to be constructed pursuant to an agreement with the City or other local government agency that restricts occupancy to Low- or Moderate-Income Households at an Affordable Housing Cost for a period of not less than 55 years (or 45 years for ownership units).
 4. Homeless shelters, Community Care Facilities, Health Care Facilities, and Single Room Occupancy Units.

ATTACHMENT 4

5. Dwelling units to replace previously existing dwelling units on the same lot, if the previous dwelling units were demolished or destroyed within the last five years prior to the date the building permit application for the replacement unit is submitted to the Development Services Department.
6. Construction of accessory dwelling units as defined by California Government Code Section 65852.2(j).
7. Home remodels and additions.
8. Density bonus units.
9. Mobile homes.
10. A residential project that was approved by the City prior to adoption of this Chapter. Notwithstanding the foregoing, this Chapter shall apply to any residential project that applies to modify its project after it has been approved by the City, and the modification increases the density of the project. In that scenario, this Chapter shall only apply to the additional units created by the modification.

19.91.050 Inclusionary Requirements.

- A. Residential or mixed-use development projects with fewer than ten units shall not be required to meet the provisions of this Chapter.
- B. For residential or mixed-use development projects of ten or more For-Sale units, except those projects complying with this Chapter in an alternative manner consistent with Section 19.91.080 below, 10% of the units shall be restricted For-Sale at an Affordable Housing Cost, as follows:
 1. The first Inclusionary Unit required by this Chapter shall be restricted For-Sale at an Affordable Housing Cost to a Moderate-Income Household;
 2. The second Inclusionary Unit required by this Chapter shall be restricted For-Sale at an Affordable Housing Cost to a Low-Income Household;
 3. All subsequent Inclusionary Units shall follow a similar order of distribution as above such that, to the extent possible, 50% of Inclusionary Units will be restricted For-Sale to Moderate-Income Households, and 50% to Low-Income Households.
- C. For residential or mixed-use development projects of ten or more Rental units, except those projects complying with this Chapter in an alternative manner consistent with Section 19.91.080 below, 10% of the units shall be restricted at an Affordable Rent, as follows:
 1. The first Inclusionary Unit required by this Chapter shall be restricted as a Moderate-Income Unit;

ATTACHMENT 4

2. The second Inclusionary Unit required by this Chapter shall be restricted as a Low-Income Unit; and

3. All subsequent Inclusionary Units shall follow a similar order of distribution as above such that, to the extent possible 50% of Inclusionary Units will be designated as affordable to Moderate-Income Households, and 50% to Low-Income Households.

D. Fractional Inclusionary Units that may result from the application of these requirements may be met by rounding up to provide an additional Inclusionary Unit consistent with this Section 19.91.050(C), or by paying a fractional Housing In-Lieu Fee as noted in Section 19.91.070.

E. If a proposed Residential Development project would result in the elimination of existing deed restricted affordable housing units, the affordable units must be replaced on a one-for-one basis with equally affordable deed restricted units with a new Affordability Agreement recorded that results in resetting and making consistent the duration of affordability consistent with the requirements of this Chapter.

19.91.060 Relationship to Density Bonus Provisions

An Applicant proposing Inclusionary Units, consistent with this Chapter 19.91, which also applies for a density bonus, consistent with Chapter 19.90 of this code, may count units affordable to lower or Moderate-Income Households toward both requirements, and shall be eligible to receive one or more incentives or concessions, pursuant to California Government Code Section 65915. Additional units allowed by the density bonus shall not be included in the total project units when determining the proportion of required Inclusionary Units in a Residential Development.

19.91.070 Housing In-Lieu Fees

Developing the required Inclusionary Units within the Residential Development, as required under Section 19.91.050, is preferred. However, as an alternative to those requirements, or for fractional units that result from application of Section 19.91.050, the requirement may be satisfied as follows:

A. The Applicant may satisfy the on-site Inclusionary Unit requirements, or fractional unit requirements, of Section 19.91.050 through payment of a Housing In-Lieu Fee in an amount that shall be calculated using the fee schedule established by resolution of the City Council.

B. In accordance with this paragraph, the Applicant may satisfy the Inclusionary Unit requirements of Section 19.91.050 by providing some of the required Inclusionary Units on-site and paying a Housing In-Lieu Fee for any required Inclusionary Units that are not included in the project. The amount of the Housing In-Lieu Fee shall be calculated by using the fee schedule established by resolution of the City Council.

C. The full Housing In-Lieu Fee shall be paid to the City prior to the issuance of the first building permit for the Residential Development project.

ATTACHMENT 4

D. Except as otherwise provided in this Chapter 19.91, all Housing In-Lieu Fees paid under this Chapter shall be paid to the City and deposited into the Housing Inclusionary Fund maintained by the City for use in producing, protecting, and preserving affordable housing, including site acquisition, development, rehabilitation, or preservation of affordable housing, homelessness prevention programs, first time homebuyer programs, or other affordable housing programs, and for affordable housing program administration, either directly by the City or in partnership with the Housing Authority or third-party affordable housing developers.

19.91.080 Alternative Compliance

The primary means of compliance with this Chapter shall be on-site Inclusionary Units or payment of Housing In-Lieu Fees consistent with Sections 19.91.050 and 19.91.070. The City will consider at its discretion certain alternatives to the provision of on-site Inclusionary Units or payment of the Housing In-Lieu Fee including the provision of Inclusionary Units off-site, directly by Applicant or through an agreement with a third party; dedication or conveyance of land; conversion of market rate units to affordable; credit for naturally occurring affordable housing; preservation of at-risk housing; or use of inclusionary credits. All alternative compliance measures must produce at least the same number and affordability of units that would have been provided on-site and are subject to review and approval by the City.

A. Inclusionary Units Provided Off-Site. An Applicant may provide (or may cause a third party to provide) Inclusionary Units off-site (“off-site units”).

1. Inclusionary Units provided off-site must be located within one mile of the development or located in an area within Chula Vista designated as “highest resource,” “high resource,” or “moderate resource” according to opportunity maps published by the California Tax Credit Allocation Committee at the time of permit application.

2. As part of the application submittal materials, if the Applicant itself will provide the Inclusionary Units off-site, the Applicant shall submit evidence that the Applicant owns, leases (pursuant to an executed a ground lease of at least the 55 years from the date offsite units would be produced), or has an irrevocable option to purchase, the site where the off-site Inclusionary Units are proposed to be located; alternatively, if Applicant enters into an agreement with a third party to provide the Inclusionary Units off-site, then the Applicant shall cause such third party to submit evidence that the third party owns, or has an irrevocable option to purchase, the site where the off-site Inclusionary Units are proposed to be located.

3. The City shall not issue a building permit for the Residential Development project until the Inclusionary Units off-site, whether they are to be constructed by the Applicant or third party, are under construction. Any agreement entered into by the Applicant and a third party to construct Inclusionary Units off-site is subject to review and approval by the City and must contain a clause that allows the City to enforce the rights in the agreement.

B. Land Dedication or Conveyance Alternative. An Applicant may offer to dedicate or convey land to the City or Housing Authority, situated on-site or off-site.

ATTACHMENT 4

1. Land offered under this section must be within the City's boundaries and must be designated for a general plan land use which allows multifamily units.
 2. The Applicant shall provide a financial analysis which demonstrates that the land offered is suitable for affordable housing development in terms of size; location; general plan land use designation; availability of sewer, water and transit services; absence of toxics; absence of environmental constraints; site characteristics and surroundings. Staff will recommend to the Review Authority whether the dedication should be accepted.
 3. The Applicant shall also submit evidence that the Applicant owns, or has an irrevocable option to purchase, the site proposed for dedication or conveyance.
 4. Land conveyed under this section shall be used for the development of affordable housing for households of lower income.
 5. Land shall be identified and offered for dedication or conveyance at the time of development application submittal. If the offer is accepted by the Review Authority, the land must be donated to the City or Housing Authority no later than the date of approval of the final subdivision map, parcel map or housing development application, and must have all the permits and approvals, other than building permits, necessary for development with the required number of Inclusionary Units.
 6. Concentration Determination. Each site proposed to be dedicated or conveyed to the City for construction of Inclusionary Units or proposed for one or more off-site Inclusionary Units shall be evaluated as to whether the placement of such units will overly impact an area with lower income units. If the site is within 1,000 feet of one or more existing or approved developments in which more than 50 percent of the units are, or will be, restricted to occupancy by households of lower incomes, impactation shall be found. The Review Authority may override a determination of impactation by making findings that local schools, services and adjacent uses will not be negatively impacted by the construction of Inclusionary Units at the proposed site.
- C. Conversion of Market Rate Units to Affordable. An Applicant may propose to convert existing market rate units within the City to affordable units in an amount equal to or greater than the required on-site inclusionary housing requirement, including any needed rehabilitation to ensure compliance with building, health and safety standards. In considering such proposals, the City will evaluate the public benefit to be gained from conversion, including the value of any rent reductions, scope of building rehabilitation, and resolution of nuisance activities.
- D. Preservation of At-Risk Housing. An Applicant may offer to purchase long term affordability covenants on an existing deed restricted affordable housing project at imminent risk of contract termination and conversion to market rate housing. The number of units preserved shall be equal to or greater than the required on-site inclusionary housing requirement and an additional 55 years beyond the expiring covenant(s). For the purposes of this section, "imminent risk" shall mean expiration of all affordability covenants within two years from the date of Applicant's proposal. Applicant must demonstrate that affordability covenants are unlikely to be renewed in the absence of such action.

ATTACHMENT 4

E. Credit for Additional Affordable Units. If an Applicant completes construction on a site of a greater number of affordable units than required by this Chapter, the additional units may be credited towards meeting the requirements of this Chapter for a future project unless otherwise regulated by a Sectional Planning Area Affordable Housing Plan. The Applicant may use credits in a future project or transfer the credits in writing to another developer. Credits will only be counted toward required affordable units with the same bedroom count, the same type (Rental or ownership), and required affordability targets. The credits must be used within 10 years of issuance. Projects which have received a density bonus, or which were constructed with an allocation of low-income housing tax credits, tax-exempt bonds, or other public subsidy, shall not be eligible for credits.

F. Incentive Credit. The City has a greater need for housing for Very Low- and Low-Income Households. To encourage developers to provide for these households, the City can in effect reduce the required affordable housing obligation when the Developer opts to provide Very Low- or Low-Income Units rather than Low- or Moderate-Income Units that are required under Section 19.91.050. The incentive credit shall be calculated as follows:

1. A credit of 6.0 units will be applied for every For-Sale unit restricted at an affordable cost for a Very Low-Income Household in lieu of a For-Sale Moderate-Income Unit otherwise required, and a credit of 3.5 units will be applied for every Rental unit restricted at an affordable cost for a Very Low-Income Household in lieu of a Rental Moderate-Income Unit otherwise required.
2. A credit of 5.0 units will be applied for every For-Sale unit restricted at an affordable cost for a Low-Income Household in lieu of a For-Sale Moderate-Income Unit otherwise required, and a credit of 3.0 units will be applied for every Rental unit restricted at an affordable cost for a Low-Income Household in lieu of a Rental Moderate-Income Unit otherwise required.
3. A credit of 1.5 units will be applied for every For-Sale or Rental unit restricted at an affordable cost for a Very Low-Income Household in lieu of a For-Sale Low-Income Unit or Rental unit otherwise required.

19.91.090 Inclusionary Unit Development Standards

A. Subject to the review and approval of the City, all Inclusionary Units shall be:

1. Dispersed throughout the residential project;
2. Proportional, in number of bedrooms, to the market rate units;
3. Comparable to the market rate units included in the residential project in terms of size, design, materials, finish quality, and appearance; and
4. Permitted the same access to project amenities and recreational facilities as market rate units.

ATTACHMENT 4

B. Notwithstanding the foregoing, the City may allow Inclusionary Units to be provided in a different manner in a separate structure if it is determined that such an arrangement is necessary to secure an allocation of Low-Income Housing Tax Credits or other affordable housing financing.

C. Timing of Construction. All Inclusionary Units in a project shall be constructed concurrent with, or before the construction of the market rate units. If the City approves a phased project, a proportional share of the required Inclusionary Units shall be provided within each phase of the residential project.

D. Accessory dwelling units shall not be counted towards meeting a project's inclusionary requirements.

E. Units for Sale. All properties offering For-Sale Inclusionary Units shall abide by Chapter 19.93 to offer the units at affordable prices.

F. Rental Units.

1. Time Limit for Inclusionary Restrictions. A Rental Inclusionary Unit shall remain restricted to the target income level group at the applicable Affordable Rent for fifty-five (55) years.

2. Certification of Renters. The owner of any Rental Inclusionary Units shall certify to the City, on a form provided by the City, the income of the tenant at the time of the initial Rental and annually thereafter.

3. Forfeiture. Any lessor who leases an Inclusionary Unit in violation of this Chapter shall be required to forfeit to the City all money so obtained. Recovered funds shall be deposited into the Housing Inclusionary Fund.

4. All properties offering Rental Inclusionary Units shall abide by Chapter 19.94 regarding Affordable Housing Marketing and offer the units at affordable prices.

G. General Prohibitions.

1. No person shall sell or rent an Inclusionary Unit at a price or rent in excess of the applicable Affordable Housing Cost or Affordable Rent placed on the unit in accordance with this Chapter.

2. No person shall sell or rent an Inclusionary Unit to a person or persons that do not meet the income restrictions placed on the unit in accordance with this Chapter.

3. No person shall provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which that person is not eligible.

H. Principal Residency Requirement.

1. The owner or lessee of an Inclusionary Unit shall reside in the unit as such person's principal residence except as may be otherwise required due to active military deployment, medical reasons, or other hardship, subject to the City's review and approval

ATTACHMENT 4

2. No owner or lessee of an Inclusionary Unit shall lease or sublease, as applicable, an Inclusionary Unit without the prior permission of the City.

19.91.100 Inclusionary Housing Plan and Affordability Agreement

- A. The Applicant shall comply with the following requirements at the times and in compliance with the standards and procedures in the City's regulations for the implementation of this Chapter.
 1. Inclusionary Housing Plan. Upon application to the City for discretionary approval which would alter or vary from the requirements of this Chapter, an Applicant shall submit an inclusionary housing plan detailing how the provisions of this Chapter will be implemented for the proposed project. If the inclusionary housing plan includes alternatives to on-site units, then the inclusionary housing plan shall be subject to the review and approval of the City Council. All other inclusionary housing plans shall be subject to the approval of the City, subject to appeal to the Planning Commission. Any such appeal shall be filed within ten working days of the City's decision.
 2. Affordability Agreement. Prior to building permit issuance, an Applicant shall execute and cause to be recorded an Affordability Agreement. Once the Residential Development including Inclusionary Units has received its final discretionary approval, the Applicant shall file an application, including payment of any processing and monitoring fees, with the Development Services Department for approval and finalization of the Affordability Agreement.
- B. An Applicant for a project providing Inclusionary Units consistent with this Chapter, as well as affordable units consistent with the provisions of Chapter 19.90 of this code, shall enter into a single affordable housing agreement with the City.
- C. Discretionary Approvals. No discretionary approval shall be issued for a project subject to this Chapter until the Applicant has submitted an inclusionary housing plan.
- D. Issuance of Building Permit. No building permit shall be issued for a project subject to this Chapter unless the Department of Housing and Homeless Services has approved the inclusionary housing plan, if such a plan is required by this Chapter, and any required Affordability Agreement has been recorded encumbering the project site.

19.91.110 Petition for Waiver or Reduction

An Applicant may request a waiver or reduction in the requirements of this Chapter 19.91, provided that the Applicant provides evidence of economic hardship, such as inability to achieve a reasonable commercial profit, which must be verified by an independent third-party, chosen by the City, at the Applicant's sole cost. Such review would include a comparison of the Applicant's projected costs and Rental/sale revenue assumptions with current market standards, including a

ATTACHMENT 4

market rate of return on cost. The waiver or reduction request may be processed ministerially by the City Manager or designee, with the option of review and approval by the City Council.

19.91.120 Administration and Enforcement.

A. The City Council, by resolution, may from time to time adopt procedures, policies, rules, guidelines, and requirements, including the adoption of processing and administrative fees, to implement, administer, and/or enforce the provisions of this Chapter.

B. The City Manager or designee is authorized to determine the number of dwelling units contained within a particular Residential Development, if a determination is needed to resolve a disagreement. When a question arises regarding the meaning or interpretation of any provision of this Chapter to any specific circumstances or situation, the City Manager or designee is authorized to render a decision thereon in writing.

C. The City shall keep on file and available for public review a copy of the current income schedules and utility allowances.

D. Any violation of this Chapter constitutes a misdemeanor and may be subject to the penalties and remedial procedures set forth in this Code.

E. The provisions of this Chapter shall apply to all owners, Applicants, developers, their agents, successors, and assigns that propose a Residential Development, occupy an Inclusionary Unit, or both. All Inclusionary Units shall be sold or rented in accordance with this Chapter and any regulations and administrative guidelines adopted pursuant to this Chapter.

F. Any individual who sells or rents an Inclusionary Unit in violation of the provisions of this Chapter, the guidelines, or the Affordability Agreement shall be required to forfeit to the City all monetary amounts obtained in violation of those provisions. Recovered funds shall be deposited into the Housing Inclusionary Fund.

G. The City Attorney may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including, but not limited to:

1. Actions to revoke, deny, or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; and
2. Actions for injunctive relief or damages.

H. In any action to enforce this Chapter or an Affordability Agreement recorded hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality

ATTACHMENT 4

shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Stacey Kurz
Director of Housing & Homeless Services

Marco A. Verdugo
City Attorney