

## **Chapter 18.32**

### **Inclusionary Housing Requirements**

Sections:

- 17.32.010 Purpose
- 17.32.020 Definitions
- 17.32.030 Inclusionary Housing Applicability and Exempt Projects
- 17.32.040 Inclusionary Housing Requirements
- 17.32.050 Alternative Equivalent Action
- 17.32.060 ~~Requirements for Inclusionary Units~~ Housing Phasing, Agreements and Affordability
- 17.32.070 Inclusionary Housing Incentives
- 17.32.080 Inclusionary Housing Plan ~~and~~
- 18.32.085 Inclusionary Housing Regulatory Agreement
- 17.32.090 Inclusionary Housing Trust Fund
- 17.32.100 Enforcement of Affordable Housing Requirements

~~17.32.110 — Control of Affordable Unit Resale~~

#### **17.32.010 - Purpose**

This Chapter requires the development ~~and availability~~ of affordable housing ~~by ensuring the addition of affordable in new development projects providing 5 or more housing units to the City's housing stock in proportion to the overall increase in new housing units that are intended for sale or rent.~~

A. This Chapter establishes standards and procedures to implement the inclusionary housing requirements identified in ~~Section 17.32.040~~ (Inclusionary Housing Requirements).

B. This Chapter is intended to implement the requirements of ~~State law (Government Code Sections 65583, and 65913, and 65915, et seq.) and the Housing Element of the General Plan, by offering incentives for increasing the development production of housing that is residential units affordable to the types of low, moderate and median income households and qualifying residents identified in Section 17. This Chapter complements the density bonus provisions of Chapter 18.31.030 (Density Bonus Eligibility), and assures that new housing development contributes to attaining the City's housing goals.~~

~~17~~(Ord. 930, § 2, passed 06-12-2017)

#### **18.32.020 - Definitions**

The specialized and technical terms and phrases used in this Chapter are defined in Article 10 (~~Glossary & Index~~ Definitions), under "Affordable and Inclusionary Housing Requirements."

"Effective date of this Chapter" means the date of Local Coastal Program certification by the Coastal Commission pursuant to Section 13544 of Title 14 of the California Code of Regulations.

~~17~~(Ord. 930, § 2, passed 06-12-2017)

#### **18.32.030 - Inclusionary Housing Applicability and Exempt Projects**

A. **Applicability.** The requirements of this Chapter apply to all housing developments proposed with ~~four~~ 5 or more dwelling units or a subdivision proposing 5 or more lots, except as noted in Subsection B. ~~The requirements (C) of Chapter 17.32 do not replace, supersede or modify the independent requirement for a CDP-approved pursuant to the otherwise applicable policies and standards of the certified LCP. However, Sections 17.32.070, 17.32.090, 17.32.100, and 17.32.110 shall not apply to the review and approval of Coastal Development Permits this Section.~~

1. ~~Compliance with B.~~ **Conversion of rental project to for-sale project.** Residential projects approved as rental developments after the requirements effective date of this Chapter shall be verified by subject to its inclusionary requirements if the review authority prior to submittal of an application as part project or any of the

~~Voluntary Conceptual Preliminary Approval of Incentives 17.32.070 (1) process, or as part of the required application process, as applicable~~ rental units therein are proposed to convert to for-sale units.

~~2. Each inclusionary dwelling unit required by this Chapter shall be sold or rented in compliance with this Chapter.~~

**BC. Exempt projects.** The following residential projects are exempt from the inclusionary housing requirements of this Chapter:

~~1. Project with prior approval.~~ A residential project that has obtained:

- ~~a. Discretionary approval (e.g., a Coastal Development Permit, Use Permit, Design Review, Planned Development Permit, or Variance approval) before the effective date of this Chapter; or~~
- ~~b. A Building Permit before the effective date of this Chapter; or~~
- ~~c. A Certificate of Occupancy before the effective date of this Chapter.~~

~~2. Exempt by State law.~~ A residential project that is exempt from this Chapter by State law.

~~31. Project with vested rights.~~ A residential project for which the City has entered into a development agreement before the effective date of this Chapter, or which otherwise demonstrates a vested right to proceed without complying with this Chapter.

~~42. Involuntarily damaged or destroyed dwelling unit.~~ Any dwelling unit(s) in existence prior to the effective date of this Chapter that is (are) damaged or destroyed by fire or natural catastrophe so long as the square footage and use of the replacement or repaired structure remain(s) the same.

~~3. Affordable housing units.~~ All affordable units shall be exempt from the inclusionary housing requirement, including those in mixed-income developments, mixed-use developments, sweat equity projects, senior housing projects, housing projects for people with special needs, and other affordable housing units as determined by the Director. In order to be exempt from the inclusionary housing requirements the affordable housing units shall be affordable for a minimum of 15 years.

~~4. Small project.~~~~5. Project Size.~~ A residential development project with ~~no more than three~~4 or fewer dwelling units or a minor subdivision.

~~5. One-bedroom Rental Units.~~~~residential units.~~ One-bedroom ~~rental~~residential units that are less than 600 square feet ~~in a multi-family development project will~~shall be exempt from the inclusionary requirement in order to encourage the production of small ~~rental~~-units.

~~176. Other exemptions as approved by City Council.~~

(Ord. 930, § 2, passed 06-12-2017)

### **18.32.040 - Inclusionary Housing Requirements**

**A. Number of inclusionary housing units required for ~~multi-family or condominium~~nonsubdivision projects with 5 or more residential units.**

~~1. 1. Developments of 4-6~~All developments that include 5 to 10 residential units. ~~Must~~All rental and "for sale" developments of 5 to 10 units must construct ~~one~~20% of the ~~4-6~~residential units as a "small-secondary unit" ~~to be~~ "affordable by design" as defined in Article 10 (Definitions).

~~2. Glossary & Index) or one of the 4-6 units as an~~Developments that include more than 10 residential units to be sold shall include inclusionary unit. ~~The affordable unit shall be subject to all the requirements of inclusionary units in compliance with Section 17.32.060 (Requirements for Inclusionary Units).~~units as follows:

**2. — ~~Developments of 7 units or greater.~~ ~~Must.~~ If 11 to 20 residential units, the applicant shall construct ~~15 percent~~10% of all new ~~dwelling~~dwellings as inclusionary units, or complete an approved alternative equivalent action, subject to all requirements in compliance with this Chapter.**

**~~a.~~ If 21 or more residential development as affordable units, the applicant shall construct 15% of all new dwellings as inclusionary units, or complete an approved alternative equivalent action, subject to all requirements in compliance with this Chapter.**

**3. Development projects that include more than 10 residential rental units shall comply with requirements below, only if the developer enters into a contract with the City of Fort Bragg and requests and receives 1 or more incentives or a density bonus:**

**a. If the project includes 11 to 20 residential rental units, the applicant shall construct 10% of all new dwellings as inclusionary units, or an approved alternative equivalent action, subject to all requirements in compliance with this Chapter.**

**b. If 21 or more residential units for sale, the applicant shall construct 15% of all new dwellings as inclusionary units, or an approved alternative equivalent action, subject to all requirements in compliance with this Chapter.**

**c. As an alternative to constructing inclusionary units, the developer may pay an in-lieu fee that is calculated based on the requirements outlined in Subsections (A)(1) and (2) of this Section.**

**4. ~~Fractional units.~~ If the calculation of the required number of units results in a fraction of ~~inclusionary~~ units of 0.5 or greater, the developer must construct the ~~next higher whole number of affordable units~~additional inclusionary unit, pay a proportional fraction of the in-lieu fee, or perform an alternative equivalent action approved by the Council in compliance with Section 17.32.050 (Alternative Equivalent Action) for the fraction. The rounded unit may be built at the higher required income level, as described in Subsection 17.32.060.A. (Requirements for Inclusionary Units, Affordability Requirements). If the calculation of the required number of units results in a fraction of affordable units of less than 0.5, the developer may round down to the next lower number of affordable units. The rounded down unit may be built at the higher required income level, as described in Subsection 17.32.060.A. (Requirements for Inclusionary Units, Affordability Requirements).**

**B. ~~B.~~ — Inclusionary requirement for subdivision projects with 5 or more residential lots.**

**1. If a proposal involves the major subdivision of a residentially zoned parcel ~~of five acres or more~~, the inclusionary requirement shall be met either through the development: (a) the construction of inclusionary housing; (b) the donation of net land for the construction of inclusionary housing; or (c) an alternative equivalent action (§ 18.32.050).**

**a. All major subdivisions that result in the creation of 5 to 10 lots shall be deed restricted such that 20% of the lots must include residential units to be “affordable units if the proposed project includes housing development, or if the project does not include housing development through the dedication of 15 percent of the land for the development of affordable units by design” as defined in Article 10 (Definitions).**

**b. All major subdivisions that result in the creation of 11 to 20 lots shall require: (i) that 10% of the ~~net~~2. The vacant land shall be ~~dedicated~~donated to the City or its designated agency for the construction of ~~affordable units~~inclusionary units; (ii) the construction of 10% of the units as inclusionary units; or (iii) an approved alternative equivalent action. Land donations must have the appropriate General Plan designation, zoning, and development standards to permit the feasible development of affordableinclusionary units and be served by adequate public facilities and infrastructure.**

**c. ~~3~~All major subdivisions that result in the creation of more than 20 lots shall require: (i) that 15% of the net land be donated to the City or its designated agency for the construction of inclusionary units; (ii) the construction of 15% of the units as inclusionary units; or (iii) an approved alternative equivalent action. Land donations must have the appropriate General Plan designation, zoning, and development**

standards to permit the feasible development of inclusionary units and be served by adequate public facilities and infrastructure.

2. The satisfaction of the inclusionary requirement for major/~~minor~~ subdivisions shall be included in and described on the tentative map at the time of application. The description shall include acreage and location of ~~the dedicated~~ any proposed land donation.

(Ord. 930, § 2, passed 06-12-2017)

~~18C. The provisions of this Section do not replace, supersede or modify the independent requirement for a CDP-approved pursuant to the otherwise applicable policies and standards of the certified LCP.~~

#### **17.32.050 - Alternative Equivalent Action**

A developer of a project with residential project units may comply with the requirements of ~~Subsection 17§~~ 18.32.040.A (Number of units required), (Inclusionary Housing Requirements) above by an alternative equivalent action approved by the City Council in compliance with this Section.

**A. Scope of alternative proposals.** A proposal for an alternative equivalent action may include:

1. **Construction of secondary units.** For single-family subdivision projects of less than between 11 and 30 units/lots, a developer may build small secondary units in lieu of inclusionary units. Two "small secondary units" are equal to ~~one~~ one inclusionary unit. Single-family subdivision projects with 30 units/lots or more may only utilize secondary units as an alternative equivalent action for the first 30 units/lots of the project; or
2. **Dedication/Donation of vacant land.** Land donations for ~~affordable housing~~ the construction of inclusionary units as part of a subdivision without development or as an alternative equivalent action must meet the following requirements described:
  - a. Have the appropriate General Plan designation, zoning, and development standards to permit the feasible development of affordable units in an amount equal to at least 15% of the units in the residential development;
  - b. Be served by adequate public facilities and infrastructure; and
  - c. ~~Subsection 17.31.030.E (Density Bonus Eligibility);~~ Be subject to an affordability covenant or deed restriction to ensure continued affordability; or
3. Construction of inclusionary units on another site subject to Council approval; or
4. ~~Conversion of existing units.~~ The acquisition, substantial rehabilitation, and enforcement of required rental/sales price restrictions on existing dwelling units in compliance with this Chapter.
4. Payment of an inclusionary housing in-lieu fee, in an amount as set forth in a resolution of the City Council, which may be amended from time to time to reflect inflation and changed conditions in the City and the region; or
5. Any on-site or off-site alternative equivalent action recommended by the Community Development Committee and approved by City Council; or
6. A combination of the above strategies, as approved by City Council.

**B. Content of proposal.** A proposal for an alternative equivalent action shall show how the alternative action proposed will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of ~~Subsection 17§~~ 18.32.040.A (Number of units required), (Inclusionary Housing Requirements). If required by the City, the applicant ~~will~~ shall provide or pay for an independent third party review/analysis of the equivalence of the proposed alternative action.

**C. Review and approval.** A proposal for an alternative equivalent action shall ~~require Use Permit approval be specified in compliance with the inclusionary housing plan submitted with this Section, the applications for the residential development. The proposal shall be processed concurrently with the residential development applications except that the review authority shall be the Council, with a recommendation by the Commission. Review and approval may occur concurrent with project approval by the Council if the Council is the final review authority for the project. Except for donations of land, a proposed an alternative equivalent action will also require a Coastal Development Permit shall be the Council.~~

**D. Criteria for approval.** A proposal for an alternative equivalent action to satisfy the requirements of this Chapter may be approved at the Council's ~~sole~~ discretion, if the Council first determines that the alternative action will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Subsection 17.32.040.A (Number of units required). ~~In reviewing a proposed alternative equivalent action, the City shall consider all feasible alternative equivalent actions and their effects on coastal resources. The City shall only grant an alternative equivalent action if the City determines that the alternative equivalent action requested by an applicant pursuant to this section will not have any adverse effects on coastal resources. The City may grant approval of an alternative equivalent action that does not have an adverse effect on coastal resources. If all feasible alternative equivalent actions would have an adverse effect on coastal resources, the City shall not grant any alternative equivalent actions.~~ otherwise applicable requirements of § 18.32.040 (Inclusionary Housing Requirements).

~~17~~(Ord. 930, § 2, passed 06-12-2017)

#### 18.32.060 - Requirements for Inclusionary Units

##### A. Housing Phasing, Agreements and Affordability Requirements.

###### 1. Rental units.

a. ~~One third of the inclusionary units that are required to be constructed along with rental market rate units shall be available at affordable rents to very low income households whose annual household income does not exceed 50 percent of area median income; one third of units shall be made available at affordable rents that are affordable to low income households whose annual household income does not exceed 80 percent of area median income; and, the remaining one third of the inclusionary units shall be available at affordable rents to moderate households whose annual household income does not exceed 120 percent of area median income with the first priority for rental given to essential public service employees within the City as defined in Article 10 (Glossary & Index), who meet income eligibility requirements.~~

A. Timing and phasing. ~~Where the number of required inclusionary units results in fractional portions of units at each income level, the small fractional portion should be added to the larger fractional portion to achieve whole numbers of unit obligation. Projects shall prioritize the development of inclusionary units, where fractional units are combined to achieve a whole unit obligation, first to moderate income, then low income, and finally very low income households.~~

e. ~~With respect to any particular rental project, the Council may waive all or a portion of the affordability requirements identified in Subsection 17.32.040.A (Number of units required) above, to the extent necessary to avoid a hardship or taking, upon a showing by the applicant that imposition of the requirement on the residential project will cause undue hardship or legal taking under the California or United States constitutions, and that the residential project will contribute significantly to affordable housing opportunities in the City. Waivers are not applicable to projects developing ownership units.~~

###### 2. For sale units.

a. ~~One half of the inclusionary units that are required to be constructed in connection with the construction of market rate units intended for owner occupancy shall be available at sales prices affordable to households whose annual household income does not exceed 100 percent of area median income as defined in Article 10 (Glossary & Index). The remaining one half of the required affordable inclusionary units shall be available at sales prices affordable to moderate income households whose annual household income does not exceed 120 percent of area median income with priority given to~~

~~essential public service employees within the City as defined in Article 10 (Glossary & Index), who meet all other income eligibility requirements.~~

~~b. — Where the number of required inclusionary units results in fractional portions of units at each income level, the small fractional portion should be added to the larger fractional portion to achieve whole numbers of unit obligation at each income level. Projects shall prioritize the development of inclusionary units, where fractional units are combined to achieve a whole unit obligation, first to moderate income and then median income households.~~

~~e. — Small secondary units that are built in lieu of inclusionary for sale units shall be rented at a rent that is affordable to moderate income households whose annual household income does not exceed 120 percent of area median income, with priority given to essential public service employees within the City as defined in Article 10 (Glossary & Index), who meet all other income eligibility requirements. These requirements will be maintained through covenants and/or deed restrictions.~~

~~d. — Small secondary units that are built in lieu of for sale units, shall be rented by the new home owner at a rent that is affordable to moderate income households whose annual income does not exceed 120 percent of area median income with priority given to essential public service employees within the City as defined in Article 10 (Glossary & Index), who meet all other income eligibility requirements. These requirements will be maintained through covenants and/or deed restrictions.~~

~~**B. — Location and Type of Affordable Units.** Required inclusionary units shall be:~~

~~1. — **Dispersed.** Dispersed throughout the residential project or, subject to the approval of the Director, may be clustered within the residential project when this furthers affordable housing opportunities;~~

~~2. — **Proportional.** The type and location of affordable units should be proportional to the market rate dwelling units in number of bedrooms and location within the project; and~~

~~3. — **Comparable.** Inclusionary units should be comparable with the design and use of the market rate dwelling units in terms of appearance, materials, and finished quality. Subject to the approval of the Director, the square footage of the affordable units and the interior features in the affordable units need not be the same as, or equivalent to those in market rate dwelling units in the same residential project, so long as they are of good quality and are consistent with contemporary standards for new housing.~~

~~**C. — Timing and Phasing of Unit Construction.** All inclusionary dwelling units within a residential project shall be constructed concurrent with, or before, the construction of the market rate dwelling units. If the City approves a phased project, the required inclusionary dwelling units shall be provided within each phase of the residential project with their number in proportion to the total number of units in the phase in relation to the total number of units in the project, or phased in another sequence acceptable to the City as approved by the Council review authority. Certificates of occupancy will be issued for increments of no more than seven market rate units before Certificatecertificates of Occupaneyoccupancy are issued for the corresponding affordableinclusionary unit(s).~~

~~**B. — Recordation of inclusionary housing agreement.** The recordation of the inclusionary housing regulatory agreement, as described in § 18.32.085, shall take place at the same time as the final or parcel map or, where a map is not being processed, before issuance of any certificates of occupancy.~~

~~**C. — Affordability requirements.**~~

~~1. — **For-sale units.** One-half of the required inclusionary units shall be available at sales prices affordable to households whose annual household income does not exceed 100% of area median income as defined in Article 10 (Definitions). The remaining 1/2 of the required inclusionary units shall be available at sales prices affordable to moderate income households whose annual household income does not exceed 120% of area median income with priority given to essential public service employees within the City as defined in Article 10 (Definitions).~~

**2. Rental units.** One-half of the required units shall be available at rents affordable to low income households whose annual household income does not exceed 80% of area median income; and the remaining half of the inclusionary units shall be available at affordable rents to moderate income households whose annual household income does not exceed 120% of area median income, with priority for rental given to essential public service employees within the City as defined in Article 10 (Definitions), who meet income eligibility requirements.

**D. Continued Affordability-~~affordability.~~** The procedures to maintain the continued affordability of the inclusionary dwelling units built to fulfill the requirements of this Chapter units shall be included in the ~~planning-permit~~ inclusionary housing plan submitted with the development project application and shall be subject to approval by the City as described in § 18.32.080.

~~1. 1. Restrictions to ensure continued~~ **Term of affordability.**

a. For-sale inclusionary units shall be affordable for 15 years. If a “for sale” inclusionary unit is resold during this term, the equity accrued shall be apportioned as follows:

i) Equity accrual to the property owner during the first 5 years shall be limited to equity accrued through the mortgage and down payments (less all outstanding mortgage, taxes and liens); it shall not include market related appreciation. At the resale of an inclusionary unit within the first 5 years of the term, all market rate equity shall be paid to the City’s Housing Trust Fund.

ii) Equity accrual to the property owner who sells an inclusionary unit in years 6 through 15 shall include 10% of the market appreciation per year of ownership, after repayment of the mortgage, taxes and any outstanding liens. The remaining market rate equity shall be paid to the City’s Housing Trust Fund.

iii) After 15 years the unit will not be an inclusionary housing unit, and resale may proceed without a payment to the City’s Housing Trust Fund.

~~b. a. Minimum time for continued affordability.~~ Each required inclusionary unit shall be reserved for very low to moderate income households in the ratios required by Subsection A (17.32.060) at the applicable affordable housing cost for a minimum of 45 years in the case of units for sale; and for a minimum of 55 years in the case of rental units in accordance with the State Community Redevelopment Law, except where the Council approves an alternative restriction that it determines will be equally effective in achieving the affordable housing goals and objectives of the Housing Element. The continued availability of moderate income units in a condominium project shall be maintained for a minimum of 45 years. Inclusionary housing rental units shall be affordable for 25 years.

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~~b. Inclusionary housing agreements required.~~ The recordation of the Inclusionary Housing Regulatory Agreement, as described in Section 17.32.080, shall take place at the same time as the final or parcel map or, where a map is not being processed, before issuance of Certificates of Occupancy for the affordable dwelling units. The agreement must be accepted by the Director and be consistent with the requirements of this Chapter.

**2. Resale restrictions to ensure continued affordability.** In order to maintain the availability of the for-sale affordable inclusionary units constructed in compliance with this Chapter, the following resale conditions of the units shall apply be restricted as follows:

**a. Written notice of intent to sell, City option.** The resale Resale restrictions shall provide that, before offering an inclusionary unit for sale, the seller shall provide written notice to the Director, by certified mail, of their intent to sell. The City or its designee shall be granted an option to purchase the unit for sale, with a maximum of 60 days to exercise the option, and a maximum of 120 days to conclude the purchase, in addition to the time for exercising the option, at the maximum price which could be charged to an eligible household.

**b. Payment of Inclusionary housing in-lieu fee.** If the unit is sold prior to the 15-year term of affordability, the seller shall pay to the City's Housing Trust Fund an inclusionary housing fee in the amount calculated according to Subsection (D)(1)(a) of this Section. This fee shall be paid as part of the escrow process for the resale of the unit.

**3. Rental restrictions.** An inclusionary unit may be leased or subleased to an income qualified eligible renter (per Subsection (C)(2) of this Section, Affordability requirements for rental units) upon review of the renter's income qualifications by the Director.

~~**b. Maximum sales price.** The maximum sales price for the resale of an inclusionary unit for sale shall not exceed the seller's purchase price, adjusted for the percentage increase in area median income since the seller's purchase, plus the value of substantial structural or permanent fixed improvements to the property which have been pre-approved by the Director, plus the cost of reasonable seller's broker fee, as determined by the Director. For purposes of this Subparagraph, area median income shall be calculated based upon the household size used to determine the original affordable sales price.~~

~~**c. Eligible purchasers.** After the first sale, affordable units shall be sold and resold only to households determined by the City to be eligible for the affordable units in compliance with this Chapter. Preference shall go to those households with the highest affordability rating based upon the eligibility requirements described in Subsection 3 below.~~

~~**d. Additional fees prohibited.** The seller shall not levy or charge any additional fees nor shall any "finder's fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.~~

~~**e. Declaration of restrictions.** The seller of the affordable unit shall attach and legally reference in the grant deed conveying title of the affordable unit a declaration of the restrictions provided by the City, stating the restrictions imposed in compliance with this Chapter. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Chapter. The grant deed shall afford the grantor and the City the right to enforce the declaration of restrictions.~~

~~**f. Prohibitions.** Prohibitions include, but are not limited to, no eligible purchaser or eligible renter of an affordable inclusionary unit shall be permitted to lease or sublease the affordable unit without prior written consent of the City, said consent being contingent upon a showing of hardship circumstances.~~

**3. Eligibility of renters and purchasers households.**

~~a1. No household shall be allowed to rent, purchase, or occupy an affordable inclusionary unit, unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by an inclusionary housing agreement or resale restrictions.~~

~~2. The eligibility of b. Eligible potential occupants of affordable inclusionary units will shall be qualified determined on the basis of household income at the time of rental or purchase as defined in this Chapter, the relationship between household size and the size of the available units, and any further criteria required by law and/or established by the City Council. The affordable housing developer shall use an equitable selection method established in conformance with the terms of this Chapter and in compliance with State and Federal law. Selection of qualified from eligible households shall be based on the affordable housing priorities established below:~~

~~i)a. **Priority 1.** Essential public service employees, as defined in Article 10 (Definitions), City of Fort Bragg employees, and/or child care workers employed in Fort Bragg. Forty percent of the available Affordable Units shall be first made available to any qualified essential public service employees. If essential public service employees do not utilize 40 percent of purchase the affordable inclusionary units, then they the units shall be made available to other qualified eligible Priority 1 applicants, prior to being made available to Priority 2 applicants.~~

~~ii)h.~~ **Priority 2.** Other ~~qualified renters or purchasers~~eligible households who live in Fort Bragg and who are also employed within Fort Bragg City limits. When the list of Priority 2 applicants is exhausted, units may be ~~rented or sold to Priority 3 applicants~~households.

~~iii)c.~~ **Priority 3.** Other ~~qualified renters or purchasers who are residents of Fort Bragg City limits or who work in Fort Bragg City limits.~~

~~Essential public service employees include: City of Fort Bragg sworn police officers, Fort Bragg Fire Protection Authority fire fighters, Fort Bragg Unified School District teachers, and Mendocino Coast District Hospital health-care workers.~~

~~eligible.~~—The City or its designee will maintain a list of priority households. Households selected to occupy the inclusionary units shall be selected first from this priority list. Priority households will be given an affordability rating based on the eligibility standards. However, placement on this list will not serve as the qualification for an inclusionary unit, rather it is a resource that developers and owners are encouraged to use to identify priority households, which they can then qualify.

#### **EE. Annual monitoring.**

- ~~1. Rental and for sale~~Inclusionary units ~~will~~shall be monitored on an annual basis by the City (or its designee) to ensure that units have not been ~~re-rented or re-sold~~resold to an unqualified ~~tenant or owner~~ (on the basis of income). ~~Property owners of rental projects will self-certify that they are renting affordable units to eligible households, and the City reserves the right to audit these self-certifications.~~
- Monitoring may be achieved by a third party, may include self-certification, may involve review of utility records, or may include any other reasonable method of monitoring as approved by the Director.
- All ~~tenants and~~ owners that initially qualified for inclusionary housing ~~will~~ retain their right to inhabit their inclusionary housing unit should their income increase above qualifying levels.

#### **F. Annual monitoring and transfer fees.**

- ~~1. Rental units.~~ For each rental inclusionary unit, the property owner will be required to pay an annual monitoring fee for the term of required affordability. The fee shall be set by City Council Resolution from time to time and shall be specified in the required Inclusionary Housing Agreement.
- ~~2. For sale units.~~ For each inclusionary unit for sale, each home owner will be required to pay a transfer fee in an amount set by City Council Resolution from time to time for a change of ownership during the term of required affordability.

#### **G. Discretionary permit and map requirements for projects subject to this ~~chapter~~Chapter.**

- Discretionary permits.** Each discretionary permit for a residential project that is subject to this Chapter and approved after the effective date of this Chapter shall contain a condition detailing the method of compliance with this Chapter.
- Final or Parcel Maps.** Each Final ~~and/or~~ Parcel Map shall have a written notation indicating that compliance with the requirements of this Chapter shall be met for each parcel created by the map, unless the requirements of this Chapter have been satisfied by ~~land dedication or~~ an alternative equivalent action approved by the City.

**H. Requirements for ~~Certificate~~certificate of ~~Ocupaney~~occupancy or ~~Final Building Inspection~~final building inspection.** A temporary or permanent ~~Certificate~~certificate of ~~Ocupaney~~occupancy shall not be issued, ~~or a Final Building Inspection~~final building inspection approved, ~~or authorized~~ for any new dwelling unit in a residential project with more than 4 dwelling units of a major subdivision until:

- The developer has satisfactorily completed the requirements of this Chapter (e.g., on-site construction of affordable units or alternative equivalent actions); or

2. The developer has demonstrated to the satisfaction of the Director that an exemption as described in Section 17.32.030 (Inclusionary Housing Applicability and Exempt Projects) is ~~appropriate~~applicable.

~~17~~(Ord. 930, § 2, passed 06-12-2017)

### **18.32.070 - Inclusionary Housing Incentives**

A. ~~Process~~Authority for describing incentives. A residential development that complies with the inclusionary housing requirements in ~~Subsection 17.32.040.A. (Number of units required),~~ through the actual construction of inclusionary units, shall be entitled to the following procedures and incentives:

#### **1. Voluntary ~~conceptual preliminary approval~~ pre-application review of requested incentives.**

~~a. Before the submittal of any formal application for a General Plan amendment, rezoning, Coastal Development Permit, Use Permit, Tentative Map, or other permit or entitlement describing and specifying the location, number, size, and type of the housing development, the developer may submit a letter of request for incentives identifying any requests for density bonus, incentives, modifications, or waivers of development or zoning standards necessary to make construction feasible for the proposed development, including the inclusionary units. The Council shall review the preliminary development proposal and the letter of request for incentives within 90 days of submittal at a public hearing and indicate conceptual preliminary approval or disapproval of the proposed development and request for incentives, modifications, or waivers of development or zoning standards.~~

a. Before the submittal of any formal application for a housing development, the developer may request a pre-application review by the Director or the City Council of requested incentives.

b. Preliminary approval or disapproval ~~Voluntary pre-application review~~ shall not bind the Director or City Council, but rather shall be subject to the discretion of the Council to review authority to accept, reject, or modify its any preliminary recommendations based upon a full review of the formal application, including all pertinent project information, ~~including and~~ any CEQA analysis, presented at the public hearing on the ~~subject~~ application.

~~e. The provisions of this Section do not replace, supersede or modify the independent requirement for a CDP approved pursuant to the otherwise applicable policies and standards of the certified LCP.~~

#### **2. Priority processing of applications.**

a. Project applications that include the construction of inclusionary units shall be expedited by each City department involved with the application.

**3. Pre-approved incentives.** The Council has adopted by resolution a set of pre-approved incentives, which may be amended from time to time. Project applicants with projects that include inclusionary housing may select an incentive from this resolution without the need of further approval for the selected incentive.

(Ord. 930, § 2, passed 06-12-2017)

~~18b. An application for a project that includes the construction of inclusionary rental units shall be processed before applications including inclusionary owner-occupied units.~~

### **17.32.080 - Inclusionary Housing Plan and Housing Regulatory Agreement**

A. **Inclusionary Housing Plan**housing plan. The applicant for a residential project that is subject to this Chapter shall submit an Inclusionary Housing Plan along with the submittal~~inclusionary housing plan as part of the Tentative Map~~project application(s), detailing how the provisions of this Chapter will be implemented for. The inclusionary housing plan shall include the number and income level of any required inclusionary units, any related occupancy restrictions, any resale or other controls to ensure continued affordability of the inclusionary units, a detailed pro forma if requested by the Director, any requested incentives or waivers, any proposed residential development project. The Inclusionary Housing Plan~~alternative equivalent action, and any other information necessary to review compliance with the requirements of this Chapter. The inclusionary housing plan shall be~~

considered and acted upon by the review authority at the same time as the residential development that is the subject of the plan.

**B. Affordable Housing Regulatory Agreement.** ~~The applicant shall also execute and cause to be recorded an Affordable Housing Regulatory Agreement ("agreement") to implement the provisions of the Inclusionary Housing Plan, except where compliance with this Chapter is through Section 17.32.050 (Alternative Equivalent Action). The Affordable Housing Regulatory Agreement shall also include provisions for the use of the density bonus, if applicable.~~ Conditions of approval. Any tentative map, use permit or other permit approving residential development projects subject to this Chapter shall contain conditions sufficient to ensure compliance with the provisions of this Chapter. Such conditions shall include but not be limited to the number of inclusionary units required, the schedule of construction for the inclusionary units, the applicant's manner of compliance with this Chapter, and shall require the execution and recordation of an agreement imposing appropriate resale and other controls to maintain continued affordability of the inclusionary units for the required time.

(Ord. 930, § 2, passed 06-12-2017)

**18.32.085 - Inclusionary Housing Regulatory Agreement contents.** ~~The~~

**A. Inclusionary housing regulatory agreement.** ~~The applicant shall include at least the following information:~~

- a. Number of dwelling units.** ~~The total number of dwelling units approved for the housing development project, including the number of affordable dwelling units~~ execute;
- b. Description and location of affordable units.** ~~The location, unit sizes (in square feet), and number of bedrooms of the affordable dwelling units;~~
- c. Use of property.** ~~A description of the use of the property stating that the affordable units shall be used~~ cause to provide be recorded an affordable housing regulatory agreement ("agreement") between the City and the developer to qualifying persons under implement the provisions of this Chapter;
- d. Description of targeted income group.** ~~A description of the household income group to be accommodated by the housing development project, and the standards and methodology for determining the corresponding affordable rent or affordable sales price and any approved inclusionary housing consistent with HUD Guidelines~~ plan. The agreement once approved and this Chapter;
- e. Non-discrimination clause.** ~~The clause shall state that there~~ executed by the City Manager shall be no discrimination recorded against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry in the sale, transfer, use, occupancy, or enjoyment of an affordable unit, or any part thereof. Nor shall any developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, use, or occupancy of purchasers or occupants of the affordable units, or parts thereof;
- f. Length of affordability.** ~~Description of the affordability restrictions for the affordable dwelling units in compliance with Subsection 17.32.060.D. (Continued Affordability), above;~~
- g. Description of concessions and/or incentives.** ~~A description of the additional concessions and/or incentives being provided by the City;~~
- h. Remedies for breach of the agreement.** ~~A description of the remedies for breach of the inclusionary housing and/or density bonus agreement by the owners, developers, and/or successors in interest of the development project;~~
- i. Project implementation plan.** ~~Plan shall include the process of tenant and purchaser selection, and disclosure in accordance with the requirements of this Chapter; and~~
- j. Other provisions.** ~~Other provisions to ensure successful implementation and compliance with this Chapter.~~

**2. Agreement provisions.** The agreement shall include at least the following provisions:

**a. Continuing right of first refusal.** The developer shall give the City the continuing right of first refusal to lease or purchase any or all of the affordable dwelling units at the maximum sales price determined in accordance with ~~Subsection 17.32.060.D.2.b. (Requirements for Inclusionary Units, Maximum sales price);~~

**b. Written approval of City required prior to transfer of unit.** The deeds to the affordable dwelling units shall contain a covenant stating that the developer or successors in interest shall not assign, lease, rent, sell, sublet, or otherwise transfer any interests for the affordable dwelling units without the prior-written approval of the City;

**c. Confirmation of price by City.** When providing the written approval, the City shall confirm that the price (rent or sale) of the affordable dwelling unit is consistent with the limits established for low, very low, or moderate income households, as published by HUD;

**d. Occupied by eligible households.** The City shall have the authority to enter into other agreements with the developer, or purchasers of the affordable dwelling units, to ensure that the required dwelling units are occupied by eligible households for the minimum time of continued affordability as described in ~~Subsection 17.32.060.D.1.a. (Requirements for Inclusionary Units, Minimum time for Continued Affordability);~~

**e. Enforcement of compliance.** Applicable deed restrictions, in a form satisfactory to the City Attorney, shall contain provisions for the enforcement of owner or developer compliance;

**f. Failure to comply.** Any default or failure to comply may result in daily penalties, liens, foreclosure, specific performance, or withdrawal of the Certificates of Occupancy; and

**g. Recovery of all City-related costs.** In any action taken to enforce compliance with deed restrictions, the City Attorney shall, if compliance is ordered by a court of competent jurisdiction, take all action that may be allowed by law to recover all of the City's costs of action including legal services.

**3. For sale housing conditions.** In the case of for sale housing developments, the agreement shall provide for the following conditions governing the initial sale and use of the affordable dwelling units during the applicable affordability restriction period:

**a. Eligible and qualified residents.** The affordable dwelling units shall be owner-occupied by eligible moderate or median income households, or by qualified residents in the case of senior housing;

**b. Mandatory contents of instrument or agreement.** The initial purchaser of each affordable dwelling unit shall execute an instrument or agreement approved by the City which:

1. Restricts the sale of the unit in compliance with this Chapter during the applicable affordability restriction period. If the unit is sold to a non-qualified buyer, the City shall be entitled to receive the amount of the sales price which exceeds the maximum sales price less reasonable costs of the sale plus the value of substantial structural or permanent fixed improvements;

2. Restricts the rental use of property during the restriction period;

3. Contains provisions as the City may require to ensure continued compliance with this Chapter and State law; and

4. Shall be recorded against the parcel(s) containing the affordable dwelling unit(s).

**c. Affordability restriction period.** The applicable affordability restriction period shall be in compliance with ~~Subsection 17.32.060.D (Requirements for Inclusionary Units, Continued Affordability);~~

**4. — Rental housing conditions.** In the case of rental housing developments, the agreement shall provide for the following conditions governing the use of the affordable dwelling units during the affordability restriction period:

- a. — Rules and procedures.** The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining the affordable dwelling units for qualified tenants;
- b. — Annually verify tenancy.** Provisions requiring owners to annually verify tenants living in units are the same tenants that were originally qualified to live in the units, and maintain books and records to demonstrate compliance with this Chapter;
- c. — Submittal of annual report to the City.** Provisions requiring owners to submit an annual report to the City, which includes the name, address, and income of each person occupying the affordable dwelling units, and which identifies the bedroom size and monthly rent or cost of each unit; and
- d. — Use restriction period.** The applicable affordability restriction period shall be in compliance with Subsection 17.32.060.D (Requirements for Inclusionary Units, Continued Affordability).

**5. — Execution of agreement.**

- a. — Timing of approval and recordation.** The approval and recordation of the agreement shall take place at the same time as the final or parcel map or, where a map is not being processed, before issuance of Certificates of Occupancy for the affordable dwelling units.
- b. — Binding on all parties.** The agreement shall be binding on all future owners, developers, and/or successors in interest.

**C. — Effect of plan and agreement.** After the approval of an Inclusionary Housing Plan and the recording of an Affordable Housing Regulatory Agreement, each inclusionary housing unit shall be constructed as required, and shall be sold or rented, and maintained as an affordable unit, in compliance with the plan and agreement units.

17(Ord. 930, § 2, passed 06-12-2017)

**18.32.090 - Inclusionary Housing Trust Fund**

**A. Inclusionary Housing Trust Fund established.** There is hereby established the City of Fort Bragg Inclusionary Housing Trust Fund (the "~~Housing Fund~~"); "Housing Fund"). Inclusionary housing in-lieu fees collected pursuant to this Chapter shall be deposited into the Housing Fund. Separate accounts within the Housing Fund may be created as necessary to avoid commingling as required by law, or as deemed appropriate to further the purposes of the Fund.

**B. Use of funds.** The City's use of the Housing Fund shall comply with the following requirements:

1. Monies deposited in the Housing Fund along with any interest earnings shall be used solely to increase and improve the supply of housing affordable to households of very low, low, and moderate income housing in the City, including:
  - a. The acquisition of property and property rights;
  - b. The cost of construction including costs associated with planning, administration, and design, actual building or installation, and any other costs associated with the construction or financing of affordable housing beyond that which is required by this Chapter for a specific development;
  - c. Reimbursement to the City for costs if funds were advanced by the City from other sources; and
  - d. Reimbursement of developers or property owners who have been required or allowed to install facilities that are constructed affordable housing units beyond that which can be attributed to is required by this Chapter for a specific development.

2. To the maximum extent possible, all monies should be used to provide for additional affordable housing and services.
3. No portion of the Housing Fund may be diverted to other purposes by way of loan or otherwise.

~~17(Ord. 930, § 2, passed 06-12-2017)~~

**18.32.100 - Enforcement of Affordable Housing Requirements**

**A. Enforcement by City Attorney/Manager.** The City Attorney/Manager shall enforce the provisions of this Chapter and may initiate revocation of any building permit or development approval in accordance with § 18.98.070. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter 17.31 and all implementing regulatory agreements and resale controls placed on the affordable units by, including civil action, injunctive relief, and any other proceeding or method allowed by Chapter 18.98 or other law.

**B. Remedies cumulative not exclusive.** The remedies available to the City shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

**C. Recovery of costs.** In any action to enforce this Chapter, or an Affordable Housing Regulatory Agreement/affordable housing regulatory agreement recorded in compliance with this Chapter, the prevailing party in such action shall be entitled to recover its reasonable attorney's fees and related costs.

~~17.32.110 - Control of Affordable Unit Resale~~

~~In order to maintain the availability of the for sale affordable units constructed in compliance with this Chapter, the following resale conditions shall apply. Any abuse or violation of the resale provisions shall be referred to the City Attorney for appropriate action.~~

~~**A. Notice of sale, City option.** Before offering an affordable unit for sale, the seller shall provide written notice to the Director, by certified mail, of their intent to sell. The City or its designee shall be granted an option to purchase the unit for sale, with a maximum of 60 days to exercise the option, and a maximum of 120 days to conclude the purchase, in addition to the time for exercising the option.~~

~~**B. Limitations on resale.** The City shall monitor the resale of affordable units, to ensure compliance with the following requirements.~~

~~**1. Eligible purchasers.** After the first sale, affordable units shall be sold and resold only to households determined by the City to be eligible for the affordable units in compliance with this Chapter.~~

~~**2. Limit on purchase price.** The sales price for an affordable unit shall not exceed the purchase price plus an increase based on the regional area consumer price index, an amount consistent with the increase in the median income since the date of purchase, or the fair market value, whichever is less.~~

~~**3. Additional fees prohibited.** The seller shall not levy or charge any additional fees nor shall any "finder's fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.~~

~~**C. Declaration of restrictions.**~~

~~**1. Attachment of declaration.** The seller of the affordable unit shall attach and legally reference in the grant deed conveying title of the affordable unit a declaration of the restrictions provided by the City, stating the restrictions imposed in compliance with this Section.~~

~~**2. Contents of declaration.** The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Section.~~

~~**3. Right to enforce.** The grant deed shall afford the grantor and the City the right to enforce the declaration of restrictions.~~

(Ord. 930, § 2, passed 06-12-2017)

**18.42.190 - Vacation Rental Units**

**A. Purpose.** This Section provides requirements and standards for the operation of vacation rental units. These standards are intended to ensure that vacation rental units are compatible with and do not adversely impact residential or commercial uses.

**B. Applicability.** The provisions of this Section shall apply to all vacation rental units. This Section does not apply to legally established hotel/motel or bed and breakfast uses, which are regulated separately.

**C. Application requirements.** In addition to the information and materials required for a Minor Use Permit application by this Development Code, the review authority may require additional information to ensure compliance with this Section.

**D. Limitations on use.**

**1. Location.**

a. Vacation rental units shall be located only within the Central Business District (CBD), and shall be limited only to second or third floors above a commercial use.

b. Vacation rental units shall only be permitted within a legal dwelling unit, as defined in § 18.100.020(D).

**2. Operating standards.**

a. The maximum quantity of vacation rental units shall be determined by Council resolution. Permit application shall be reviewed and approved on a first-come, first-served basis. The City shall maintain a waiting list for new permits, once all authorized permits are awarded.

b. The maximum quantity of vacation rental units allowable per property shall be determined by Council resolution.

c. The maximum occupancy permitted for a vacation rental unit shall be limited to 2 persons per bedroom, plus 1 person (not including children under age 12). The maximum occupancy shall be stated as an approval condition of a permit authorizing a vacation rental unit.

d. The maximum number of vehicles permitted for guests of a vacation rental unit shall equal the number of bedrooms in the unit. The maximum number of vehicles shall be stated as a condition of the vacation rental unit permit.

e. All advertisement listings for vacation rental units shall include the following:

i) City of Fort Bragg Business License number and Minor Use Permit number;

ii) Maximum permitted occupancy, as stated on the approved permit; and

iii) Maximum vehicles permitted, as stated on the approved permit.

f. Vacation rental units shall have a property manager who is available 24 hours per day, 7 days per week during all times that the property is rented or used on a transient basis. Operation of a vacation rental unit without a property manager shall be considered a violation of this Section. The name and contact information of the property manager shall be provided to any interested party upon request.

g. A permit authorizing a vacation rental unit shall be revoked under any of the following conditions:

i) The City processes 3 or more code enforcement cases against the property within a 2-year period;

- ii) The vacation rental unit is found to be noncompliant with any portion of the zoning ordinance or the terms of the permit approving the use;
  - iii) Failure to maintain a business license for the use;
  - iv) Abandonment of the use for a period of 12 months or more (demonstrated by a lack of payment of transient occupancy taxes); or
  - v) Any instance of transient occupancy tax fraud or transient occupancy tax delinquency of more than 3 months.
- h. A permit for a vacation rental unit shall transfer with the sale of the property, provided the new owner complies with all permit conditions and the provisions of this zoning ordinance.

(Ord. 930, § 2, passed 06-12-2017)