

Chapter 11.70: Affordable Housing

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11.70.010 Purpose and Enabling Authority

- A. The purpose of this Chapter is to help the City, region, and State meet the goal of providing housing affordable across a range of income categories. This Chapter requires new development to contribute to the City's affordable housing stock through the provision of housing units, land dedication, and/or fees.
- B. California Gov't Code § 65850(g) allows for local jurisdictions to require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by lower income households, within the confines of State law governing residential development in their communities.

11.70.20 Residential Affordable Requirement

- A. **Affordable Option.** As a condition of approval for each tentative or vesting tentative map or land use entitlement having residential parcels or units, the developer is required to either:
 - 1. Allocate a percentage of total project units as Affordable units, as described in Section 11.70.030; or
 - 2. Satisfy this requirement by an Alternative Means of Compliance, as described in Section 11.70.040.
- B. **Exceptions.**
 - 1. Residential projects that provide 10 or less for-sale units shall be allowed to satisfy the requirements of this Chapter through an In-Lieu Fee.
 - 2. Residential projects that provide 10 or less rental units shall be wholly exempt from the requirements of this Chapter.

11.70.030 Percentage of Affordable Units

When the developer intends to provide the required affordable housing units within the proposed development project, the developer shall construct the types and quantities as described below:

- A. **General Plan Areas.**
 - 1. **For-Sale Units.** The developer shall reserve 15 percent or more of the total for-sale units as affordable units to be sold to low- and moderate-income households at

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a price that does not exceed the maximum affordable purchase price for a unit for those households. The maximum purchase price for low- and moderate-income households shall be as adopted annually by City Council resolution.

- a. At least seven and one-half percent of the reserved units shall be set aside for low-income households, with the balance set aside for moderate-income households.
 - b. Whenever the inclusionary requirement results in an odd number of units, the majority of units shall be provided as low-income. Whenever the number of units result in a fraction of a unit greater than 0.5, the requirement shall be rounded up to the nearest whole unit. Whenever the number of units results in a fraction of a unit less than or equal to 0.5, the requirement shall be rounded down to the nearest whole unit.
 - c. The for-sale units shall be encumbered in a manner acceptable to the City, so that if a buyer resells the reserved unit within the restricted time period for a price in excess of the inflation-adjusted purchase price, then the excess profit will be returned to the City for use in affordable housing programs.
2. **Rental Units.** The developer shall reserve 15 percent or more of the total rental units as affordable units to be rented to very-low- and low-income households at a cost that does not exceed maximum monthly rental rates for those households. The maximum monthly rental rates for very-low- and low-income households shall be adopted annually by City Council resolution.
- a. At least seven and one-half percent of the reserved units shall be set aside for very-low-income households, with the balance set aside for low-income households.
 - b. Whenever the inclusionary requirement results in an odd number of units, the majority of units shall be provided as very-low-income. Whenever the number of units result in a fraction of a unit greater than 0.5, the requirement shall be rounded up to the nearest whole unit. Whenever the number of units results in a fraction of a unit less than or equal to 0.5, the requirement shall be rounded down to the nearest whole unit.
 - c. The rental units shall be marketed and made available through an application process directed by the City, and the development shall be managed by an experienced management company approved by the City.

B. **Downtown Specific Plan Area.**

1. **For-Sale Units.** The developer shall reserve 10 percent or more of the total for-sale units to be sold to low-income households at a price that does not exceed the maximum affordable purchase price for the units.
 - a. Whenever the number of units results in a fraction of a unit less than or equal to 0.5, the requirement shall be rounded down to the nearest whole unit.
2. **Rental Units.** The developer shall reserve 10 percent or more of the rental units to be rented to low-income households at a cost not to exceed the maximum monthly rental rates for those households.
 - a. Whenever the number of units results in a fraction of a unit less than or equal to

0.5, the requirement shall be rounded down to the nearest whole unit.

C. **Isabel Neighborhood Specific Plan Area.**

1. **For-Sale Units.** The developer shall reserve 15 percent or more of the total for-sale units as affordable units to be sold to low- and moderate-income households at a price that does not exceed the maximum affordable purchase price for a unit for those households. The maximum purchase price for low- and moderate-income households shall be as adopted annually by City Council resolution.
 - a. At least seven and one-half percent of the reserved units shall be set aside for low-income households, and at least seven and one-half percent for moderate-income households.
 - b. Whenever the inclusionary requirement results in a fraction of units, the units shall be combined and provided as low-income units. Whenever the number of units result in a fraction of a unit greater than 0.5, the requirement shall be rounded up to the nearest whole unit.
2. **Rental Units.** The developer shall reserve 20 percent or more of the total rental units as affordable units to be rented to very-low-income, low-income, median-income, and moderate-income households at a cost that does not exceed maximum monthly rental rates for those households. The maximum monthly rental rates for very-low-income, low-income, median-income, and moderate-income households shall be adopted annually by City Council resolution.
 - a. At least six percent of the reserved units shall be set aside for very-low-income households, at least seven percent shall be set aside for low-income households, and at least four percent shall be set aside for median-income households, with the balance set aside for moderate-income households.
 - b. Whenever the inclusionary requirement results in a fraction of units, the units shall be combined and provided as very-low-income units. Whenever the number of units result in a fraction of a unit greater than 0.5, the requirement shall be rounded up to the nearest whole unit.

11.70.040 Alternative Means of Compliance

A. **Prerequisites**

1. **Economic Equivalence.** Each alternative must be economically equivalent to the affordable housing requirement and may satisfy part or all of the affordable housing requirement.
2. **City Council Approval.** Alternatives to constructing affordable units on site specified in subsections B.1 through B.3 of this section require prior City Council approval.
3. **Concurrent Submittal.** An Alternative Means of Compliance request shall be presented concurrently to the City Council as part of a residential tentative subdivision map or land use entitlement application that is submitted to the City.
4. **Report Required.** The request shall be accompanied by a report demonstrating economic equivalence and either: 1) why it is not feasible for the applicant to construct affordable units within the development project; or 2) that the proposed alternative exceeds the City's affordable requirement.. The report shall include

independent data, including financial information.

- B. Alternatives.** The following alternatives may satisfy the requirements of this Chapter:
- I. In-Lieu Fee.
 - a. A developer may satisfy the affordable housing requirement by paying an in-lieu fee for each market-priced unit.
 - b. The method of calculating the in-lieu fee is specified in LMC 3.26.050.
 - c. Whenever the number of affordable units required to be constructed includes a fraction of a unit, the payment of a proportional in-lieu fee shall satisfy that partial unit requirement.
 - d. The applicable fee rate shall be determined at the time of building permit application unless otherwise agreed to in the project's low-income housing agreement.
 2. Dedication of Land.
 - a. A developer may satisfy the affordable housing requirement by dedicating to the City a parcel of land suitable for development of housing units equal to or exceeding the number of affordable units required to be provided in compliance with this section.
 - b. The General Plan designation and zoning designation on the land proposed for dedication shall be consistent with the intended use of the property for affordable housing at the appropriate density, and there shall be direct access to improved streets and utilities.
 3. Alternative Affordable Plan.
 - a. A developer may satisfy the requirements of this Chapter through an alternative affordable plan.
 - b. The alternative affordable plan shall meet the following requirements:
 - i May only be considered as part of a Development Agreement between a developer and the City of Livermore;
 - ii The Development Agreement may only allow for the following deviations from this Chapter:
 - (a) Timing of affordable unit construction.
 - (b) Quantity of affordable units.
 - (c) Affordability Level of affordable units.
 - (d) Comparability of affordable units.
 - (e) Location of affordable units.
 - (f) Bonding Structure and timing.
 - (g) Deed Restriction Term for Rental Units.
 - iii Shall not conflict with affirmatively furthering fair housing and state housing requirements.

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All affordable units required as part of this Chapter shall meet the following performance measures. Each performance measure is applied to affirmatively further fair housing, in compliance with state housing law.

- A. **Timing of Construction.** The developer shall construct the affordable units concurrently with all other units.
- B. **Comparability of Units.** Affordable and market-rate units in the same development project shall not be distinguishable from one another and shall have the same features and characteristics, as follows:
1. Unit type (e.g. townhouse, flat, loft, duplex, etc.)
 2. Size, as determined by habitable square footage.
 3. Bedroom count.
 4. Bathroom count.
 5. Interior finishes and fixtures.
 6. Access to common areas and amenities such as a community pool, gym, and open space.
 7. Floor and wall treatments.
 8. Exterior appearance.
 9. Size, amount, and location of parking.
 10. Laundry facility location, size, and type.
 11. Kitchen facility features, including quality of cabinetry and countertops.
 12. Open space quantity and type (e.g. common vs. private).
- C. **Minimum Unit Size.** Notwithstanding the requirements for comparability of units, the affordable units shall meet or exceed the gross floor areas specified in the following table:

Number of Bedrooms	Units Reserved for Rent	Units Reserved for Sale
Studio unit	450 square feet	600 square feet
One bedroom unit	500 square feet	750 square feet
Two bedroom unit	750 square feet	900 square feet
Three bedroom unit	1,000 square feet	1,000 square feet
Four bedroom unit	1,200 square feet	1,250 square feet

- D. **Location and Integration.**
1. **Distribution.** The developer shall construct affordable units in locations uniformly dispersed throughout the project site.
 2. **Concentration.** Each building within a multi-building project shall contain a representative proportion of the total required affordable units.
 3. **Arrangement.** All affordable units shall be arranged on the project site in a similar manner as all market-rate units, including proximity to amenities, vistas, and open

space.

4. **Grouping.** Within a building, all affordable units shall not be grouped together, and shall be located in a manner similar to all market-rate units.

- E. **Tenant Services Requirement.** Rental projects in excess of 50 units shall include resident services space and provisions for on-site resident services (i.e., childcare, senior services, or mobility services) sufficient to meet the needs of the population housed as determined by the Director.

11.70.060 Implementation

- A. **Plans.** The affordable unit locations, quantities, and affordability levels required by this Chapter shall be identified on a tentative map, site plan, affordable plan, and/or other affordable exhibit approved by the Director.
- B. **Security.** The developer shall provide security to satisfy the affordable housing requirement before approval of a final map, improvement plan, Master Plan, or Building Permit as determined by the Director. The security shall be one or a combination of the following:
 1. A performance bond to cover the construction costs for all required affordable units and related improvements and amenities;
 2. Other appropriate security approved in writing by the Director.
- C. **Low Income Housing Agreement.** The project applicant shall enter into a Low Income Housing Agreement in a form provided by the City, to be recorded against the property before issuance of building permits or recordation of a final map, as determined by the Director. The agreement shall include the following:
 1. **Fifty-Five-Year Restriction.** The affordable units required as part of this Chapter shall be deed restricted as affordable for a minimum of 55 years, unless otherwise authorized by an Alternative Affordable Plan, as described in Section 11.70.040(B)(3).
 2. **Site Plan.** The Low Income Housing Agreement shall include an approved tentative map, site plan, or affordable plan showing locations, quantities, and affordability levels of all required affordable units.
 3. **Administrative Cost Recovery.** The Low Income Housing Agreement for for-sale residential projects shall include provisions that allow the City to charge the developer for administrative costs associated with selling the affordable housing units.
 4. **Monitoring.** The Low Income Housing Agreement shall include provisions that allow the City to regularly inspect and monitor project compliance after construction is completed. Monitoring costs incurred by the City shall be borne by the developer.
 5. **Legal Documents.** The Low Income Housing Agreement shall reference all required legal documents, including but not limited to Promissory Note, Deed of Trust, Regulatory Agreement and any other document, as determined by the Director.
- D. **For Sale Prices.** The maximum purchase price for all for-sale Affordable units shall be adopted annually by City Council resolution.
- E. **For Sale Deed Restriction.** For-sale units shall be encumbered in a manner acceptable to the City, so that if a buyer resells the reserved unit within the restricted time period for a

price in excess of the inflation-adjusted purchase price, then the excess profit will be returned to the City for use in affordable housing programs.

- F. **For Rent Prices.** The maximum monthly rental rates for low-income households shall be adopted annually by City Council resolution.
- G. **For Rent Marketing and Management.** The rental units shall be marketed and made available through an application process directed by the City, and the development shall be managed by an experienced management company acceptable to the City.
- H. **Additional Fees.** Affordable units shall not be charged additional costs or fees that are not charged to market-priced units.
- I. **Unit Eligibility.** Employees or family members of the developer or developer's property management agent may not be eligible to apply for the affordable units.

11.70.070 Commercial and Industrial Development

The developer is required to pay the affordable housing fee established in compliance with Chapter 3.26 LMC.

11.70.080 Enforcement

Enforcement provisions regarding this section are specified in Chapter 9.20 (Enforcement).

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