

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO THAT:

SECTION 1.

17.190.010 Purpose and intent.

This chapter is intended to provide that residential projects in new growth areas contain a defined percentage of housing affordable to low income and very low income households, to provide for a program of incentives and local public subsidy to assist in this effort, and to implement the mixed income policies of the housing element of the city's general plan. (Ord. 2000-039 § 2 (part))

SECTION 2.

17.190.020 Definitions.

"Affordable" means rented at an affordable rent or sold at an affordable housing price.

"Affordable housing price" means a sales price at which low income or very low income households can qualify for the purchase of for-sale inclusionary units. Qualification shall be based on no more than thirty-five (35) percent of income being applied to housing expenses, which shall include mortgage principal and interest, taxes, insurance, and assessments.

"Affordable rent" means (1) for a unit whose occupancy is restricted to a low income household, a monthly rent consisting of a maximum of one-twelfth of thirty (30) percent of eighty (80) percent of the median income applicable to Sacramento County; and (2) for a unit whose occupancy is restricted to a very low income household, a monthly rent consisting of a maximum of one-twelfth of thirty (30) percent of fifty (50) percent of the median income applicable to Sacramento County. In each case the median income applicable to Sacramento County is as determined annually by the United States Department of Housing and Urban Development. Maximum rent is adjusted for household size appropriate to the unit, less a reasonable allowance for utilities.

"City" means the city of Sacramento.

"Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks city's approvals for all or part of a development project. "Developer" includes "owner."

"Development agreement" means an agreement entered into between the city and a developer pursuant to Section 65864 of the Government Code and Chapter 18.16 of Title 18 of the city code.

"Development project" means any real estate development project in a new growth area that includes market rate residential units. Projects at one location undertaken in phases, stages or otherwise developed in distinct sections shall be considered a single development project for purposes of this section.

"Dwelling unit" means a residential unit within a development project.

"Exclusively single-family" refers to a project that contains land zoned for single-family residential use, but insufficient land zoned for or permissive of multifamily residential to accommodate the very low income portion of the inclusionary housing component onsite. Where land zoned for single-family residential use and land planned, zoned for or permissive of multifamily residential use exist at one location as of the time of the first legislative entitlement for any parcel or portion thereof, the totality of such land shall be considered in determining whether the subject project is exclusively single-family.

"External subsidy" means any source of funds that is not local public funding, including federal or state grants, loans, bond funds, tax credits or other tax-based subsidy.

"First-time home buyer" means that neither the purchaser nor the purchaser's spouse has owned a home during the past three years, or that the purchaser meets at least one of the following criteria:

1. The purchaser is a displaced homemaker, defined as a person who has not worked full-time for a number of years, worked primarily without remuneration to care for the home and family, is unemployed or underemployed, is experiencing difficulty in obtaining or upgrading employment, and, while a homemaker, owned a home with a previous spouse;

2. The purchaser is single (unmarried or legally separated), has one or more minor children of whom purchaser has custody, and, while previously married, owned a home with a previous spouse; or

3. The purchaser owns or owned as a principal residence during the past three years, a dwelling unit which structure is not permanently affixed to a permanent foundation in accordance with the city code, or is not and cannot be brought into compliance with city code for less than the cost of replacing the structure.

"Housing trust fund" means the fund created by the City, administered by the SHRA, and codified at Chapter 17.188 of Title 17 of the city code.

"Inclusionary housing agreement" or "agreement" means the agreement described in Section 17.190.110 between a developer and the SHRA setting forth the manner in which the inclusionary housing component requirement of this chapter will be met in the development project.

"Inclusionary housing component" means the inclusionary housing units included in or provided by a development project as specified in this chapter.

"Inclusionary housing plan" means the plan described in Section 17.190.110 setting forth the elements of a development project's inclusionary housing component and the manner in which the inclusionary housing component will be implemented.

"Inclusionary housing unit "or" inclusionary unit" means an ownership or rental dwelling unit developed as a part of the inclusionary housing component of a development project as provided in this chapter.

"Inclusionary incentives" means the fee waivers or reductions, planning and building standards waivers or reductions, regulatory incentives or concessions, and local public funding provided by the City or SHRA to a development project to assist in the provision of the inclusionary housing component.

"Initial owner" means the first person or persons to purchase a new for-sale inclusionary unit for his, her or their primary residence.

"Legislative entitlements" means and includes general and community plan amendments, zonings and rezonings, planned unit development (PUD) schematic plans and amendments thereto, planned unit development guidelines and amendments thereto, and development agreements.

"Local public funding" means loans and grants from the housing trust fund, federal HOME Investment Partnership Program ("HOME" funds), redevelopment area tax increment housing set-aside funds, and other funds originating from or administered by the city, the SHRA, or the county of Sacramento.

"Low income household" means a household whose income does not exceed eighty (80) percent of median income applicable to Sacramento County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

"Major legislative entitlements" means all legislative entitlements and amendments to legislative entitlements which are not minor legislative entitlements.

"Minor legislative entitlements" means legislative entitlements or amendments to legislative entitlements which satisfy one or more of the following:

1. Entitlements that do not result in any of the following criteria as defined by the North Natomas community plan target average densities: a net loss of residential acreage; a net loss of acreage of land designated for high density residential (HDR) or medium density residential (MDR) development, unless the HDR total residential units replace the loss of MDR residential units; or a net loss of total residential units:

2. Entitlements that are the result of, and required by, amendments to public facilities or roadways designated in the North Natomas community plan; provided further that the entitlements are limited to addressing the amendments required by the city or other public agency;

3. Entitlements that are limited to amendments to a previously approved Planned Unit Development (PUD) schematic plan, or PUD development guidelines, provided that the amendments do not result in a loss of more than five (5) percent between the density of the proposed project and the density of the previously approved project.

"Market rate" means not restricted to an affordable housing price or affordable rent.

"Multifamily residential" means residential units planned, approved, or built on land planned or zoned for other than single-family residential.

"New growth areas" means (1) the newly developed communities identified on the map in Attachment A to this chapter, (2) major redevelopment opportunity areas, including the railyards special planning district and the Curtis Park West railyards site as identified on Attachment A; and (3) any future annexation areas of the City.

"Off-site" means outside of the boundaries of a development project.

"One location" means all adjacent land owned or controlled by the same owner or a related owner, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way.

"Owner" means and includes the person, persons, partnership, joint venture, association, corporation, or public or private entity having sufficient proprietary interest in real property to commence, maintain, and operate a development project.

"Percent" means a one-hundredth part. In applying percentages referred to in this chapter, any portion of a percent less than one-half shall be disregarded and any portion of a percent one-half or greater shall be rounded up to the next whole number.

"Project level approval" means and includes a tentative subdivision map, a special permit, or other administrative or adjudicatory approval or determination in connection with a development project.

"Related owner" means a person or entity, including but not limited to, partnerships, limited partnerships, and corporations, that has any of the following relationships with an owner: (1) they share the majority of members of their governing boards; (2) they share two or more officers; (3) they are owned or controlled by the same majority shareholder(s) or general partner(s); (4) they are in a parent-subsidary relationship; or (5) the person is a sibling, offspring or parent of an individual owner. For purposes of this section, a controlling interest means fifty (50) percent or more of the voting power of a corporation, and a parent-subsidary relationship exists when one corporation owns, directly or indirectly, fifty (50) percent or more of the voting power of another corporation. For purposes of this section, a person and any general partnership in which the person is a general partner, or a person and any corporation in which the person owns a controlling interest, shall be treated as one and the same.

"Residential project" means the entirety of a residential development with market rate units in a development project subject to the requirement to provide an inclusionary housing component as specified in this chapter.

"SHRA" means the Sacramento Housing and Redevelopment Agency, a joint powers agency, and its City constituent entities, the Housing Authority of the City of Sacramento and the Redevelopment Agency of the City of Sacramento.

"Single-family residential" means planned, approved or built-on land planned or zoned solely for a permitted residential density of one unit per parcel. Where such a planning or zoning single-family designation also allows by right or as a conditional use duplexes, halfplexes, second units, or similar uses, the designation is nonetheless considered single-family residential for purposes of the inclusionary housing component and the other provisions of this chapter.

"Very low income household" means a household whose income does not exceed fifty (50) percent of the median income, adjusted for household size, applicable to Sacramento County, as published and periodically updated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

"Zoning code" means Title 17 of the city code as it may be amended from time to time.

SECTION 3.

17.190.030 Standard inclusionary housing component

A. Inclusionary Housing Component Required. All development projects not exempt under section 17.190.070 shall include or provide for an inclusionary housing component as set forth in this chapter.

B. Number and Affordability of Inclusionary Units.

1. Not less than fifteen (15) percent of the development project's residential units shall be inclusionary units developed for, offered to, and leased or sold at an affordable rent or housing price to very low and low income households as follows: Ten (10) percent of the dwelling units shall be affordable to and occupied by very low income households and five (5) percent of the dwelling units shall be affordable to and occupied by low income households.

2. Notwithstanding the provisions of subsection B.1. above, the inclusionary housing component for exclusively single family development projects that are five (5) gross acres or less in size, if met on site, may consist of for-sale inclusionary units developed for, offered for sale to, and sold at an affordable housing price to low income households as follows: fifteen (15) percent of the development project's residential units shall be affordable to and occupied by low income households.

C. Location of Inclusionary Units. Except as provided in Section 17.190.060, inclusionary units shall be built on the site of the development project.

D. Timing of Development. The inclusionary housing plan and inclusionary housing agreement shall include a phasing plan which provides for the timely development of the inclusionary units as the residential project is built out. The phasing plan shall provide for development of the inclusionary units concurrently with the market rate units, unless the phasing schedule approved in the inclusionary housing plan under section 17.190.110 provides otherwise.

E. Unit Size. The inclusionary housing component shall accommodate diverse family sizes by including units with different numbers of bedrooms, as determined by the planning director, upon recommendation by the SHRA director.

F. Exterior Appearance. Inclusionary units shall be visually compatible with the market rate units. External building materials and finishes shall be of the same type and

quality for inclusionary units as for market rate units. Interior materials and finishes may vary pursuant to Section 17.190.040(C).

G. Development Standards. Except as provided in the inclusionary housing agreement pursuant to Sections 17.190.040 and 17.190.110, inclusionary units shall comply with all applicable development standards.

SECTION 4.

17.190.040 Incentives, assistance and subsidies.

The developer of a development project with an inclusionary housing component required by this chapter may request that the City or SHRA provide inclusionary incentives as set forth in this section. The goal of these inclusionary incentives is to apply available incentives to qualifying projects in a manner that, to the extent feasible, offsets the cost of providing the inclusionary housing component. The planning director shall respond to that request at the time and in the manner specified in this section, and shall make a determination as to a package of inclusionary incentives for the inclusionary units as provided in this section.

A. Fee Waivers or Deferrals. Upon application as provided herein, the city shall make available to a residential project developer a program of waiver, reduction or deferral of development fees, administrative and financing fees for inclusionary units. Such a program may include application, on behalf of a developer, to the California Housing Finance Agency to obtain school facility fee reimbursements for eligible projects and credit such funds to offset school fees paid by the project; and application to the County of Sacramento residential impact fee waiver and deferral program for waiver and/or deferral of regional sanitation impact fees.

B. Modification of Planning and Public Works Development Standards. Upon application as provided herein, the City may modify for inclusionary units, to the extent feasible in light of the uses, design, and infrastructure needs of the development project as determined by the planning director, the zoning administrator, or planning commission, as applicable under the city zoning code: (1) applicable public works development standards contained in Titles 12 and 16 of the city code, such as alternative standards relating to road widths, curbs and gutters, and parking; and (2) applicable planning standards contained elsewhere in this title such as minimum lot size, alternative housing types, and other minor deviations from development standards, lot coverage, locational and other requirements for approval of duplexes, halfplexes, and patio homes.

C. Interior Finish Reductions. Upon application as provided herein, the City may, to the maximum extent appropriate in light of project design elements as determined by the planning director, allow builders to finish out the interior of inclusionary units with less expensive finishes and appliances.

D. Streamlining and Priority Processing. The planning director may issue special permits for residential projects that include an inclusionary housing component. The city shall develop further procedures for streamlining and priority processing which relieve inclusionary units of permit processing requirements to the maximum extent feasible consistent with the public health, safety and welfare.

E. Density Bonus. The City shall make available to the residential project a density bonus as provided in state density bonus law, including Government Code Section 65915, as it may be implemented hereinafter in city ordinance; provided, however, that the affordability requirements to qualify for a density bonus shall be those stated in Section 17.190.030 B. 1. and 2. and the other provisions of this chapter. Dwelling units produced as part of such a density bonus shall not be subject to the inclusionary housing component requirement under this chapter.

F. Local Public Funding. The developer of the inclusionary component may apply to the SHRA for local public funding to assist in the financing and development of the inclusionary housing component. The application shall contain planning and financial information necessary to evaluate the eligibility and suitability of the project for local public funding and shall include timetables or proposals for external subsidy. Local public funding may serve to facilitate state allocation of tax credits, mortgage revenue bond funds, or state or federal assistance to the project ("external subsidy"); provided that the provision of such local public funding requires that the developer diligently pursue such external subsidy and is not intended to substitute for such external subsidy.

SECTION 5.

17.190.050 Construction of the inclusionary housing component to avoid overconcentration.

A. The following principles shall apply to the development of the inclusionary housing component whether on-site or off-site:

1. The inclusionary housing plan shall provide for the dispersal of buildings containing inclusionary units to the maximum extent feasible;

2. Multifamily buildings may contain any proportion of inclusionary units. However, no multifamily development consisting of more than fifty (50) per cent inclusionary units may be located adjacent to another multifamily development with more than fifty (50) per cent inclusionary units, or adjacent to an affordable housing development.

B. For purposes of this section, an affordable housing development means a building containing more than eight units, or a cluster of such buildings under one ownership, consisting of more than fifty (50) per cent assisted units for low and very low income households receiving local public funding. When considering a request to amend an approved inclusionary housing plan under section 17.190.110 B. 3., the decision maker may allow for variation from these principles, but only to the extent necessary, if an alternative configuration of inclusionary units is required by funding or financing considerations associated with the development of the inclusionary units or by the applicable residential land use designations within and adjacent to the residential project.

SECTION 6.

17.190.060 Alternatives to the standard inclusionary housing component- Land dedication and off-site inclusionary housing.

A. Off -site Inclusionary Units. The inclusionary housing obligation of an exclusively single-family project may be satisfied in whole or part by development of inclusionary units on another site located within the same new growth area and within the same Community Plan Area as the exclusively single-family project.

1. Site Suitability. The land proposed for off-site development must be suitable from the perspectives of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria.

2. Number of Inclusionary Units Credited. The number of inclusionary units credited to

the exclusively single family project will consist of the number of inclusionary units that can, with a reasonable degree of certainty, be developed on the off-site land, given (a) the mix of inclusionary unit sizes and type of structure in the inclusionary housing plan; (b) densities permitted by applicable planning and zoning designations; and (c) site, infrastructure, environmental and other physical and planning constraints. In no event may the number of inclusionary units credited to the exclusively single family project for the off-site development exceed the exclusively single family project's total inclusionary obligation. In no event may the off-site inclusionary units credited to any exclusively single family project be transferred to any other project or person.

3. The land selected for off-site inclusionary housing development shall be subject to the requirements of this chapter for its own inclusionary housing obligation unless exempt under Section 17.190.070.

4. Participation by multiple developers. Two or more developers with an inclusionary housing obligation may request to participate in the same off -site development if the following conditions are met: (a) All the residential projects are in the same new growth area, and (b) each inclusionary housing unit may only be credited to one exclusively single family project.

5. Timing of Development. Legislative entitlements and/or project-specific approvals for both the exclusively single family project and the inclusionary units on offsite land shall proceed concurrently, unless the phasing schedule in the approved inclusionary housing plan provides otherwise.

6. Implementation. As early as possible in the regulatory process, and in no case later than the negotiation of the inclusionary housing agreement as provided in Section 17.190.110, the developer of the exclusively single family project must demonstrate ownership of the off -site location, or adequate control of the use of the off site location through joint ownership, joint venture or contractual commitment with a third party to purchase the site and provide the inclusionary units. If necessary to ensure that inclusionary housing units are developed contemporaneously with the market rate units, the inclusionary housing plan may require the demonstration of offsite control to occur concurrently with the approval of the first legislative entitlement, or at any time thereafter.

B. Land Dedication. The developer of any development project subject to this chapter may dedicate a portion of the land within the residential development site to SHRA at no cost to fulfill all or a portion of the inclusionary housing obligation for the development project. The developer of an exclusively single-family project may dedicate land outside of its development project, but within the same new growth area and the same Community Plan Area as the development project, to SHRA, at no cost, to fulfill all or a portion of the inclusionary housing obligation of the exclusively single family project.

1. Site Suitability. The land proposed for dedication must be suitable from the perspectives of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria. In addition, the land proposed for dedication must have characteristics consistent with affordable housing financing program criteria and be deemed qualified for financing under these programs by SHRA.

2. Number of Inclusionary Units Credited. The number of inclusionary units credited to the residential development project will consist of the number of inclusionary units which can, with a reasonable degree of certainty, be developed on the dedicated land, given (a) the mix of inclusionary unit sizes and type of structure in the inclusionary housing plan; (b) densities permitted by applicable planning and zoning designations; and (c) site, infrastructure, environmental and other physical and planning constraints. In no event may the number of inclusionary units credited to the residential project for the land dedication exceed the residential project's total inclusionary obligation. In no event may the inclusionary units credited to any residential project be transferred to any other project or person.

3. The land selected for off-site dedication shall be subject to this chapter for its own inclusionary housing obligation unless exempt under section 17.190.070. For purposes of this section, the number of inclusionary units attributable to the land proposed to be dedicated means fifteen (15) percent of the maximum allowable residential density of the land proposed to be dedicated.

4. Participation by multiple developers. Two or more developers with an inclusionary obligation may request to participate in the same off-site land dedication if the following conditions are met: (a) all the residential projects are in the same new growth area, and (b) each inclusionary housing unit may only be credited to one residential project.

5. Timing of Development. The developer must identify the site proposed to be dedicated and the number of proposed units to be credited as part of the inclusionary housing plan required in Section 17.190.110. Prior to the development project receiving legislative entitlements and/or project-specific approvals, the dedicated land shall be properly zoned and adequately served with necessary infrastructure, unless the phasing schedule in the inclusionary housing plan provides otherwise. As early as possible in the regulatory process, and in no case later than the negotiation of the inclusionary housing agreement as provided in Section 17.190.110, the developer of the residential project must provide an irrevocable offer of dedication for the site to SHRA at no cost. If necessary to ensure that inclusionary housing units are developed contemporaneously with the market rate units, the housing plan may require the offer of dedication to be tendered concurrently with the approval of the first legislative entitlement, or any time thereafter. Upon acceptance of the offer of dedication, SHRA shall ensure the site is developed in a manner that will result, at a minimum, in the production of, (i) the number of inclusionary units credited to the site(s), and (ii) the additional number of inclusionary units necessary to ensure that there is no net loss of inclusionary units caused by the development of the dedicated site as an affordable housing development while reducing or eliminating the requirement to construct inclusionary units on the site of the development project.

C. Approval of Housing Plans Containing Land Dedication or Off-site Inclusionary Housing

1. Review and Recommendation of the Planning Director. The planning director shall review the proposed inclusionary housing plan containing land dedication or offsite inclusionary housing and in so doing shall consult with the executive director of the SHRA. The planning director shall recommend approval, modification, or denial of the proposed inclusionary housing plan to the City Council or Planning Commission, as provided below.

2. Standard for Approval. An inclusionary housing plan containing land dedication or

off-site inclusionary housing may be approved only if it provides a more cost-efficient solution when considering the amount of public subsidy to the inclusionary housing component than the standard approach set forth in Section 17.190.030, or if the location of off-site development or land dedication would be superior to on-site development from the perspective of access to transportation or other applicable residential planning criteria .

3. Approval by the City Council. For development projects that require legislative entitlements, the inclusionary housing plan containing land dedication or offsite inclusionary housing shall be reviewed and approved in the same manner as the legislative entitlements. If the inclusionary housing plan containing land dedication or off-site inclusionary housing is approved, the relevant elements of the inclusionary housing plan shall be included in the applicable legislative approvals for both the residential development generating the requirement for the inclusionary housing component and, if applicable, the dedicated site or off-site development project where all or part of that requirement shall be met.

4. Approval by the Planning Commission. For projects that require only non-legislative, adjudicatory entitlements, the inclusionary housing plan containing land dedication or off-site inclusionary housing shall be subject to planning commission approval. If the inclusionary housing plan containing land dedication or off-site inclusionary housing is approved, the relevant elements of the inclusionary housing plan shall be included in the applicable non-legislative adjudicatory approvals, for both the residential development generating the requirement for the inclusionary housing component and, if applicable, the dedicated site or off-site development project where all or part of that requirement shall be met.

SECTION 6.5.

17.190.065 Alternative to the standard inclusionary housing component-
Residential condominium projects.

A. Special Permit Required. The inclusionary housing obligation of a multifamily residential condominium development project that is two hundred (200) units or less in size may be satisfied under this section upon approval of a special permit under Chapter 17.212. For purposes of this section, a multifamily residential condominium development project means a multifamily development project characterized by individual ownership of each dwelling unit and joint or common ownership of the common areas. Multifamily residential condominium development does not include single family residential projects as defined in section 17.190.020.

B. Requirements. The inclusionary housing component approved under this section shall consist of on-site, for-sale inclusionary units developed for, offered for sale to, and sold at an affordable housing price to very low and low-income households as follows: five (5) percent of the dwelling units shall be affordable to and occupied by very low-income households and ten (10) percent of the dwelling units shall be affordable to and occupied by low-income households.

C. Approval of Housing Plan for Residential Condominium Projects; Required Findings for Special Permit.

1. Review and Recommendation of the Planning Director. The planning director

shall review the inclusionary housing plan proposed under this section and in so doing shall consult with the executive director of the SHRA. The planning director shall recommend approval, modification, or denial of the proposed inclusionary housing plan to the City

SECTION 7.

17.190.070 Exempted development projects.

The following development projects are exempt from this chapter and generate no obligation to provide an inclusionary housing component:

A. Development projects proposed to contain nine or fewer residential dwellings at one location;

B. Development projects outside of a new growth area;

C. Rehabilitation of existing residential dwellings;

D. Units produced as a density bonus;

E. Residential projects made up entirely of mobile homes as defined in Section 17.16.010;

F. Any residential project in the North Natomas community plan area which is the subject of a development agreement executed on or before June 20, 2000, unless subsequent to June 20, 2000 the residential project requires the approval of one or more legislative entitlements or amendments to legislative entitlements which are major rather than minor, in which case the residential project shall not be exempt from inclusion of the inclusionary housing component or from the other provisions of this chapter;

G. Residential projects in the North Natomas community plan area which had an approved development agreement on or before June 20, 2000 and which contemplated a particular type of development, as described in Exhibit B to its respective development agreement, shall be exempt from inclusion of the inclusionary housing component or the other provisions of this chapter even though one or more legislative entitlements are required; provided that the legislative entitlements or amendments to legislative entitlements are consistent with and necessary to develop the residential project described in said Exhibit B. If legislative entitlements or amendments to legislative entitlements are required to develop a project different from the residential project described in said Exhibit B, the revised residential project shall be subject to the requirement to provide the inclusionary housing component and the other the provisions of this chapter unless the legislative entitlements or amendments to legislative entitlement are minor;

H. Any residential project in the North Natomas Community Plan Area which does not have a development agreement as of June 20, 2000, but which is the subject of a formal application on which the planning commission took final action on or before June 20, 2000, regardless of whether the planning commission's action was thereafter appealed; provided that the city council thereafter approves the project in substantially the same form as approved by the planning commission. If the city council denies the application as approved on or before June 20, 2000 by the planning commission, the development project shall

comply with this chapter. If the city council approves the application but modifies the project in any substantial manner from the project approved by the planning commission, the project shall comply with the provisions of this chapter to the extent required by the council at the time of approval of the project. If changes in the residential project are proposed subsequent to the council's approval of the pending application, and the proposed changes require the approval of one or more legislative entitlements or amendments which are major rather than minor, the revised residential project shall be subject to the inclusionary housing component requirement and the other provisions of this chapter.

I. Any residential project for development of single family residential units on subdivision lots created pursuant to a final map recorded on or before June 20, 2000 where the only remaining discretionary entitlements required to develop the project are one or more of the following nonlegislative entitlements: special permit, variance, plan review, "R" review, or design review.

SECTION 8.

17.190.080 Duration of affordability of inclusionary units.

A. Rental inclusionary units shall remain affordable for a period of no less than thirty (30) years from the recordation of the inclusionary housing agreement.

B. For-sale inclusionary units shall remain affordable for a period of not less than thirty (30) years from the date of recordation of the inclusionary housing agreement and from the date of any resale to an income-eligible buyer made at a time the inclusionary unit is subject to affordability restrictions under this chapter.

SECTION 9.

17.190.090 Affordability and resale of for-sale units.

A. Affordability. The owner of a development project subject to an inclusionary housing agreement shall sell the inclusionary housing units to income-eligible initial owners at an affordable price. The initial sale and any subsequent sale to an income eligible purchaser shall be subject to the recordation by SHRA of legal documents to enforce the affordability, resale, and recapture requirements described in this section for a period of not less than thirty (30) years. Legal documents may include an interest-bearing note, a deed of trust, and a regulatory agreement or other affordability covenant. To the extent possible, affordability and resale requirements shall be designed to be compatible with conventional mortgage financing programs, including secondary market requirements.

B. Resale Procedure.

1. If the initial owner or any subsequent owner of a for-sale inclusionary unit intends to sell the unit at a time that the unit is subject to affordability restrictions, the owner shall notify SHRA in writing of the intent to sell, prior to initiating discussions with a real estate professional or taking any other steps to market the unit. Upon receipt of the notice from the owner, SHRA, or its assignee, shall have 120 days to either (a) identify, qualify as income eligible, and refer to the seller an income-eligible buyer; or (b) give notice to the seller that SHRA, or its assignee, will acquire the unit. If SHRA, or its assignee, gives notice of intent to

acquire the unit, it shall complete the transaction to purchase the property within thirty (30) days from the date it provides the notice of intent.

2. If the owner receives either a referral of an income-eligible buyer or a notice of intent to acquire from SHRA, or its assignee, the owner shall sell the unit to the referred buyer or to SHRA, or its assignee, at the resale price established by SHRA as provided in C., below.

3. If, within the timeframes specified, SHRA, or its assignee, (a) does not refer an income-eligible buyer to owner and (b) does not give notice of intent to acquire or does not complete the purchase of the unit, the inclusionary unit may be sold to a non-income eligible buyer. The sale to a non-income eligible buyer shall be subject to the recapture provisions of C. 2, below. Thereafter, affordability restrictions applicable to the unit shall terminate. SHRA shall apply all funds recaptured at resale to subsidize other inclusionary housing units.

C. Resale Price. SHRA shall establish the resale price for inclusionary units as follows:

1. For income-eligible buyers, the resale price shall be based on the lesser of: (a) market value, as established by an appraiser approved by SHRA; or (b) the new affordable price as established by SHRA for the appropriate income level of the buyer. Should the resale price be less than the last affordable sales price, or should the resale price be insufficient to ensure that the seller receives his or her original investment in the unit as well as reasonable and customary closing costs, SHRA shall allow the resale price to be increased to cover these costs. SHRA may also allow a higher resale price for owners occupying the unit for a substantial period of time and making capital improvements to the unit.

2. For non-income eligible buyers, the resale price shall be based on the market value established by an appraisal approved by SHRA. The seller shall receive the amount of the resale price established by SHRA under C.1, above. The remaining proceeds of the sale shall be paid to SHRA as recapture funds.

SECTION 10.

17.190.100 Occupancy requirement.

A. Rental Units. Any person who occupies a rental inclusionary unit shall occupy that unit as his or her principal residence.

B. For-Sale Units. An owner who purchases a for-sale inclusionary unit shall occupy that unit as his or her principal residence, and shall certify to the developer or seller of the unit that he or she is a first-time home buyer.

SECTION 11.

17.190.110 Administration of the inclusionary housing component.

A. Proposed Inclusionary Housing Plan. At the time of and as part of the application for the first legislative entitlement for a development project, or in the case of projects that do not require legislative entitlements, the first non-legislative adjudicatory entitlement, the

developer of a development project shall present to the City a draft inclusionary housing plan which shall contain, at a level of detail appropriate to the entitlement, the number, unit mix, location, structure type, affordability, and phasing of inclusionary units. If land dedication or an off-site location is proposed, the draft plan shall include information necessary to establish site location, suitability, development constraints, and the number of inclusionary units credited.

B. Action on Inclusionary Housing Plan.

1. Approval of Inclusionary Housing Plan. The SHRA director shall review the proposed inclusionary housing plan and shall make recommendations to the planning director.

a. City Council Approval of Inclusionary Housing Plan. For projects that require legislative entitlements, the inclusionary housing plan shall be noticed and heard by the city council in the same manner as the legislative entitlements.

b. Planning Commission Approval of Inclusionary Housing Plan. The inclusionary housing plan for development projects requiring only non-legislative, adjudicatory entitlements subject to planning commission approval shall be noticed and heard in the same manner as the non-legislative, adjudicatory entitlements. The decision of the planning commission approving or denying the inclusionary housing plan shall be subject to appeal to, and call-up by, the city council pursuant to Section 17.200.030 and 17.200.040 of Title 17 of the City Code. Notwithstanding any other provision of this code to the contrary, an appeal or call-up of the decision of the planning commission on the housing plan for a project shall also constitute the appeal or call-up of the decision of the planning commission on each adjudicatory entitlement considered by the planning commission for that project.

c. Planning Director Approval of Inclusionary Housing plan. The inclusionary housing plan for development projects requiring only staff-level adjudicatory entitlements shall be noticed and considered by the planning director in the same manner as a planning director's special permit. The decision of the planning director approving or denying the inclusionary housing plan shall be subject to appeal to the planning commission pursuant to Section 17.200.030. The decision by the planning commission approving or denying the housing plan shall be subject to appeal to, and call-up by, the city council pursuant to Section 17.200.030 and 17.200.040 of Title 17 of the City Code. Notwithstanding any other provision of this code to the contrary, an appeal or call-up of the decision of the planning director or planning commission on the housing plan for a project shall also constitute the appeal or call-up of the decision of the planning director and/or planning commission on each adjudicatory entitlement considered by the planning director and/or planning commission for that project.

d. Notwithstanding subsection 17.190.110.B.1.c, inclusionary housing plans that include land dedication or off-site inclusionary housing shall be approved by the City Council or planning commission in accordance with section 17.190.060.

2. Approval-When Required. No entitlement for a development project shall be granted without an approved inclusionary housing plan. The elements of the inclusionary housing plan shall be incorporated into the terms and conditions. of the applicable legislative entitlements and project-level approvals.

3. Amendment of Inclusionary Housing Plan. An inclusionary housing plan may be amended as provided in this subsection prior or subsequent to the execution of the inclusionary housing agreement.

a. Findings Required. Approval of an amendment to an inclusionary housing plan shall be subject to a finding that the amendment is necessary to facilitate the development, is consistent with the provisions of this chapter and will not inhibit the city's ability to enforce compliance with this chapter. If the amendment will change the phasing plan in such a way that the inclusionary units will not be developed concurrently with the market rate units, the amendment may be approved only if necessary to account for the different financing and funding environments, economies of scale, and infrastructure needs applicable to development of the market rate units.

b. Plans Approved by the City Council or Planning Commission. An amendment to an inclusionary housing plan that was originally approved by the council or planning commission, including all plans that contain land dedication or off-site inclusionary housing components, shall require hearing and approval by the planning commission in the same manner as a planning commission special permit. In approving the amendment, the planning commission shall make the findings stated in subsection 17.190.110.B.3.a., above.

c. Plans Approved by the Planning Director. An amendment to an inclusionary housing plan that was originally approved by the planning director shall require hearing and approval by the planning director in the same manner as a planning director special permit. In approving the amendment, the planning director shall make the findings stated in subsection 17.190.110 B.3.a., above. The planning director may, at his or her discretion, elevate any request for amendment to the planning commission that would otherwise be heard by the planning director, and matters so elevated shall be treated in all respects as amendments subject to planning commission review in the first instance.

d. Minor Amendments. Notwithstanding subsections 17.190.110 B.3.b and B.3. c, amendments to an inclusionary housing plan that are limited to modifications in total number and location of units and the unit size and mix necessary to reflect changes in the design of the underlying development project, including changes in unit size, on-site location and other similar changes, shall be approved by the planning director if the planning director finds that the amendment to the inclusionary housing plan conforms to the changes in the design of the development project. Approval of a minor amendment to an inclusionary housing plan by the planning director under this subsection shall not be subject to appeal.

e. Fee. The applicant for an amendment of an inclusionary housing plan shall pay a fee, as established by resolution of the City Council, at the time the application is filed.

C. Inclusionary Housing Agreement.

1. Inclusionary housing agreements shall be prepared by SHRA.

2. Except as provided under subsection C.3. of this section, for development projects that require legislative entitlements, no project-level approval may be issued by the City without a recorded inclusionary housing agreement executed by the owner, the developer (if not owner) and the director of SHRA acting with the advice of the planning director.

3. A tentative subdivision map or tentative parcel map may be approved prior to

execution or recordation of an inclusionary housing agreement if: (a) an inclusionary housing plan including a phasing plan has been approved; (b) the tentative subdivision map or tentative parcel map contains conditions that enforce the applicable phasing and other requirements of the housing plan; and (c) the legislative entitlements contain provisions that condition approval of special permits, plan review, or building permits on execution and recordation of and compliance with an inclusionary housing agreement.

4. Development projects that only require approval of one or more non-legislative, adjudicatory entitlements, including, but not limited to, a tentative subdivision or parcel map, special permit, or plan review shall include as a condition that no building permit, grading permit, final map, or other ministerial permit necessary to develop the project shall issue unless and until an inclusionary housing agreement consistent with the requirements of this chapter has been executed and recorded, and the developer or owner has complied with the terms and conditions of that agreement.

5. Timing. For development projects that require legislative entitlements, the inclusionary housing agreement shall be negotiated concurrently with the processing of an application for the first project-level approval, except tentative subdivision maps and tentative parcel maps may issue prior to such negotiation pursuant to subsection C.3. of this section. For development projects that only require approval of one or more non-legislative, adjudicatory entitlements, the inclusionary housing agreement shall be negotiated prior to or concurrent with the processing of the first building permit for the project. At the request of the developer, and if developer makes the project development and financing details set forth below in subsections C.6. and C.7. of this section available, the inclusionary housing agreement may be negotiated earlier in connection with the issuance of a legislative or non-legislative, adjudicatory entitlement.

6. Contents. The agreement shall be consistent with the inclusionary housing plan, and shall indicate ownership or rental project, the number and size of very low and low income units, the developer of the inclusionary units, the phasing and construction scheduling of the units, and any other information required by the SHRA relative to the inclusionary housing component. In the case of land dedication or off-site inclusionary housing, the agreement shall also contain the information required in Section 17.190.060.

7. Information Required from Developer. The developer of the development project shall present to SHRA: (a) plans, schematics, and details of phasing of the residential project as a whole including the inclusionary housing component; (b) financial pro-forma for the inclusionary housing component with sufficient economic information to allow for evaluation of feasibility, financing and equity sources and requirements, and rates of return; (c) the name and address of the entity that will develop the inclusionary housing component if not developer; (d) in the case of land dedication, an executed irrevocable offer of dedication at no cost; (e) in the case of offsite location, the evidence of site control required in Section 17.190.060; and (f) any other information reasonably required by SHRA in connection with the agreement.

8. If the SHRA or City fail to make available any of the inclusionary incentives agreed to in the inclusionary agreement, the residential project shall be relieved of the portion of the inclusionary obligation that represents the percentage of local public funding committed but not provided. If the local public funding component of the inclusionary incentives is delayed, SHRA may allow delay of the construction of some or all of the inclusionary units until the local public funding is available. Upon a decision by the City or SHRA that funding is not available for inclusionary units the Planning Director will initiate an amendment to the Housing Plan pursuant to Section 17.190.110B3.

9. Incorporation into Project-Level Approvals and Recordation. The developer obligations and the inclusionary incentives in the agreement shall be incorporated into the applicable ^{project-level} approvals. The executed agreement shall be recorded as a covenant running with the land against the real property of the residential project and, in the case of off-site inclusionary units, against the real property on which such units are to be located.

D. Administration of Affordability for Inclusionary Housing. The owner of rental inclusionary units shall be responsible for certifying the income of tenants to the SHRA at the time of initial rental and annually thereafter and that the unit is being rented at an affordable price. The owner of a for-sale inclusionary unit shall certify to the SHRA the income of the initial purchaser and shall certify to the SHRA that the initial purchaser is a first-time home buyer and that the unit is being sold at an affordable price. The owner of rental inclusionary units shall apply the same rental terms and conditions (except rent levels, deposits and income requirements) to tenants of inclusionary units as are applied to all other tenants, except as otherwise required to comply with government subsidy programs. Discrimination based on subsidies received by the prospective tenant is prohibited. The city and SHRA shall keep confidential the personal identifying information of the household members occupying an inclusionary unit.

SECTION 11.5.

17.190.115 Guidelines.

A. The SHRA multifamily development financing guidelines and the SHRA single family ownership financing guidelines shall apply to inclusionary housing developed under this chapter.

B. The executive director of SHRA and the planning director, individually or jointly, may adopt guidelines consistent with the terms contained in this chapter, as each may determine to be necessary or convenient for the implementation and administration of this chapter, which guidelines shall become effective upon approval by resolution of the Housing Authority of the City of Sacramento. The executive director and the planning director, individually or jointly, may adopt administrative procedures to implement the regulations adopted by Housing Authority resolution.

SECTION 12.

17.190.120 Administrative fees.

The city council may by resolution establish reasonable fees and deposits for the administration of this chapter. (Ord. 2000-039 § 2 (part))

SECTION 13.

17.190.130 Taking determination.

Commencing upon execution of the inclusionary housing agreement and within fifteen (15) days thereafter, a developer may request a determination that the requirements of this chapter, taken together with the inclusionary incentives, as applied to the residential project through the inclusionary housing agreement, would legally constitute a taking of property of

the residential project without just compensation under the California or Federal Constitutions. If the developer and the SHRA have been unable to reach agreement on the terms of an inclusionary housing agreement, the applicable draft for purposes of the taking determination shall be the final draft proposed by the SHRA which the developer may execute under protest without recordation. The developer has the burden of providing economic information and other evidence necessary to establish that application of the provisions of the inclusionary housing agreement to the residential project would constitute a taking of the property of the Proposed residential project without just compensation. The SHRA director shall perform an independent evaluation, and make a recommendation to the planning director. The planning director shall make the determination, which may be appealed in the same manner as planning director decisions as provided in Chapter 17.200 of the city code; provided, however, that the decision of the planning director shall be subject to appeal to the city council. In making the taking recommendation or determination, the decision maker shall assume each of the following: (A) incorporation of the inclusionary housing component in the residential project; (B) application of the inclusionary incentives; (C) incorporation into the residential project of the most cost-efficient product type for the inclusionary units; and (D) external funding where reasonably likely to occur. If it is determined that the application of the provisions of this chapter through the inclusionary housing agreement would be a taking, the inclusionary housing plan and the inclusionary housing agreement shall be modified to reduce the obligations in the inclusionary housing component to the extent and only to the extent necessary to avoid a taking. If it is determined no taking would occur though application of the inclusionary housing agreement to the residential project, the requirements of this chapter remain applicable, and no project-level approval shall be issued unless the developer has executed and recorded the inclusionary housing agreement as proposed by the SHRA. (Ord. 2000-039 § 2 (part))

SECTION 14.

17.190.140 Enforcement and penalties.

A. No legislative entitlement or, in the case of projects that do not require legislative entitlements, no non-legislative entitlement for any development project subject to this chapter shall be issued or valid without an inclusionary housing plan as required by this chapter.

B. No project-level approval shall issue for any development project subject to this chapter unless an inclusionary housing agreement has been executed and recorded, except tentative subdivision maps and tentative parcel maps may issue prior to such recordation pursuant to Section 17.190.110(C), and no building permit or certificate of occupancy shall issue until the inclusionary housing agreement has been recorded as required by this chapter.

C. The city may bring such civil and criminal enforcement actions as are provided for in the city code.