

ORDINANCE NO. ____
ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON THE DATE OF [October 3, 2000]

**AN ORDINANCE ADDING CHAPTER 17.190
TO TITLE 17 (ZONING CODE) OF THE CITY CODE
RELATING TO MIXED INCOME HOUSING**

Section 1. Findings.

The City Council of the City of Sacramento makes the following findings:

It is a public purpose of the City and a policy of the State to achieve a diverse and balanced community with housing available for households of all income levels. Economic diversity fosters social and environmental conditions that protect and enhance the social fabric of the City and are beneficial to the health, safety and welfare of its residents.

State law pertaining to general plans and the Housing Element of the City General Plan require that City ordinances regulate land use development and that the City and its agencies otherwise use their authority in a manner that provides an adequate supply of housing for all economic segments of the community.

The City is experiencing an increasing shortage of housing affordable to very low and low income households. New residential development does not provide housing opportunities for very low and low income households due to the high cost of newly constructed housing in the City. As a result, low and very low income families are de facto excluded from many new neighborhoods, creating economic stratification in the City detrimental to the public health, safety and welfare. An increasing number of persons in low and very low income households live in overcrowded or substandard housing and devote an overly large percentage of their income to pay for housing.

The amount of land in the City available for residential development is limited by City General Plan policies, the planning principles embodied in state law pertaining to general plans and annexation, and by mandates in federal law. These policies and laws discourage urban sprawl and limit the supply of land for residential development for many environmental reasons including the need to reduce vehicle-related air pollution, the preservation of agricultural land and wildlife habitat, and efficient use of natural resources.

The consumption of this remaining land for residential development without providing housing affordable to persons of all income levels would work counter to these housing, environmental and planning policies. Scarce remaining opportunities for affordable housing would be lost. Persons from low and very low income families who work in the City would be unable to find affordable housing there and would be forced into longer commutes.

Therefore, to implement the City General Plan, to carry out the policies of the state and federal law and policy, and to ensure the benefits of economic diversity of the residents of the City, it is essential that new residential development in the remaining new growth areas of the City contain housing opportunities to households of low and very low income, and that the City provide a regulatory and incentive framework which ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the community.

Section 2. Mixed Income Housing

Chapter 17.190 is hereby added to Title 17 of the City Code, to read as follows:

CHAPTER 17.190. MIXED INCOME HOUSING.

Section 17.190.010. Purpose and Intent.

This section 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.

Section 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 as provided in this Chapter can qualify for the purchase of for-sale Inclusionary Units, based on thirty percent (30%) of the Very Low or Low Income standard. For purposes of this calculation, housing expenses 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 that the monthly rent consists of a maximum of one-twelfth of thirty percent (30%) of eighty percent (80%) of the median income applicable to Sacramento County; and (2) for a unit whose occupancy is restricted to a Very Low Income Household that the monthly rent consists of a maximum of one-twelfth of thirty percent (30%) of fifty percent (50%) 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, adjusted for household size, less a reasonable allowance for utilities.

Affordable Rental Agreement means legal restrictions by which the rents for rental Inclusionary Units will be controlled to ensure that rents remain Affordable for a period of thirty (30) years or longer.

City means the City of Sacramento.

Density bonus means a minimum density increase of at least twenty five percent (25%) over the otherwise maximum residential density as permitted by the City General Plan, Community Plan and Chapter 17.186 of Title 17 of the City Code at the time of application.

Developer means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which 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 Units and is required to provide an Inclusionary Housing Component pursuant to the provisions of this Chapter. 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 Multi-Family Residential to accommodate the Very Low Income portion of the Inclusionary Housing Component. Where land zoned for Single-Family Residential use and land planned, zoned for or permissive of multi-family 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 or spouse has owned a home during the past three years, or that the purchaser meets at least one of the following criteria:

- A. 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;

- B. 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
- C. 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 will be met in the Development Project.

Inclusionary Housing Plan means the plan described in Section 17.190.110 setting forth the manner in which the Inclusionary Housing Component will be implemented in the Development Project.

Inclusionary Housing Component means the provision of the Inclusionary Housing Units in a Development Project as specified in this Chapter.

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 Housing Development means a building containing more than eight (8) units, consisting of more than fifty percent (50%) Inclusionary Units or otherwise assisted units for Low or Very Low Income Households, and receiving Local Public Funding, or a cluster of such buildings under one ownership, or approved as one project in a single Special Permit.

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 designations and redesignations, zonings and rezonings, planned unit developments ("PUD") schematic plans and amendments thereto, planned unit development guidelines and amendments thereto.

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 percent (80%) 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.

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:

- A. 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;
- B. 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 entitlement are limited to addressing the amendments required by the City or other public agency; or
- C. Entitlements that are limited to amendments to a previously approved PUD schematic plan, tentative map, or PUD Development Guidelines, provided that the amendments do not result in a deviation of more than five percent (5%) 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.

Multi-family 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 "Appendix 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 (0.5%) shall be disregarded and any portion of a Percent one half (0.5%) 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, which 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-subsidiary relationship; or (5) the person is a sibling, offspring or parent of an individual Owner. For purposes of this subsection, a controlling interest means fifty percent (50%) or more of the voting power of a corporation, and a parent-subsidiary relationship exists when one corporation owns, directly or indirectly, fifty percent (50%) 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 Market Rate residential development 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 Development Agency, a joint powers agency, and its constituent entities, the Sacramento Housing Authority and Sacramento Redevelopment Agency.

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 as a conditional use duplexes, half-plexes, 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-percent (50%) 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.

Zoning Code means Title 17 of the City Code as it may be amended from time to time.

Section 17.190.030. Standard Inclusionary Housing Component

- A. Number and Affordability of Inclusionary Units. In Development Projects in New Growth Areas, the Inclusionary Housing Component shall consist of Inclusionary Units developed for, offered to, and leased or sold to Very Low and Low Income Households as follows: ten percent (10%) of the Dwelling Units shall be Affordable to Very Low Income Households and five percent (5%) of the Dwelling Units shall be Affordable to Low Income Households.

- B. Location of Inclusionary Units. Except as provided in Section 17.190.060, Inclusionary Units shall be built on the site of the Development Project.
- C. 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; provided however, that the phasing plan will be adjusted by the Planning Director away from strict concurrency where necessary in order to account for the different financing and funding environments, economies of scale, and infrastructure needs applicable to development of the Market Rate and the Inclusionary Units.
- D. Unit Size. The Inclusionary Housing Component shall accommodate diverse family sizes by including a mix of studio, one, two and three-bedroom units as determined by the Planning Director, upon recommendation by the SHRA Director.
- E. Exterior Appearance. Inclusionary Units shall be visually compatible with the Market Rate Units. External building materials and finishes shall be the same type and quality for Inclusionary Units as for Market Rate Units. Interior materials finishes may vary pursuant to Section 17.190.040 (C).
- F. Development Standards. Except as provided in the Inclusionary Housing Agreement pursuant to Section 17.190.040 and 17.190.110 below, Inclusionary Units shall comply with all applicable Development Standards.

Section 17.190.040. Incentives, Assistance, and Subsidies

The Developer of a Development Project subject to the Inclusionary Housing provisions of 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 Section 17.190.040 below, 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, half-plexes, patio homes and second units.

- 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 (A) (1) and (2) and the other provisions of this Chapter. Market Rate Units produced as part of such a Density Bonus do not give rise to an Inclusionary Housing Component under this Chapter.
- F. Local Public Funding. The Developer may apply to the SHRA for Local Public Funding to assist in the financing and development of the Inclusionary Housing Component. 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 Developer diligently pursue such External Subsidy and is not intended to substitute for such External Subsidy. A Developer seeking Local Public Funding shall apply to the SHRA Director for such funding pursuant to Section 17.190.110.
The SHRA Director shall make a recommendation regarding the proposed Local Public Funding assistance package to the Planning Director for inclusion in the City's Inclusionary Incentives for the project. The SHRA Director, in making the recommendation to the Planning Director as to the feasible elements of Local Public Funding, and the Planning Director, in making the determination as to inclusion of Local Public Funding in the Inclusionary Incentives, shall consider: (1) the number, percentage, and tenure of the Units for Very Low Income or Low Income Households in the Inclusionary Housing Component; (2) the financial structure and financing needs of the Inclusionary Housing Component; (3) the cost-efficiency of the solution to the Inclusionary Housing Component, (4) the Developer's initiatives in applying for grants and other funds external to Local Public Funding; (5) the availability of funds given the funding priorities of SHRA and other funding agencies at the time, and other development of housing for Very Low or Low Income Households under way, proposed or anticipated;

and (6) other factors necessary to the evaluation. SHRA shall adopt and provide to Developers and other interested parties criteria for evaluation of applicants for Local Public Funding. These criteria may be contained in the Guidelines referenced in Section 17.190.110.

Section 17.190.050. Construction of the Inclusionary Housing Component to Avoid Overconcentration

The following principles shall apply to the development of the Inclusionary Housing Component: (1) The Inclusionary Housing Plan shall provide for the dispersal of buildings containing Inclusionary Units to the maximum extent feasible taking into account the funding and financing environments applicable to Inclusionary housing development. (2) Multi-family buildings may contain any proportion of inclusionary units, but no Inclusionary Housing Development may be located adjacent to or in the immediate vicinity of another Inclusionary Housing Development. For purposes of this Section, Inclusionary Housing Development means a building containing more than eight (8) units, consisting of more than fifty percent (50%) Inclusionary Units or otherwise assisted units for Low or Very Low Income Households, and receiving Local Public Funding, or a cluster of such buildings under one ownership, or approved as one project in a single Special Permit. The Planning Director may allow for variation from these principles, but only the extent necessary, if he or she determines that 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 17.190.060. Alternatives to the Standard Inclusionary Housing Component: Land Dedication and Off-Site Inclusionary Housing

A. Land Dedication and Off-Site Compliance Options. Upon a determination by the Planning Director that the criteria in subsection B below have been met, a Residential Project may provide all or part of its Inclusionary Housing Component by means of the following options:

- (1) Dedication of land to the SHRA at no cost;
- (2) In the case of a Residential Project that is Exclusively Single-family, by development of Inclusionary Units on a site outside the Development Project within a New Growth Area (“Off-Site”). For purposes of this option, a Residential Project is Exclusively Single-family if it contains land zoned for Single-Family Residential use, but insufficient land zoned for or permissive of Multi-Family Residential to accommodate the Very Low Income portion of the Inclusionary Housing Component. Where land zoned for Single-Family Residential use and land planned, zoned for or permissive of multi-family 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.
- (3) A combination of these options.

- B. Standard for Approval. The Planning Director may approve the proposal only if it provides a more cost-efficient solution to the Inclusionary Housing Component than the standard approach set forth in Section 17.190.030, or if the location of Off-Site development would be superior to on-site development from the perspective of access to transportation or other applicable residential planning criteria in the City General Plan.
- C. Number of Inclusionary Units Credited to the Dedication or Off-Site Location. The number of Inclusionary Units credited to the dedication or Off-Site location will consist of the number of Inclusionary Units which can with reasonable degree of certainty be developed on the land, given (1) the mix of Inclusionary Unit sizes and type of structure in the Inclusionary Housing Plan; (2) densities permitted by applicable planning and zoning designations; and (3) site, infrastructure, environmental and other physical and planning constraints.
- D. Site Suitability. The land proposed for dedication or for Off-Site location must be suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria. The site must allow development of Inclusionary Units in a manner that complies with this chapter including the over-concentration provisions set forth in Section 17.190.050.
- E. Site Identification and Regulatory Status. The Developer must identify the proposed dedicated site or Off-Site location and the number of proposed Units to be credited thereby as part of the Inclusionary Housing Plan required in Section 17.190.110. At the same time or before the Development Project receives its Legislative Entitlements, the dedicated or Off-Site land shall have received all the Legislative Entitlements necessary for development of the Inclusionary Units on such land. Unless the phasing plan requires otherwise, at the same time or before a Residential Project receives its first Project-specific Entitlements, the dedicated or Off-Site land shall have received all the necessary Project-Level Approvals necessary for development of the Inclusionary Units on such land, and prior to the issuance of any Certificate of Occupancy for a Residential Project, the dedicated land or Off-Site land shall be fully served with the infrastructure necessary for residential development.
- F. Planning Director Action. The Planning Director may approve, conditionally approve or reject the proposed land dedication or Off-Site development proposal. In reviewing the proposal the Planning Director will consult with the director of the SHRA. If the land dedication or the Off-Site proposal is accepted or accepted as modified, 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 is proposed to be met. If the dedication or Off-Site proposal is rejected, the Inclusionary Housing Component shall be provided as set forth in Section 17.190.030 within the Development Project.
- G. 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 Owner of the Residential Project must: (1) in the case of land dedication, provide an irrevocable offer of dedication for the dedicated site at no cost to SHRA or the City; and (2) in the case of Off-Site land, demonstrate to the Planning Director that the Off-Site location is and will remain committed to the timely development of the Inclusionary Units as provided in the Inclusionary Housing Plan. This commitment may be demonstrated through ownership of the Off-site location, or through adequate control of the use of the Off-site location through joint ownership, joint venture or other contractual means. If necessary to ensure that Inclusionary Housing Units are developed contemporaneously with the Market Rate Units, the Planning Director may require the offer of dedication or evidence of Off-Site control as early as the first Legislative Entitlement. With respect to an Off-site location, the Planning Director may also condition development or occupancy of the Residential Project on development or occupancy of the Off-Site Inclusionary Units, and the Inclusionary Housing Agreement must apply to and be recorded against both the Residential Project and the Off-Site land. With respect to dedicated land, the SHRA, upon acceptance of the offer of dedication, shall publish a request for proposal for development of the site(s) which will result in the production of the number of Inclusionary Units credited to the site(s).

Section 19.190.070. Exempted Residential Development

The following Development Projects are exempt from this Chapter and generate no obligation to provide an Inclusionary Housing Component:

- A. Residential Projects proposed to contain nine or fewer residential dwellings at One Location.
- B. Residential Projects outside of a New Growth Area.
- C. Rehabilitation of existing residential dwellings.
- D. Market Rate Units produced as a Density Bonus.
- E.. 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.
- F. 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.

G. 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 approves the application and authorizes execution of a Development Agreement in substantially the form approved by the Planning Commission. In the event that 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 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.

H. The following Residential Projects in the Jacinto Creek Planning Area:

1. Residential Projects for which an application for a tentative map was filed and determined or deemed to be complete on or before June 20, 2000, pursuant to Government Code Section 65943, where the only remaining Discretionary Approval required to proceed are a tentative map and other Project-specific Entitlements. If changes in the Residential Project are proposed subsequent to the 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 not be exempt from the Inclusionary Housing Component requirement or the other provisions of this Chapter.
2. Residential Projects for which an application for a tentative map was filed and determined or deemed to be complete on or before June 20, 2000, pursuant to Government Code Section 65943, where the only remaining Discretionary Approval required to proceed are (1) a tentative map and other Project-specific Entitlements; and (2) one or more Legislative Entitlements, but only if the Legislative Entitlements are required to address requests made by the City, a schools district or other public entity to locate schools, parks or other public facilities on or adjacent to the Residential Project site.

Section 17.190.080. Duration of Affordability for Rental Inclusionary Units

Rental Inclusionary Units shall remain Affordable for a period of no less than thirty (30) years from the recordation of the Affordable Rental Agreement.

Section 17.190.090. Affordability and Resale For-Sale Units

- A. Resale to an Income Eligible Person, Exception: The Owner of a Residential project shall sell Inclusionary Housing Units to an income-eligible Initial Owner at an Affordable Price. Thereafter for a period of thirty (30) years from the recordation of the SHRA note or other document as provided below, the Initial Owner and any subsequent owner shall notify SHRA in writing of his or her intent to sell the Inclusionary Unit. SHRA or its assignee shall have ninety (90) days from receipt of the notification to (1) identify, qualify, and refer to the seller an income-eligible purchaser; or (2) give notice to the seller that the SHRA will acquire the Unit. The Initial Owner and any subsequent owner who receives a referral or a SHRA notice of intent to acquire, shall sell the unit to the referred purchaser or to the SHRA or its assignee at the resale price established by SHRA as provided in this section. If the SHRA has given notice of intent to acquire the Unit, it shall have thirty (30) days from the date it provides notice to complete the transaction and purchase the property. In the event that SHRA or its assignee does not refer an income-eligible purchaser or complete the purchase of the unit within the time frames specified above, the Inclusionary Unit may be sold to a non-income eligible purchaser and the affordability restrictions applicable to the unit shall terminate.
- B. Recordation of Note: Agreement or Covenant and Recapture Upon Sale: At the time of the initial sale and any subsequent sale to an income-eligible purchaser, SHRA shall record an interest-bearing note, secured by a deed of trust, and/or regulatory agreement or covenant to recapture the difference between the Inclusionary Unit's market value, as determined by an appraiser approved by SHRA, and its Affordable Housing Price at the time of sale or resale. SHRA shall also record a deed of trust encumbering any other monetary Inclusionary Incentives. The deed of trust, regulatory agreement, or covenant shall require that for a period of no less than 30 years, the unit may be resold to an income eligible purchaser, except where SHRA is unable to refer such a purchaser, as provided herein. The full principal amount and interest will be due on sale to any non income-eligible purchaser(after failure of SHRA to refer an income-eligible purchaser or otherwise); due on change of use from an owner-occupied residential unit to any other use or if the Inclusionary Unit is rented; and due on any refinance of the Inclusionary Unit without SHRA approval. SHRA shall apply all recaptured funds to subsidize other for-sale Inclusionary Housing Units.
- C. Resale Price: SHRA shall establish the resale price for Inclusionary Units for the 90-day referral period based on the lesser of 1) market value, as established by an appraiser approved by SHRA; or 2) an amount equal to a two percent increase per year over the market value of the Inclusionary Unit at its last sale; provided, however, that the increase per year over market value may rise over the time of ownership by one owner if the SHRA adopts guidelines so providing.
- D. SHRA Guidelines: SHRA shall adopt guidelines for the administration of this program. The guidelines may provide for a graduated increase in the rate of increase of market value over the time of ownership of a for-sale Inclusionary Unit by one Owner or for forgiveness of all or a portion of the note(s) when (1) the resale value of the Inclusionary Unit falls below the

market value of the unit at its last sale;, or (2) the income-eligible owner occupies the unit for a substantial period of time.

Section 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 Initial Owner who purchases a for-sale Inclusionary Unit shall occupy that unit as his or her principal residence, and shall certify to the Developer of the Unit that he or she is a First-time Home buyer.

Section 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, 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 Legislative 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 assigned.
- B. Action on Inclusionary Housing Plan. The SHRA Director shall review the proposed Inclusionary Housing Plan and make recommendations to the Planning Director. No Legislative Entitlement shall be granted without an adequate 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-specific Approvals.
- C. Inclusionary Housing Agreement.
 - 1. Requirement. No Development Agreement or Project-specific Approval may be issued by the City without an executed Inclusionary Housing Agreement executed by the Owner, the Developer (if not Owner), and the Director of the SHRA acting with the advice of the Planning Director. Recordation of the Agreement shall be a condition of approval of any Development Agreement, Disposition and Development Agreement or Project-level Approval.
 - 2. Timing. The Inclusionary Housing Agreement shall be negotiated concurrently with the processing of an application for the earlier of a Development Agreement or the first Project-specific Approval. The SHRA shall act with the advice of the Planning Director. At the request of the Developer, and if Developer makes the project development and financing details set forth below in subparagraphs 3 and 4 available, the Inclusionary Housing Agreement may be negotiated earlier in connection with the issuance of a Legislative Entitlement.
 - 3. 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, commitments for Inclusionary Incentives, including SHRA commitments for Local Public Subsidy, 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 17.190.60.

4. Information Required from Developer. The Developer of the Development Project shall present to SHRA: (1) plans, schematics, and details of phasing of the Residential Project as a whole including the Inclusionary Housing Component; (2) 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; (3) the name and address of the entity which will develop the Inclusionary Housing Component if not Developer; (4) in the case of land dedication, an executed irrevocable offer of dedication at no cost; (5) in the case of Off-Site location, the evidence of site control required in Section 17.190.050, and (6) any other information reasonably required by SHRA in connection with the Agreement.
5. Local Public Subsidy. The Developer of the Development Project may apply to the SHRA for Local Public Subsidy. Such an application shall contain the planning and financial information necessary to evaluate the eligibility and suitability of the project for Local Public Funding and shall include timetables or copies of proposals for External Subsidy. The application will be considered pursuant to the SHRA Multi Family Lending Guidelines, SHRA Single Family Ownership Housing Financing Guidelines, and any Guidelines developed pursuant to Section 17.190.110 (F). The SHRA shall recommend to the Planning Director, and, as part of the Inclusionary Incentives, the Planning Director shall determine the Inclusionary Incentives it will make available in connection with the Residential Project as provided in Section 17.190.40. The Inclusionary Housing Agreement shall specify the nature and amount of Local Public Funding. If the SHRA and City fail to make available the Inclusionary Incentives set forth in an executed and recorded Inclusionary Housing Agreement, the Residential Project shall be relieved of the portion of the Inclusionary Obligation that represents the percentage of local public funding committed in the Agreement but not provided. At SHRA option the Agreement may provide that, if the Local Public Funding component of the Inclusionary Incentives is delayed beyond the time provided for in the Agreement, the construction of Inclusionary Units may be deferred until funding availability, or that during the period of delay, the Owner may offer the Inclusionary Units as rental units at Market Rate until such time as the Local Public Funding indicated in the Agreement becomes available, at which time such rental units, upon being voluntarily vacated by existing market rate tenants, would be offered as Inclusionary Units.
6. Incorporation into Project-level Approvals and Recordation. The Developer obligations and the Inclusionary Incentives in the Agreement shall be incorporated into the Project-specific 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 Rental Inclusionary Housing. The Owner of rental Inclusionary Units shall be responsible for certifying the income of tenant to the SHRA at the time of initial rental and annually thereafter. 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. 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.
- E. Guidelines. The SHRA Multi-family Development Financing Guidelines and the SHRA Single Family Ownership Housing Financing Guidelines shall apply to Inclusionary Housing developed under this Chapter. The Planning Director and SHRA Director may jointly develop, and either of them may adopt, additional guidelines as necessary for the implementation of this Chapter consistent with the terms contained herein.

Section 17.190.120. Administrative Fees

The City Council may by resolution establish reasonable fees and deposits for the administration of this chapter.

Section 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 Section 2 of Chapter 7 of Title 17 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: (1) incorporation of the Inclusionary Housing Component in the Residential Project; (2) application

of the Inclusionary Incentives; (3) incorporation into the Residential Project of the most cost-efficient product type for the Inclusionary Units; and (4) 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.

Section 17.190.130. Enforcement and Penalties

- A. No Legislative Entitlement and no Master Parcel Map shall be issued or valid without an Inclusionary Housing Plan as required by this Chapter.
- B. No Project-specific Approval nor Development Agreement shall issue for any Development Project unless an Inclusionary Housing Agreement has been approved and executed, 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.

Section 3. Severability

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any provision of the ordinance is held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

Ayes:
Noes:
Absent:

Jimmy Yee, Mayor

Attest:

Valerie Burrows, City Clerk

