



Community Development Department
Planning and Building Division
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PLANNING COMMISSION STAFF REPORT April 21, 2021

INCLUSIONARY ZONING ORDINANCE AMENDMENTS

DETAILS

Applicant: City of El Cerrito

Location: Citywide

Request:

Planning Commission consideration of a recommendation to City Council of adoption of amendments to Chapter 19.30: Inclusionary Zoning of the El Cerrito Municipal Code.

CEQA:

This action is exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061 (b)(3). The activity is covered by the general rule which exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment. Any project that would implement inclusionary housing being constructed would be subject to its own review under the California Environmental Quality Act.

EXECUTIVE SUMMARY

In December 2014, the City Council adopted the San Pablo Avenue Specific Plan to permit increased development in the San Pablo Avenue corridor consistent with City goals. In August 2017, the City Council adopted the Affordable Housing Strategy that identified the adoption of an Inclusionary Housing policy. Subsequently, the City Council adopted Chapter 19.30: Inclusionary Zoning in May 2018. At that time, the Ordinance exempted entitled projects and projects with complete applications provided that a building permit was issued within two years of approval or by June 30, 2021, whichever comes first.

Due to the COVID-19 pandemic, the City Council acted in June 2020 to extend the expiration of all exemptions to the Inclusionary Zoning Ordinance as June 30, 2021. The provisions required that building permit applications be submitted by June 30, 2021 and that building permits be issued within 6 months of submittal. Regardless of any entitlement extension or amendments, all exempt projects are set to expire on June 30, 2021.

The restrictions imposed due to the COVID-19 pandemic over the last twelve plus months have caused delays across the construction and financing sectors. Several entitled projects which are currently exempt from the Inclusionary Zoning Ordinance due to the date of their entitlement remain unbuilt. Developers of existing projects have reached out to the City to indicate their interest in moving forward but due to circumstances related to financing and feasibility related to timing affected by the pandemic, needed additional months. To facilitate these projects continuing to move into the construction phase, City staff is recommending the following amendments to Chapter 19.30: Inclusionary Zoning of the El Cerrito Municipal Code:

1. Establish an application process for developers to request a limited extension that must be filed with the City Manager by June 30, 2021.
2. If granted, the extension will require that building permit applications be submitted by January 1, 2022 and that construction begin by July 1, 2022.
3. Allow any approved extension for all exempt projects to expire on January 1, 2022, if a building permit has not been issued, or July 1, 2022, if construction has not commenced.

Background

The Council adopted the City's first Inclusionary Zoning Ordinance, Chapter 19.30, in May 2018. This policy was identified in the City's 2017 [Affordable Housing Strategy](#) as a tool to *Leverage Private Development to Address Affordable Housing Needs* to increase our affordable housing stock. Requiring market-rate developers to set aside a portion of their units at below market rate or the option of an in-lieu fee payment assists the City in meeting its housing needs/goals by increasing the supply of low- and moderate-income units while also contributing to the overall market supply. Given that inclusionary housing is produced by the market and is informed and driven by development economics, it differs from affordable housing tools that require subsidies.

When the Ordinance was adopted, it provided that entitled projects or projects that had submitted entitlement applications which had been deemed 'complete' prior to the effective date to remain exempt from the inclusionary requirements. This exemption included provisions which required developers of the exempt projects to obtain a building permit within two years of their entitlement or by June 30, 2021, whichever comes first. A total of 13 projects were exempt from the Ordinance on this basis. Creating an exemption for previously entitled projects was also part of the Economic Analysis completed by Keyser Marston Associates (2018) in determining financial feasibility for the Ordinance. Due to the lack multifamily housing production in El Cerrito over the previous decade, this exemption was driven by the need for catalyzing development by creating market-rate comparables with the first generation of Specific Plan projects to be built.

In early 2020, the global COVID-19 pandemic began to impact our lives and economy in unprecedented ways. In Contra Costa County and across the nation, Shelter-In-Place (SIP) Orders took effect starting March 2020. Ongoing construction was halted at this time and projects were stalled. Without knowing the ultimate duration that the SIP Orders would be in effect, City staff recommended that the Planning Commission and City Council amend the exemptions to the Ordinance as the June 30, 2021 sunset approached. The following amendments were adopted in May-June 2020:

1. Establish the expiration of all exemptions to the Inclusionary Zoning Ordinance as June 30, 2021.
2. Modify the exemption to require that building permit applications be submitted by June 30, 2021 and that building permits be issued within 6 months of submittal.
3. Allow the exemption for all exempt projects to expire on June 30, 2021 regardless of any entitlement extensions or amendments which have been granted, as described further below.

Staff is returning to the Planning Commission to consider and recommend additional amendments to Chapter 19.30 due to the ongoing effects of the COVID-19 pandemic that have resulted in construction and financing delays. Any extension granted through this amendment will be subject to performance timelines driven by the submittal and issuance of a building permit including the commencement of construction. Based on the Governor's announcement that aims to fully reopen the State on June 15, 2021, staff does not anticipate recommending any future extensions unless economic circumstances change dramatically. More detailed information about the Inclusionary Zoning provisions can be found in **Table 1** and at www.el-cerrito.org/InclusionaryHousing

Table 1: City of El Cerrito Chapter 19.30 Inclusionary Zoning Existing Provisions

	<i>For-Sale Projects</i>	<i>Rental Projects</i>
<i>Applicability</i>	All residential development applications not deemed complete by the Ordinance effective date.	All residential development applications not deemed complete by the Ordinance effective date.
<i>Threshold</i>	9 units	10 units
<i>Exemptions</i>	Accessory Dwelling Unit (ADU) < 9 units	< 10 units
<i>Compliance Options</i>	On-site	In-lieu fee or on-site
<i>Set-aside</i>	12%	10%
	<i>For-sale Projects</i>	<i>Rental Projects</i>
<i>Affordability</i>	Moderate income (80-120%)	5% low (up to 80% AMI) + 5% moderate-income
<i>In-lieu Fee</i>	\$22.00 per square foot (for fractional units)	\$18.00 per square foot - optional
<i>Fractional Unit</i>	≥ .5, provide unit < .5, pay fee	≥ .5, provide unit < .5, pay fee
<i>Exempt</i>	A residential development project for which has been determined to be complete prior to the effective date, and for which a building permit application is submitted by June 30, 2021 and a building permit is issued within six months of submittal.	
<i>Sunset Provision</i>	All exempt projects will expire on June 30, 2021 regardless of any entitlement extensions or amendments.	

Analysis

Until 2017, it had been nearly a decade since El Cerrito had seen new multi-family housing development. This shift was a result of the adoption of the San Pablo Avenue Specific Plan in 2014 by the City Council, recognizing the regional housing crisis and the need to increase housing opportunities. Given El Cerrito’s proximity to transit and jobs, the Plan not only serves this need but also creates opportunities to address our Active Transportation Plan, Climate Action Plan, Urban Greening Plan and Housing Element.

The adoption of the Specific Plan began to catalyze new development along with a robust economy and led to the entitlement of 15 projects in the Specific Plan area, including 1,170 new residential units, 27,254 square feet of new commercial space, and 124 new hotel rooms. Between 2018 and 2019 four of these projects began construction. And, in 2017/2018, Metro 510 opened (109 market-rate + 19 below market rate units) and Hana Gardens (62 affordable units) was completed.

When the Council adopted the Inclusionary Zoning Ordinance in 2018, it exempted entitled projects in the pipeline at that time based on the Economic Analysis by Keyser Marston Associates which evaluated residential development economics in El Cerrito. The Analysis tested the feasibility of establishing affordable housing requirements, including on-site requirements and an in-lieu fee option, and to perform an on-site cost equivalency analysis to assist in understanding the cost associated with complying with on-site requirements at various income levels. One finding in the Analysis cited the need “to balance between setting an inclusionary requirement or fee high enough to support a meaningful contribution to affordable housing in El Cerrito without discouraging new residential development”. It also took into consideration that while there are many residential projects in the development pipeline, very few new projects had been completed and are operating. The Analysis pointed out that projects initiated after the effective date of the Ordinance would be able to negotiate land prices and make other adjustments necessary to absorb the costs of the new requirements. At the time of the adoption of the Ordinance, staff recommended that a new economic analysis be conducted 24-36 months after adoption and subject to completion of development projects in the pipeline at the time. See **Table 2** for a summary and status of these early/exempt projects.

Table 2: Status of Entitled Projects

Project Address	Final Design Approval	Unit Count	Status	Notes
Completed Projects				
10963 San Pablo Avenue	05/02/2018	50 rentals	Completed	Certificate of Occupancy issued February 2021
10534 San Pablo Avenue	05/04/2016	5 rentals	Completed	Certificate of Occupancy issued March 2020
Under Construction				
11600 San Pablo Avenue (Mayfair - Phase I)	08/02/2017	156 market-rate rentals	Under Construction	Estimated Completion Summer 2021
10300 San Pablo Avenue	09/06/2017	32 condos (includes 2 live/work units)	Under Construction	Estimated Completion June 2021
Entitled				
10810 San Pablo Avenue	04/04/2018	40	Entitled	Entitlement extension granted
11690 San Pablo Avenue (Mayfair - Phase II)	08/02/2017	69 affordable rentals	Entitled	BRIDGE Housing is expecting to break ground in 2022
10167 San Pablo Avenue	06/06/2018	62	Entitled	Entitlement extension granted
10135 San Pablo Avenue	06/18/2018	72	Entitled	Entitlement extension granted
11048/11060 San Pablo Avenue	01/24/2019 (original); 03/04/2020 (amended)	173 (original entitlement); 183 (amended entitlement)	Entitled	Entitlements amended to improve financial feasibility. Underground parking level and 3-bedroom units eliminated. Entitlement extension granted.
10919 San Pablo Avenue	07/03/2019	90 rentals	Entitled	Developer recently completed 10963 SPA. Entitlement extension granted.
921 Kearney	03/04/2019	59 rentals	Entitled	Entitlement extension granted
11965 San Pablo Avenue	06/18/2019	144 rentals	Entitled	Density Bonus project with 10 low-income units
10192 San Pablo Avenue	01/24/2019	26 condos	Entitled	Developer is currently constructing 10300 SPA. Entitlement extension granted.
Subject to Inclusionary Zoning				
11795 San Pablo Avenue	10/2/2019	130 rentals	Entitled	Subject to Inclusionary Zoning
10290 San Pablo Avenue	08/02/2017 (original entitlement); 03/04/20 (revised entitlement)	55 rentals	Entitled	Subject to Inclusionary Zoning

Despite COVID-19, construction costs have continued to rise. Over the last year, staff has continued to stay in contact with developers who have expressed the desire to continue moving their projects forward. However, under current conditions, developers have expressed their inability to move forward due delays caused by Shelter-in-Place orders along with lending constraints associated with construction loans and the approaching inclusionary sunset deadline. There are currently seven exempt projects that will sunset on June 30, 2021. The developers of the projects located at 10919 and 10192 San Pablo Avenue are currently unable to proceed with financing and construction. This is due to certain lending

requirements that have been delayed due to COVID-19 at their nearly completed projects at 10963 and 10300 San Pablo Avenue. Developers must fulfill certain rental/sales occupancy thresholds before additional financing can be approved. Since the cost of implementing inclusionary housing requirements was not accounted for during the land negotiations for these sites, it endangers the project's financing and feasibility. Considering these variables, staff is recommending amendments to the Ordinance to allow projects to continue to move toward the construction phase and completion in the current environment. The following changes are recommended:

1. Allow limited extensions of exemptions to the Ordinance due to COVID-19 delay. In recognition of delays to residential development projects resulting from the economic dislocations of the COVID-19 pandemic, Residential Development projects that are exempt under subsections (C)(4) and (C)(5) of this Section may apply for a limited extension of their exemption, as provided for in this subsection.
2. An application for a limited extension under this subsection shall be filed by June 30, 2021 and include all of the following:
 - An application on a form prepared by the City or a Letter of Request.
 - A narrative description on the economic impacts of the COVID-19 pandemic on the Residential Development project.
 - A project schedule for the Residential Development project showing that the applicant will be able to file a substantially complete application for building permits by January 1, 2021, and to begin construction of the Residential Development project by July 1, 2022.
 - An Application Fee to be established by the City Council.
3. The City Manager may grant a limited extension of a Residential Development project's exemption from this Chapter under subsections (C)(4) and (C)(5) of this Section, based upon a determination, in light of the information provided in the application and any other information that the City Manager considers relevant, that the Applicant will be able to comply with the requirements of the extension listed below. Any extension granted shall be subject to the following conditions and any others that the City Manager determines are necessary or appropriate for the Residential Development project:
 - The Applicant shall submit a building permit application by January 1, 2022; and
 - The Applicant shall start construction by July 1, 2022.
4. No extension of exemption may be approved for a Residential Development project if noticed violations of the Municipal Code, California Building Codes, or other state or federal laws related to conditions on the Residential Development project property have not been corrected prior to the filing of an extension application.
5. In the event that an extension is approved by the City Manager and the Residential Development has not been issued a building permit by January 1, 2022 and construction of the Residential Development project has not commenced by July 1, 2022, the provisions of this Chapter shall apply, unless the requirements are waived pursuant to Section 19.30.070(C).

As we continue to work with developers to maintain the feasibility of entitled projects and move toward construction, the proposed limited extensions will only be reviewed and granted on a request basis by developers applying to the City Manager by June 30, 2021 along with an application fee (unlike the blanket exemption that was provided within the 2020 amendments). Each request must demonstrate that the project is in position to meet the extension timelines. If approved, project extensions will be subject to performance standards by requiring a building permit to be submitted by January 1, 2022 and construction to begin by July 1, 2022. If a project is granted an extension and unable to meet these performance timelines, it will be subject to Chapter 19.30: Inclusionary Zoning. If a project does not apply

for an extension by June 30, 2021, under the above proposed amendments, the inclusionary requirements will also apply.

Lastly, staff is utilizing this Ordinance amendment to correct the State Density Bonus language contained in paragraph 19.30.030(A)(1) to maintain consistency with 19.30.040.D. The inclusionary calculations shall include the total unit count for the project as a result of the Density Bonus. This was the intent when the Ordinance was adopted in 2018, as approved by the City Attorney.

Environmental Review

This action is exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(b)(3). The activity is covered by the general rule which exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment. Any project that would implement inclusionary housing being constructed would be subject to its own review under the California Environmental Quality Act.

Staff Recommendation

Based on the information contained in this report, staff recommends that the Planning Commission recommend that the City Council adopt an ordinance to amend the exemptions contained in Chapter 19.30: Inclusionary Zoning of the El Cerrito Municipal Code.

Proposed Motion

1. Move adoption of Planning Commission Resolution PC2021-06 recommending that the City Council adopt an ordinance to amend Chapter 19.30: Inclusionary Zoning of the El Cerrito Municipal Code.

Attachments

1. Draft Resolution
2. Draft Inclusionary Zoning Ordinance Amendments

Planning Commission Resolution PC2021-06

A RESOLUTION OF THE CITY OF EL CERRITO PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE TO AMEND CHAPTER 19.30: INCLUSIONARY ZONING OR THE EL CERRITO MUNICIPAL CODE

WHEREAS, the San Pablo Specific Plan and Form Based Code were adopted in 2014 to promote new high-density and mixed use in transit-oriented development for all income levels;

WHEREAS, the El Cerrito Affordable Housing Strategy adopted on August 17, 2017 identifies four policy pillars for implementation over the next five years to produce, protect and preserve affordable housing for El Cerrito residents;

WHEREAS, Pillar A: Leveraging private development to address affordable housing needs, of the El Cerrito Affordable Housing Strategy, recommends establishing a new inclusionary zoning ordinance and/or enacting new housing in-lieu fees for affordable housing;

WHEREAS, on May 15, 2018, the El Cerrito City Council adopted an ordinance (Inclusionary Zoning Ordinance) adding Chapter 19:30: Inclusionary Zoning to the El Cerrito Municipal Code;

WHEREAS, the Inclusionary Zoning Ordinance initially exempted projects with approved entitlements or a complete entitlement application as of the effective date of the ordinance, provided that a building permit was issued within two years of entitlement or by June 30, 2021, whichever came first;

WHEREAS, the COVID-19 global pandemic has added much uncertainty to financial markets;

WHEREAS, on June 2, 2020, the City Council amended the ordinance allowing existing exempt projects to be exempt from the ordinance until June 30, 2021, provided that a building permit application is submitted by this date and the permit is issued within six months of submittal;

WHEREAS, in order to allow developers to secure financing the construct entitled projects in the current uncertain environment, additional time is needed;

WHEREAS, the proposed ordinance amendments will allow additional time to secure financing by allowing existing exempt projects to submit an application to the City Manager to request a limited extension from the ordinance by June 30, 2021, provided that a building permit application is submitted by January 1, 2022 and construction begins by July 1, 2022;

WHEREAS, any approved extension will expire on January 1, 2022, if a building permit has not been issued, or July 1, 2022, if construction has not commenced;

WHEREAS, no extension of exemption may be approved for a project if noticed violations of the Municipal Code, California Building Codes, or other state or federal laws related to conditions on the Residential Development project property have not been corrected prior to the filing of an extension application;

WHEREAS, the City of El Cerrito supports the production of housing at all income levels; and

WHEREAS, on April 21, 2021 the Planning Commission, conducted a public hearing and considered all evidence, reports and application materials offered for review regarding this matter.

NOW, THEREFORE, BE IT RESOLVED, that after careful consideration of facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito Planning Commission hereby recommends that the City Council adopt an ordinance amending Chapter 19.30:

Inclusionary Zoning of the El Cerrito Municipal Code.

CERTIFICATION

I certify that this resolution was adopted by the El Cerrito Planning Commission at a regular meeting held on April 21, 2021 upon motion of Commissioner _____, second by Commissioner _____.

AYES:

NOES:

ABSTAIN:

ABSENT:

Sean Moss, AICP
Planning Manager

DRAFT AMENDED INCLUSIONARY ZONING ORDINANCE

Chapter 19.30 - INCLUSIONARY ZONING

Sections:

19.30.010. - Findings and Purpose.

A. Findings. The city council finds and declares as follows:

1. Housing affordability continues to be a regional issue, especially for the residents of El Cerrito.
2. According to the El Cerrito Affordable Housing Strategy, one-third of El Cerrito's households are cost-burdened or spend more than thirty percent of their household income for housing.
3. The 2015-2023 Housing Element identifies the need to study an inclusionary zoning ordinance to address a portion of the city's affordable housing needs.
4. According to the 2015-2022 Regional Housing Needs Allocation (RHNA), determined by the Association of Bay Area Governments (ABAG), the City of El Cerrito has a total housing need of three hundred ninety-eight units through the year 2022, out of which nearly sixty percent is for lower- and moderate-income households (two hundred thirty two units). Of the affordable units: fifty units (thirteen percent) are for extremely low-income households; fifty units (thirteen percent) for very low-income households; sixty three units (sixteen percent) for lower income households; and sixty nine units (seventeen percent) for moderate income households.
5. The inclusionary ordinance codified in this chapter will substantially advance the city's legitimate interest in providing additional housing affordable to all income levels and dispersed throughout the city because inclusionary units required by the ordinance codified in this chapter, including both rental and for-sale units, must be affordable to lower, and moderate-income households.
6. The ordinance codified in this chapter is being adopted pursuant to the city's police power authority to protect the public health, safety, and welfare. Requiring inclusionary units within each residential development is consistent with the community's housing element goals of protecting the public welfare by fostering an adequate supply of housing for persons at all economic levels and maintaining both economic diversity and geographically dispersed affordable housing. Requiring builders of new market rate housing to provide some housing affordable to lower and moderate-income households is also reasonably related to the impacts of their projects.

B. Purpose. The purposes of this chapter are to:

1. Implement the housing goals set forth in the 2015-2023 Housing Element of the El Cerrito General Plan and the Affordable Housing Strategy of the City of El Cerrito.
2. Ensure that private market-rate development is making a reasonable and feasible contribution towards addressing the need for additional affordable housing.
3. Increase the production of affordable housing units for very low, low and moderate-income households.
4. Create a balanced community with a wide variety of housing available to households of all income levels.
5. Support the housing objectives contained in state law.
6. Establish policies and alternative methods of compliance for meeting the city's affordable housing needs.

(Ord. No. [2018-02](#), § 2, 5-15-2018)

19.30.020 - Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter. Words and phrases not defined in this chapter shall be interpreted to give this chapter its most reasonable application.

"Affordable housing cost" means the housing cost for dwelling units as defined by California Health and Safety Code Section 50052.5 for owner-occupied housing and the affordable rent for rental units as defined by California Health and Safety Code Section 50053, as applicable.

"Affordable housing strategy" means the city's affordable housing workplan that identifies a range of goals and implementation tools to preserve and expand housing opportunities for households with very low to moderate incomes and for persons with special housing needs

"Affordable sales price" means the maximum allowable sales price for an inclusionary unit in effect at the time of initial (first) sale to an eligible household. The affordable sales price is a price that includes a reasonable down payment and results in projected average monthly housing payments during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners' insurance, homeowners' association dues, if any, not exceeding costs equal to thirty five percent of one hundred ten percent of area median income for moderate income units. The city manager may adjust the percentage of area median income to between eighty percent and one hundred ten percent to address major shifts in the housing market or other related economic conditions affecting the demand for inclusionary units, as needed.

"The affordable sales price" shall be determined for a household size based on the number of bedrooms in the dwelling unit plus one. The city manager shall determine the sales price for inclusionary units by any reasonable method, so long as average monthly housing payments do not exceed those permitted by this chapter. Affordable sales prices may be adjusted annually by the city manager and will be provided to the developer annually upon such adjustment.

"Affordable rent" means the total monthly payments by the tenant of an inclusionary unit for all of the following: (1) use and occupancy of the inclusionary unit, land and storage lockers, and use of all common areas; (2) any separately charged fees or service charges assessed by the developer that are required of all tenants of units in the project, except security deposits; (3) an allowance for utilities paid by the tenant as established by the Contra Costa Housing Authority, including garbage collections, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or associated facilities that are assessed by a public or private entity other than the developer and paid by the tenant.

The affordable rent shall be determined for a household size based on the number of bedrooms in the dwelling unit plus one. The city manager shall determine the rent for inclusionary units by any reasonable method, so long as average monthly housing payments do not exceed those permitted by this chapter. Affordable rent may be adjusted annually by the city manager and shall be provided to the developer annually upon such adjustment. For purposes of this chapter, Affordable Rent, shall not exceed costs equal to thirty percent of seventy percent of area median income for lower income units or thirty percent of one hundred ten percent of area median income for moderate income units.

"Affordable housing trust fund" means a fund or account designated by the city to maintain and account for all monies received pursuant to this chapter.

"Affordable housing plan" means a plan on a form provided by the city that shall be submitted by the applicant or developer, containing all of the information specified in and in conformance with Section 19.30.040 of this chapter specifying the manner in which inclusionary units will be provided in conformance with this chapter and any regulations adopted to implement this chapter, and consistent with the El Cerrito General Plan.

"Applicant" or "developer" means a person, persons, or entity that applies for a residential development and includes the owner or owners of the property if the applicant does not own the property on which development is proposed.

"Area median income" or "AMI" means the annual median income for Contra Costa County as published annually by the State of California Department of Housing and Community Development, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of El Cerrito in the event that such median income figures are no longer published periodically in the California Code of Regulations.

"Building permit" includes full structural building permits as well as partial permits such as foundation-only permits.

"City" means the City of El Cerrito.

"City manager" means the city manager of the City of El Cerrito or his or her designee.

"Certificate of occupancy" is the permit issued by the El Cerrito building division authorizing the initial occupancy of a dwelling unit, including a temporary certificate of occupancy.

"Common ownership" or "control" refers to property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

"Community development director" means the director of the community development department or his or her designee.

"Construction phase" means:

- A. The area included within one city approved tentative subdivision map for residential development where a single final map implements the entire approved tentative map;
- B. The area included within each separate final map for residential development where multiple final maps implement the entire approved tentative map; or
- C. An area designated as a construction phase in an approved affordable housing plan. For residential development that does not require a subdivision map, the affordable housing plan shall identify construction phases.

"Contiguous property" means any parcel of land that is:

- A. Touching another parcel at any point;
- B. Separated from another parcel at any point only by a public right of way, private street or way, or public or private utility, service, or access easement; or
- C. Separated from another parcel only by other real property of the applicant which is not subject to the requirements of this chapter at the time of the planning permit application by the applicant.

"Determined to be complete" is a term that applies to an application for a specific land planning permits that is requested by the applicant and in accordance with Title 19 (Zoning) herein, and means that such application:

- A. Accurately includes all data required on the appropriate planning permit checklist that is utilized upon the date of receipt of the application;
- B. Is duly executed by the applicant or the applicant's authorized representative;
- C. Includes the full payment of all required fees;
- D. Includes an accurate and complete application for environmental clearance; and
- E. Includes the affordable housing plan required by Section 19.30.040.

"Density bonus units" means dwelling units approved in a residential development pursuant to California Government Code Section 65915 et seq. that are in excess of the maximum residential density otherwise permitted by the El Cerrito General Plan, San Pablo Avenue Specific Plan or zoning ordinance.

"Dwelling unit" shall have the definition given for dwellings in Title 19 (Zoning) of the El Cerrito Municipal Code.

"Effective date" shall have the definition given in Section 19.30.030.

"Eligible household" means a household which has been determined to be eligible to rent or purchase an inclusionary unit.

"First approval" means the first of the following approvals to occur with respect to a residential development: development agreement, general plan amendment, specific or area plan adoption or amendment, zoning, rezoning, pre-zoning, annexation, planned development permit, tentative map, parcel map, conditional use permit, special use permit, or building permit.

"For-sale" means and refers to any dwelling unit, including a condominium, stock cooperative, community apartment, or attached or detached single family home, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which the dwelling unit is located or for the creation of the unit in accordance with the Subdivision Map Act (California Government Code Section 66410 et seq.), or any residential development including such for-sale dwelling units.

"Inclusionary housing agreement" means an agreement in conformance with Section 19.30.040 of this chapter between the city and an applicant, governing how the applicant shall comply with this chapter.

"Inclusionary unit" means a dwelling unit imposed on new residential development as required by this chapter to be affordable to lower or moderate-income households.

"Livable square feet" means the total square footage of the interior of all dwelling units within a residential development.

"Lower income household" means a household with incomes that do not exceed eighty percent of area median income as set forth in California Health and Safety Code Section 50079.5.

"Market rate unit" means a new dwelling unit in a residential development that is not an inclusionary unit as defined by section.

"Moderate income household" means a household with income ranging above eighty percent to one hundred twenty percent of area median income as set forth in California Health and Safety Code Section 50093(b).

"Planning permit" means a tentative map, parcel map, conditional use permit, site development permit, planned development permit, design review, development agreement, or special use permit, or any discretionary permit excluding general plan amendments, zoning and rezoning, annexation, specific plans, and area development policies.

"Rental" means and refers to a dwelling unit that is not a for-sale dwelling unit, and does not include any dwelling unit, whether offered for rental or sale, that may be sold as a result of the lawful subdivision of the parcel upon which the dwelling unit is located or creation of the unit in accordance with the Subdivision Map Act (California Government Code Section 66410 et seq.), or any residential development including such rental dwelling units.

"Residential development" means any project requiring a planning permit for which an application has been submitted to the city, and that either:

- A. Would create ten or more new rental dwelling units or nine or more new for-sale dwelling units by:
 1. The construction or alteration of structures, or
 2. The conversion of a use to residential from any other use.
- B. Is contiguous to property under common ownership or control and the cumulative residential capacity of all of the applicant's property pursuant to the general plan designation or zoning at the time of the planning permit application for the residential development is either:
 1. Ten or more rental or nine or more for-sale dwelling units; or

2. Any combination of nine or more for-sale and rental dwelling units, in which case the inclusionary housing requirement shall be determined as though the project were a for-sale residential development.

"Tenant" is a household occupying an inclusionary unit pursuant to a valid lease with the developer.

"Unit type" means any form of dwelling or dwelling unit described in Title 19 (Zoning) of the El Cerrito Municipal Code.

"Utilities" means garbage collection, sewer, water, electricity, gas and other heating, cooling, cooking and refrigeration fuels.

(Ord. No. [2018-02](#), § 2, 5-15-2018)

19.30.030. - Effective Date and Applicability.

- A. Effective Date. This chapter shall be effective thirty days from and after the date of its adoption.
- B. Applicability. The provisions of this chapter shall apply city-wide to:
 1. All for-sale residential development that consist of nine or more units;
 2. All rental residential development that consist of ten or more units; and
 3. All residential development and contiguous property that is under common ownership or control.
- C. Exemptions. This chapter shall not apply to any of the following:
 1. Accessory Dwelling Unit(s).
 2. Rental residential developments with a total of less than ten dwelling units.
 3. For-sale residential developments with a total of less than nine dwelling units.
 4. A residential development project the application for which has been determined to be complete prior to the effective date, and for which a building permit application is submitted by June 30, 2021 and a building permit is issued within six months of submittal.
 5. A residential development project that has received all required approvals prior to the effective date, and for which a building permit application is submitted by June 30, 2021 and a building permit is issued within six months of submittal.
 6. Residential Developments exempted by California Government Code Section 66474.2 or 66498.1, provided that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was determined to be complete.
- D. Special Circumstances Related to Exemptions.
 1. Planning approval expiration, extension, or amendment.
 - a. Residential development projects that are exempt under subsections (C)(4) and (C)(5) of this section shall remain exempt for the period stipulated in subsections (C)(4) and (C)(5) if their planning permits are amended or extended.
 - b. Residential development projects that are exempt under subsections (C)(4) and (C)(5) of this section shall be subject to the requirements of this chapter if a planning permit for the residential development is amended or extended after the period stipulated in subsections (C)(4) and (C)(5), unless the requirements are waived pursuant to Section 19.30.070(C).
 - c. In the event that a planning permit expires for a residential development project that is exempt under paragraphs (C)(4) and (C)(5) of this section during the period stipulated in subsections (C)(4) and (C)(5), this chapter shall apply to any subsequent residential development of the same property, unless the requirements are waived pursuant to Section 19.30.070(C).

- d. Any residential development project that requests an extension or amendment of any approved planning permit shall be subject to the requirements of this chapter, unless the residential development project is exempt pursuant to Section 19.30.030(C) or the requirements are waived pursuant to Section 19.30.070(C).
2. Limited extension of exemption due to delay. The city manager, may grant a request for an extension of the timelines in this section exempting residential development from this chapter where a change in federal, state or local law would cause the need for a material redesign of the approved residential development that would render any of the approved planning permits, if implemented as approved, in violation of federal, state, or local law and would require amendment or revision of the planning permit.
3. Limited extension of exemption due to COVID-19 delay. In recognition of delays to residential development projects resulting from the economic dislocations of the COVID-19 pandemic, Residential Development projects that are exempt under subsections (C)(4) and (C)(5) of this Section may apply for a limited extension of their exemption, as provided for in this subsection.
- a. An application for a limited extension under this subsection shall be filed by June 30, 2021 and include all of the following:
 1. An application on a form prepared by the City or a Letter of Request.
 2. A narrative description on the economic impacts of the COVID-19 pandemic on the Residential Development project.
 3. A project schedule for the Residential Development project showing that the applicant will be able to file a substantially complete application for building permits by January 1, 2021, and to begin construction of the Residential Development project by July 1, 2022.
 4. An Application Fee to be established by the City Council.
 - b. The City Manager may grant a limited extension of a Residential Development project's exemption from this Chapter under subsections (C)(4) and (C)(5) of this Section, based upon a determination, in light of the information provided in the application and any other information that the City Manager considers relevant, that the Applicant will be able to comply with the requirements of the extension listed below. Any extension granted shall be subject to the following conditions and any others that the City Manager determines are necessary or appropriate for the Residential Development project:
 1. The Applicant shall submit a building permit application by January 1, 2022; and
 2. The Applicant shall start construction by July 1, 2022.
 - c. No extension of exemption may be approved for a Residential Development project if noticed violations of the Municipal Code, California Building Codes, or other state or federal laws related to conditions on the Residential Development project property have not been corrected prior to the filing of an extension application.
 - d. In the event that an extension is approved by the City Manager and the Residential Development has not been issued a building permit by January 1, 2022 or construction of the Residential Development project has not commenced by July 1, 2022, the provisions of this Chapter shall apply, unless the requirements are waived pursuant to Section 19.30.070(C).

(Ord. No. [2018-02](#), § 2, 5-15-2018; Ord. No. [2020-04](#), § 2, 6-16-2020)

19.30.040. - Inclusionary Housing Requirements.

A. Inclusionary Housing Requirement.

1. All new residential developments and contiguous property under common ownership and control shall include inclusionary units. Calculations of the number of inclusionary units required by this section shall be based on the number of dwelling units in the residential development, ~~excluding~~ including any density bonus units as defined in this chapter.
2. On-site inclusionary requirement. Unless otherwise exempted or excepted from this chapter, residential developments shall include inclusionary units upon the same site as the residential development as follows:
 - a. For-sale residential development: For for-sale residential development projects with nine or more dwelling units, twelve percent of the total dwelling units in the residential development shall be built on-site and made available for purchase at an affordable housing cost to moderate income households.
 - b. Rental residential development: For rental residential development projects with ten or more dwelling units that elect to provide units, five of the total dwelling units in the residential development shall be made available for rent at an affordable housing cost to moderate income households, and five percent of the total dwelling units in the residential development shall be made available for rent at an affordable housing cost to lower income households.
3. If a project amendment results in a change in the total number of dwelling units, the number of inclusionary units will be recalculated to coincide with the final approved residential development.

B. Calculation of Inclusionary Units.

1. To calculate the number of inclusionary units required:
 - a. For for-sale residential development projects, multiply twelve percent by the total number of for-sale dwelling units in the project.
 - b. For rental residential development projects with ten or more dwelling Units, multiply five percent by the total number of rental dwelling units in the project to determine the number of dwelling units that must be made available for rent at an affordable housing cost to moderate income households, and five percent by the total dwelling units in the project to determine the number of dwelling units that shall be made available for rent at an affordable housing cost to lower income households.
2. For rental residential development projects, when five percent is multiplied by the total number of dwelling units to determine the number for each respective income category and the result is less than one unit for each income category, the number of inclusionary units required shall be calculated by multiplying ten percent by the total number of dwelling units, and the required inclusionary units shall be affordable to moderate-income households.

C. Fractional Units.

1. When the calculation of inclusionary units according to this section results in a number that includes a fractional unit, the fraction shall be rounded to the next whole number if the fraction is equal to one-half or more. In that event an additional inclusionary unit shall be provided, or for rental residential development projects either an additional inclusionary unit affordable to moderate-income households shall be provided or a fee may be paid in lieu of the additional inclusionary unit.
2. If the result of the calculation of inclusionary units includes a fraction less than one-half, the applicant shall have the option of either rounding up to next whole number and providing an additional inclusionary unit affordable to moderate-income households or paying an in-lieu fee as provided in Chapter 19.30.50 for the fractional unit.

D. State Density Program. Any inclusionary units provided on site in compliance with this chapter may be used to qualify for a density bonus under California Government Code Section 65915 or any

ordinance implementing Government Code Section 65915. An applicant seeking a density bonus under state law shall provide reasonable documentation to establish eligibility for a requested density bonus, incentive or concession, and waiver or reduction of development standards, as provided for under state law and as consistent with the process and procedures detailed in a locally adopted ordinance implementing the state law. The number of inclusionary units shall be based upon the total number of dwelling units in a residential development, including any market rate units allowed as a result of density bonus. The inclusionary unit requirement for a residential development shall be recalculated after a density bonus is provided to determine the total dwelling units in the project. Regardless of state density bonus utilization, the applicant is required to meet the inclusionary housing requirements defined in this chapter.

- E. Contiguous Property under Common Ownership and Control. An applicant for a planning permit shall not avoid the requirements of this chapter by submitting piecemeal planning permit applications. At the time of the application for first approval for the residential development, the applicant shall identify all contiguous property under common ownership and control. The applicant shall not be required to construct dwelling units upon the contiguous property at the time of the application for first approval; however, the applicant shall be required to include the contiguous property under common ownership or control in its affordable housing plan. The inclusionary housing agreement shall be recorded against the residential development and all contiguous property under common ownership or control and shall require compliance with this chapter upon development of each contiguous property at such time as there are planning permit applications that would authorize a total of ten or more rental or nine or more for-sale dwelling units for the residential development and the contiguous property under common ownership or control.
- F. Residential Development with Overlapping Inclusionary Requirements. When overlapping inclusionary housing requirements could be applied to a residential development pursuant to this chapter because the residential development is located upon a parcel or parcels subject to more than one of the requirements in this section, the entire residential development shall be subject to the requirement that results in the production of the greatest amount and greatest depth of affordability of inclusionary dwelling units.
- G. Residential Development with Both For-Sale and Rental Units. When a residential development includes both for-sale and rental dwelling units, the provisions of this chapter that apply to for-sale residential development shall apply to that portion of the development that consists of for-sale dwelling units, while the provisions of this chapter that apply to rental residential development shall apply to that portion of the development that consists of rental dwelling units.
- H. Timing of Construction of Inclusionary Units. All inclusionary units shall be constructed, completed, ready for occupancy, and marketed concurrently with or prior to the market rate units, unless the city finds that extenuating circumstances exist. In phased developments, inclusionary units may be constructed and occupied in proportion to the number of units in each phase.
- I. Standards for Inclusionary Units.
 - 1. Single-family detached inclusionary units shall be dispersed throughout the residential development. Townhouse, row-house, and multifamily inclusionary units shall be located so as not to create a geographic concentration of inclusionary units within the residential development.
 - 2. The quality of exterior design and overall quality of construction of the inclusionary units shall be consistent with the exterior design of all market rate units in the residential development and meet all site, design, and construction standards included in Title 16 (Buildings and Construction), Title 18 (Subdivisions), and Title 19 (Zoning) of this code, including but not limited to compliance with all design guidelines included in applicable specific plans or otherwise adopted by the city council, and any regulations adopted to implement this chapter shall have functionally equivalent parking when parking is provided to the market rate units.
 - 3. Inclusionary units shall have the same interior finishes and features as the market rate units that are durable and of good quality and comply with any regulations adopted to implement this chapter.

4. The inclusionary units shall have the same amenities as the market rate units, including the same access to and enjoyment of common open space and facilities in the residential development.
 5. The inclusionary units shall have the same proportion of unit types as the market rate units in the residential development except:
 - a. Single-family detached residential projects may include single family attached inclusionary units;
 - b. Single-family detached inclusionary units may have smaller lots than single-family detached market rate units in a manner consistent Title 19 (Zoning); and
 6. The inclusionary units shall have a comparable square footage and the same bedroom count and bedroom count ratio as the market rate units.
- J. Minimum Requirements. The requirements of this chapter are minimum requirements and shall not preclude a residential development from providing additional inclusionary units or inclusionary units with lower affordable rents or affordable sales prices than required by this chapter.
- K. Affordable Housing Plan and Inclusionary Housing Agreement.
1. An affordable housing plan shall be submitted as part of the application for first approval of any residential development whether paying the in-lieu fee or providing inclusionary units on-site. No application for a first approval for a residential development may be determined to be complete unless an affordable housing plan is submitted and approved by the city in conformance with the provisions of this chapter.
 2. For each construction phase, the affordable housing plan shall specify, at the same level of detail as the application for the residential development, all of the following applicable information including, but not limited to:
 - a. Developer's compliance option as specified in Section 19.30.050;
 - b. The calculations used to determine the number of inclusionary units;
 - c. A floor plan or site plan depicting the location of the inclusionary units;
 - d. The tenure and affordability level for each inclusionary unit;
 - e. The term of affordability;
 - f. Other affordability requirements;
 - g. A phasing plan for phased developments;
 - h. A description and details of any requested incentives, waivers or exemptions;
 - i. The process by which eligibility of qualified households will be reviewed and selected to purchase or rent inclusionary units;
 - j. Rental/ownership regulatory provisions;
 - k. An annual reporting schedule and requirements;
 - l. A statement signed by the applicant and property owner, if different, that the affordable housing agreement required by this chapter shall include a provision that authorizes the city to recover reasonable attorneys' fees, investigation and litigation expenses, and related staff costs associated with enforcing the inclusionary housing agreement; and
 - m. Any other information that is reasonably necessary to evaluate the compliance of the affordable housing plan with the requirements of this chapter and any regulations adopted to implement this chapter.
 3. Upon submittal, the community development director shall determine if the affordable housing plan is complete and conforms to the provisions of this chapter and any regulations adopted to

implement this chapter. The decision of the community development director may be appealed to the city council.

4. The decision of the community development director may be appealed to the city council by filing a written appeal with the city clerk. The appeal shall identify the decision being appealed and shall clearly and concisely state the reasons for the appeal. The appeal shall be accompanied by the fee specified in the city's master fee schedule.
 5. The city clerk shall schedule the appeal for consideration by the city council within thirty days of the date the appeal was filed. The community development director shall prepare a staff report that responds to the issues raised by the appeal and may include a recommendation for action.
 6. The affordable housing plan shall be reviewed as part of the first approval of any residential development. The affordable housing plan shall be approved if it conforms to the provisions of this chapter and any regulations adopted to implement this chapter. A condition shall be attached to the first approval of any residential development to require recordation of the inclusionary housing agreement described in this section prior to the approval of any final or parcel map or building permit for the residential development.
 7. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. Other modifications to the affordable housing plan shall be processed in the same manner as the original plan.
 8. Following the first approval of a residential development, the city shall prepare an inclusionary housing agreement providing for implementation of the affordable housing plan and consistent with any regulations adopted to implement this chapter. Prior to the approval of any final or parcel map or issuance of any building permit for a residential development subject to this chapter, the inclusionary housing agreement shall be executed by the city and the applicant and recorded against the entire residential development property and any other property used for the purposes of providing inclusionary housing pursuant to this chapter to ensure that the affordable housing agreement will be enforceable upon any successor in interest. The inclusionary housing agreement shall not be amended without the prior written consent of the city and shall also not be amended prior to any necessary amendments to applicable planning permits.
 9. The city council, by resolution, may establish fees for the ongoing administration and monitoring of the inclusionary units, which fees may be updated periodically, as required.
- L. Lottery. At the initial offering of inclusionary units in a residential project and any inclusionary unit becomes available for sale or for rent in any residential project, the city requires the use of a lottery approved by the city to select purchasers or renters.

(Ord. No. [2018-02](#), § 2, 5-15-2018)

19.30.050. - Developer's Compliance Options.

- A. On-site Provision of Inclusionary Rental Units Instead for Inclusionary For-Sale Units. When on-site inclusionary for-sale units are required by this chapter, a developer may instead construct on-site inclusionary rental. If a developer chooses to construct on-site inclusionary rental units in lieu of on-site inclusionary for-sale units, the requirements for such on-site rental inclusionary units shall be the same as if the residential development were a rental residential development project.
- B. In Lieu Fee.
 1. The inclusionary housing requirement in Section 19.30.040 for for-sale residential development must be satisfied by the provision of the required inclusionary units, except when the number of required inclusionary units includes a fraction less than one-half. In that case, an in-lieu fee may be paid for the fractional unit. The inclusionary housing requirement in Section 19.30.040 for rental residential development may be satisfied by the payment of a fee to the city in lieu of constructing the inclusionary units within the residential development, including fractional units.

In either case, any fee that the developer chooses to pay must be received by the city upon issuance of a building permit for the residential development.

2. In lieu fees shall be as follows:
 - a. For-sale residential development: An in-lieu fee may be paid only for fractional units when the number of required inclusionary units includes a fraction less than one-half. In that case, the in-lieu fee for each for-sale inclusionary unit shall be twenty dollars per square foot multiplied by the livable square footage of the entire project and divided by the number of required for-sale inclusionary units, including fractional units. The in-lieu fee for each fractional for-sale inclusionary unit shall be the per-unit in-lieu fee calculated using the preceding formula multiplied by the applicable fraction.
 - b. Rental residential development: An in-lieu fee may be paid for all or any portion of inclusionary units required in a rental residential development, including fractional units. As noted in Section 19.30.040(C), however, if the number of required rental inclusionary units is one-half or greater, the fraction shall be rounded to the next whole number, and the developer may either provide the rental inclusionary unit or pay a fee in lieu of the rental inclusionary unit. In the event that the developer chooses to pay a fee in lieu of providing rental inclusionary units, the in-lieu fee for each rental inclusionary unit shall be seventeen dollars per square foot multiplied by the livable square footage of the entire project and divided by the number of required rental inclusionary units, including fractional units. The in-lieu fee for each fractional rental inclusionary unit shall be the per-unit in-lieu fee calculated using the preceding formula multiplied by the applicable fraction.
3. The amount of in lieu fees established in this section shall be included in the city's master fee schedule and may be adjusted annually for inflation each July 1 using an appropriate index, as determined by the city council.
4. If a project amendment results in a change in the total number of dwelling units, the in-lieu fee will be recalculated to coincide with the final approved residential development.
5. No building permit shall be issued by the city for any market rate dwelling unit in the residential development prior to the payment in full of all in-lieu fees to the city. The developer shall provide both notice by recorded document against the residential development and, additionally, for each for-sale dwelling unit therein, the developer shall provide specific written notice to any purchaser of any dwelling unit prior to the acceptance of any offer to purchase, and shall obtain executed acknowledgment of the receipt of such notice, that purchaser shall not have any right to occupy the dwelling unit until such time as all in lieu fees owing for the residential development are paid to the city.
6. All in lieu fees collected under this section shall be deposited in the City of El Cerrito Affordable Housing Trust Fund and utilized for the development of new affordable housing units.

(Ord. No. [2018-02](#), § 2, 5-15-2018)

19.30.060. - Continuing Affordability and Occupancy.

- A. The duration of affordability and occupancy for units created through the inclusionary zoning provisions are this chapter shall be as follows:
 1. The affordable sales price for inclusionary units shall be restricted for a period of forty five years pursuant to an affordable housing agreement recorded against the property and resets upon resale of the unit(s).
 2. The monthly affordable rent for inclusionary units shall be restricted for a period of fifty five years pursuant to an affordable housing agreement recorded against the property.

3. A longer term of affordability may be required if the residential development receives a subsidy of any type, including but not limited to loan, grant, mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability.
- B. The developer shall be required to execute standard documents, in a form approved by the city attorney, to ensure the continued affordability of the inclusionary units approved for each residential development. The documents may include, but are not limited to, inclusionary housing agreements, regulatory agreements, promissory notes, deeds of trust, resale restrictions, rights of first refusal, options to purchase, and/or other documents. The affordability documents shall be recorded against the residential development, all inclusionary units, and any site subject to the provisions of this chapter. Affordability documents for for-sale owner-occupied inclusionary units shall also include subordinate shared appreciation documents permitting the city to capture at resale the difference between the market rate value of the inclusionary unit and the affordable housing cost, plus a share of appreciation realized from an unrestricted sale in such amounts as deemed necessary by the city to replace the inclusionary unit.
 - C. Unless otherwise required by law, all promissory note repayments, shared appreciation payments, or other payments collected under this section shall be deposited in the City of El Cerrito Affordable Housing Trust Fund established pursuant to Section 19.30.070.
 - D. Any household that occupies an inclusionary unit must occupy that unit as its principal residence at all times, unless the community development director approves rental to a third party for a limited period of time due to household hardship.
 - E. No household may begin occupancy of an inclusionary unit until the household has been determined to be an eligible household to occupy that unit. Rental inclusionary units shall continue to be rented to income eligible households at an affordable rent for the entire term of the inclusionary housing restriction. The community development director shall establish standards for determining household income, maximum occupancy, affordable housing cost, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.
 - F. Officials, employees, or consultants of the city, and members of boards and commissions thereof, shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an inclusionary unit. City council may adopt additional conflict of interest provisions relating to the administration of this paragraph and the eligibility of persons to occupy inclusionary units pursuant to this chapter.

(Ord. No. [2018-02](#), § 2, 5-15-2018)

19.30.070. - Implementation, Waivers, Enforcement.

- A. Affordable Housing Trust Fund.
 1. Unless otherwise required by law, all in lieu fees, fees, promissory note repayments, shared appreciation payments, or other funds collected under this chapter shall be deposited into a separate account to be designated as the City of El Cerrito Affordable Housing Trust Fund.
 2. The moneys in the affordable housing trust fund and all earnings from investment of the moneys in the affordable housing trust fund shall be expended exclusively to provide housing affordable to extremely low income, very low income, lower income, and moderate-income households in the City of El Cerrito and administration and compliance monitoring of the inclusionary housing program.
- B. Monitoring of Compliance. Each inclusionary housing agreement shall include provisions for the monitoring by the city of each residential development and each inclusionary unit for compliance with the terms of this chapter, the applicable inclusionary housing agreement, and as required by law. Such provisions shall require annual compliance reports to be submitted to the city by the owner and the city shall conduct periodic on-site audits to insure compliance with all applicable laws, policies, and

agreements. The city council may adopt fees for the costs of monitoring and compliance by the city, which shall be deposited into the affordable housing trust fund for that purpose.

C. Waiver.

1. Notwithstanding any other provision of this chapter, the requirements of this chapter may be waived, adjusted, or reduced if an applicant shows, based on substantial evidence, applying the requirements of this chapter would take property in violation of the United States or California Constitutions.
2. Any request for a waiver, adjustment, or reduction under this section shall be submitted to the city concurrently with the affordable housing plan required by Section 19.30.040 of this chapter. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
3. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the affordable housing plan and is subject to the appeal process for affordable housing plans in Section 19.30.040.
4. In making a determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The city may assume each of the following when applicable:
 - a. That the applicant will provide the most economical inclusionary units feasible, meeting the requirements of this chapter and any regulations adopted to implement this chapter.
 - b. That the applicant is likely to obtain housing subsidies when such funds are reasonably available.
5. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

D. Implementation and Enforcement.

1. The community development director may issue regulations or interpretations to assist in the implementation and administration of all aspects of this chapter.
2. The city shall evaluate the effectiveness of the ordinance codified in this chapter, for review by the city council, three years or sooner after the effective date of this chapter.
3. The city attorney shall be authorized to enforce the provisions of this chapter and all inclusionary housing agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on inclusionary units by civil action and any other proceeding or method permitted by law. The city may, at its discretion, take such enforcement action as is authorized under this code and/or any other action authorized by law or by any regulatory document, restriction, or agreement executed under this chapter.
4. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant or owner from the requirements of this chapter. No permit, license, map, or other approval or planning permit for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been satisfied.
5. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.

(Ord. No. [2018-02](#), § 2, 5-15-2018)