



**MEMORANDUM
OFFICE OF THE CITY ATTORNEY**

DATE: March 7, 2019

TO: Honorable Planning Commission
FROM: Ariel Pierre Calonne, City Attorney
Tava Ostrenger, Assistant City Attorney

SUBJECT: Technical Revisions and Clean-Up on Ordinance Establishing Inclusionary Housing Requirements For The Average Unit-Size Density Incentive Program

In consultation with staff and consultants, we have identified six areas where the ordinance would benefit from clarification or correction. This memorandum summarizes those changes. The revised ordinance is attached. The most recent revisions are identified with CAPITALS highlighted in yellow.

1. 30.150.020 Definitions. Add definition of "Project" per 30.300.160 "P."
2. 30.150.100 Inclusionary Requirements for Rental Housing Projects. Delete term "Residential Developments" as used in 30.150.100 A. Substitute existing defined term "Project" as noted above.
3. 30.150.100 C. Delete Definition of "Rounding" as duplicative of fractional prorating in 30.150.120 C.
4. 30.150.120 B. Added the ability to adjust the fee by resolution as well as an automatic inflation index adjustment tied to the Engineering News Record Building Cost Index for Los Angeles.
5. 30.150.130 A. Deleted allowance for moderate income units to be smaller than market-rate. Substitutes size compliance as provided in the City's Affordable Housing Policies and Procedures.
6. 30.150.130 B. Deleted unnecessary (duplicative) size requirement language.

Attachment: Revised Ordinance of the Council of the City of Santa Barbara Amending Chapter 30.150 of the Santa Barbara Municipal Code Pertaining to Inclusionary Housing Requirements for the Average Unit-Size Density Incentive Program

APC/apc

Chapter 30.150 AVERAGE UNIT-SIZE DENSITY INCENTIVE PROGRAM

30.150.010 Purpose.

The Average Unit-Size Density Incentive Program carries out a key program directed by the 2011 General Plan. The Program facilitates the construction of smaller housing units by allowing increased density and development standard incentives in selected areas of the City. Housing types that provide housing opportunities to the City's workforce are encouraged and facilitated by the program. The Average Unit-Size Density Incentive Program will be in effect for a trial period of either eight years or until 250 residential units have been constructed in the areas designated for High Density residential [as defined in Subsection 30.150.070.B, High Density] or the Priority Housing Overlay [as defined in Section 30.150.070.C, Priority Housing Overlay], as shown on the City's Average Unit-Size Density Incentive Program Map, whichever occurs earlier.

30.150.020 Definitions.

For purposes of this chapter, the following words or phrases shall have the respective meanings assigned to them in the following definitions unless, in a given instance, the context in which they are used indicates a different meaning:

Affordable Housing. Residential units that are sold or rented at values defined as being affordable by the City of Santa Barbara's Affordable Housing Policies and Procedures, as such policies and procedures may be approved by the City Council from time to time.

Affordable Rent. The maximum monthly housing payment that may be charged for a Moderate Income Unit, calculated on the basis of 30 percent times 100 percent of the Area Median Income adjusted for family size appropriate for the unit. As used in this chapter, "affordable rent" shall include the total of monthly payments by the tenant for all of the following: (1) use and occupancy of the Moderate Income Unit and land and all facilities associated with the Moderate Income Unit; (2) any additional separately charged fees or service charges assessed by the owner, other than security deposits; (3) an allowance for utilities paid by the tenant as established by the City, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone, internet, or television service; and (4) any other interest, taxes, fees or charges for use of the land or Moderate Income Unit or associated facilities and assessed by a public or private entity other than the owner, and paid by the tenant.

Area Median Income. The median household income as provided in Section 50093(c) of the California Health and Safety Code, as it is currently enacted or hereinafter amended.

Average Unit Size. The total of the net floor area of each of the residential units in a project and divided by the number of residential units in that project. Common areas not controlled by the occupant of an individual residential unit are excluded from the Average Unit Size.

Community Benefit Housing. Residential development that has a public benefit including the following housing types:

1. Priority Housing;
2. Housing affordable to very low, low, moderate, or middle income households as defined in Chapter 30.160, Inclusionary Housing; and
3. Transitional Housing and Supportive Housing.

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Employer-Sponsored Housing. Residential units which are developed, owned, maintained, and initially sold or rented to employees of a local Employer (or group of employers) where each residential unit is occupied as a primary residence (as defined by federal income tax law) by a household that includes at least one person who works in the south coast region of Santa Barbara County.

Household. One or more persons living together in a single residential unit, with common access to, and common use of, all living areas and all areas and facilities for the preparation and storage of food and who maintain no more than four separate rental agreements for the single residential unit.

Net Floor Area. See Section 30.15.070, Measuring Floor Area.

Limited-Equity Housing Cooperative. A corporation organized on a cooperative basis that meets the requirements of State Civil Code §817 and which restricts the re-sale price of the cooperative's shares in order to maintain a specified level of affordability to any new shareholder.

Local Employer. A person, business, company, corporation or other duly formed legal entity which employs persons whose primary place of employment is located within the South Coast region of Santa Barbara County.

Market-Rate Unit. An Ownership Unit or a Rental Housing unit that may be sold or leased at an unrestricted price.

Moderate-Income Household. A household whose income does not exceed the moderate income limits applicable to Santa Barbara County as defined in California Health and Safety Code Section 50093 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development. Moderate-Income Households are generally households with incomes between eighty percent (80%) and one hundred twenty percent (120%) of Area Median Income.

Moderate Income Housing Plan. A plan for a residential development submitted by an applicant as provided by Section 30.150.130, Moderate Income Housing Plan Processing.

Moderate Income Unit. A Rental Housing unit affordable to Moderate-Income Households.

Ownership Housing. Housing developed so that individual residential units may be sold separately under the requirements of the State Subdivision Map Act. For purposes of this chapter, a residential unit may be designated as Ownership Housing whether or not it is rented by the owner thereof.

Priority Housing. Priority Housing includes the following three categories of housing:

1. Employer-Sponsored Housing;
2. Limited-Equity Housing Cooperatives; and
3. Rental Housing.

PROJECT. PROJECT SHALL BE DEFINED AS PROVIDED IN SECTION 30.300.160 "P".

Rental Housing. Housing developed and maintained as multiple residential units on the same lot for occupancy by separate households pursuant to a lease or other rental agreements where all residential units are owned exclusively by the same legal entity.

30.150.030 Permitted Zones for the Program.

The Average Unit-Size Density Incentive Program as established herein is a density incentive program available in the following zones of the City: R-M, R-MH, O-R, C-R, C-G, M-C, CO-HV, and CO-CAR zones, as shown on the City of Santa Barbara Average Unit-Size Density Incentive Program Map attached hereto as Exhibit A. The fact that a lot may be subject to an overlay zone does not preclude the application of the Average Unit-Size Density Incentive Program on that lot if the Average Unit-Size Density Incentive Program is otherwise allowed in the base zoning of that lot. Development Projects developed in accordance with the provisions of the Average Unit-Size Density Incentive Program shall comply with the development standards specified in this chapter

30.150.040 Program Duration.

- A. **Initial Program Period.** The Average Unit-Size Density Incentive Program shall have an initial duration of eight years after the effective date of the ordinance codifying this chapter or until 250 new residential units under this program are constructed (as evidenced by the issuance of a Certificate of Occupancy) within the areas of the City designated for High Density Residential or the Priority Housing overlay (as shown on the City of Santa Barbara Average Unit-Size Density Incentive Program Map attached to this chapter as Exhibit A), whichever occurs sooner.
- B. **Exclusion of Low and Very Low Housing Units.** Housing projects that are affordable to low-income and very low-income households, as defined in the City's Affordable Housing Policies and Procedures, will not count towards the 250-unit Program limit established in subsection A, above.
- C. **Pending Applications.** Any application for new development that is deemed complete prior to the expiration of the Program term established in subsection A, Initial Program Period, above, or the issuance of the certificate of occupancy for the 250th residential unit (whichever occurs sooner) may continue to be processed and potentially approved under the Average Unit-Size Density Incentive Program.

30.150.050 Status of R-M and R-MH Residential Density.

Notwithstanding the provisions of Chapter 30.20, Residential Zones, for the duration of the Average Unit-Size Density Incentive Program established in Subsection 30.150.040.A, Initial Program Period, the following incentive program is available regarding the residential density of new development projects in zones of the City which otherwise would apply the R-M residential density:

- A. **Average Unit-Size Density Incentive Program.** Projects developed in accordance with the provisions of the Average Unit-Size Density Incentive Program established in Section 30.150.070, Average Unit-Size Density Incentives, hereof are exempt from the standard R-M residential density provisions specified in Table 30.20.030.B, Development Standards—Two-Unit and Multi-Unit Zones

Development of Affordable Housing. Projects that meet the affordability criteria of the State Density Bonus Law or the City's Affordable Housing Policies and Procedures may continue to

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propose development pursuant to the density incentives established in Chapter 30.145, Affordable Housing and Density Bonus and Development Incentives.

30.150.060 Pre-Application and Concept Review Required.

- A. **Planning Commission Concept Review.** Concept Review by the Planning Commission pursuant to Section 30.205.040, Concept Review, is required for all rental housing projects proposed in accordance with the provisions of the Average Unit-Size Density Incentive Program when all of the following conditions apply:
 1. The project does not require another discretionary approval by the Planning Commission pursuant to any other provision of this Title; and
 2. The project site includes a lot with a High Density Residential land use designation or the project is being proposed under the Average Unit-Size Density Incentive Program Priority Housing Overlay; and
 3. The project site has a combined net lot area of 15,000 square feet or greater.
- B. **Review by Pre-Application Review Team.** All Average Unit-Size Density Incentive Program projects subject to Planning Commission Concept Review pursuant to subsection A above, shall be reviewed by the Pre-Application Review Team pursuant to Section 30.205.030, Pre-Application Review.
- C. **Initial Concept Review by Design Review Body.** Initial Concept Review by the appropriate Design Review body shall occur prior to Concept Review by the Planning Commission. The **aA**pplicant may elect to have additional Concept Reviews by the appropriate Design Review body, prior to the review by the Planning Commission.
- D. **Pre-Application Review Team Report.** Prior to their review, the Planning Commission shall receive a written report from the Pre-Application Review Team concerning the proposed design and improvement of the project and the project's consistency with the City's General Plan.
- E. **Planning Commission Comment and Recommendations.** The Planning Commission shall provide comment and recommendation by majority vote regarding the proposed design and improvement of the project and the project's consistency with the City's General Plan. The Planning Commission comments and recommendations are intended for use by the applicable Design Review body in their deliberations.
- F. **Communication to Design Review Body.** Following the Planning Commission review hearing, the Community Development Department staff shall communicate the Planning Commission's comments and recommendations to the applicable Design Review body.
- G. **Additional Planning Commission Review.** If a project is subject to Planning Commission Concept Review pursuant to this section, the Historic Landmarks Commission cannot elect to refer the project to the Planning Commission pursuant to Section 22.22.133 of the Santa Barbara Municipal Code, and the Architectural Board of Review cannot elect to refer the project to the Planning Commission pursuant to Section 22.68.050 of the Santa Barbara Municipal Code. However, the project **aA**pplicant may request an additional concept review of the project by the Planning Commission.

30.150.070 Average Unit-Size Density Incentives.

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The Average Unit-Size Density Incentive Program offers project applicants residential unit density incentives as alternatives to the base residential densities specified for the particular City zones in which the program is available. The Average Unit-Size Density Incentive Program consists of three density tiers which may apply based upon the City's General Plan land use designation for the lot and the nature of the development being proposed as follows:

- A. **Medium-High Density.** The Medium-High density tier applies to those lots with a City General Plan land use designation of Medium High Density Residential. The Medium-High density tier allows the development of projects at residential densities ranging from 15 to 27 residential units per acre. The maximum average unit size within the Medium-High density tier varies from 1,450 square feet of floor area to 905 square feet of floor area, depending upon the number of units per acre being developed, as specified in the Average Unit-Size Density Incentive Program Table attached to this chapter as Exhibit B and incorporated by this reference as though fully set forth herein.
- B. **High Density.** The High Density tier applies to those lots with a City General Plan land use designation of High Density Residential. The High Density tier allows the development of projects at residential densities ranging from 28 to 36 residential units per acre. The maximum average unit size within the High Density tier varies from 1,245 square feet of floor area to 970 square feet of floor area, depending upon the number of units per acre being developed, as specified in the Average Unit-Size Density Incentive Program Table attached to this chapter as Exhibit B.
- C. **Priority Housing Overlay.** The Priority Housing Overlay applies to lots within the City with a City General Plan land use designation of High Density Residential and lots zoned M-C (regardless of the General Plan land use designation) as shown on the City of Santa Barbara Average Unit-Size Density Incentive Program Map attached to this chapter as Exhibit A. The Priority Housing Overlay allows the development of projects at residential densities ranging from 37 to 63 residential units per acre. The maximum average unit size within the Priority Housing Overlay varies from 970 square feet of floor area to 811 square feet of floor area, depending upon the number of units per acre being developed, as specified in the Average Unit-Size Density Incentive Program Table attached to this chapter as Exhibit B. The Priority Housing Overlay is only available for Rental Housing, Employer-Sponsored Housing, or Limited-Equity Housing Cooperative. A project developed under the Priority Housing Overlay may have a mixture of Priority Housing categories (i.e., a portion of the project may be Rental Housing while another portion of the project may be Employer-Sponsored housing).
- D. **Process to Establish Priority Housing.** For the purposes of this chapter, the different forms of Priority Housing shall be established in the following manner:
 1. **Employer-Sponsored Housing.** In order to qualify for the density incentives allowed under the Average Unit-Size Density Incentive Program, the applicant for a proposed Employer-Sponsored Housing project should typically propose a project which contains a range of residential unit sizes and which offers a range of rents or purchase prices, some of which are affordable to a household earning 200% of the Area Median Income or less at the time of the initial occupancy of the project. The owner of an approved Employer-Sponsored Housing project must record a written instrument against the real property, in a form acceptable to the City

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Attorney, by which the employer sponsor(s) that owns the real property agrees to limit the occupancy of each residential unit to a household who occupies the unit as their primary residence and which includes at least one person who is primarily employed at a place of employment located within the south coast region of Santa Barbara County for as long as the property is developed and maintained at the incentive densities.

2. **Limited-Equity Housing Cooperative.** In order to qualify for the density incentives provided under the Average Unit-Size Density Program, all of the residential units within the Limited-Equity Housing Cooperative must be affordable to households earning up to 250% of the Area Median Income measured at the time of purchase, as affordability is defined in the City's Affordable Housing Policies and Procedures, and a covenant containing this requirement (in a form acceptable to the City Attorney) shall be recorded against the real property to this effect.
3. **Rental Housing.** In order to qualify for the Priority Housing Overlay density incentives allowed under the Average Unit-Size Density Incentive Program, the owner of real property developed with Rental Housing must record a written covenant, in a form acceptable to the City Attorney, by which the owner agrees to maintain the rental housing use for as long as the property is developed and maintained at the incentive densities provided for in this chapter.

E. **Residential Unit Sizes.** The unit sizes shown in the Average Unit-Size Density Incentive Program Table are the maximum average residential unit sizes allowed for the corresponding residential densities specified in the applicable density tier. Projects may be developed under the Average Unit-Size Density Incentive Program at a residential density that is greater than the base density for the zone in which the lot is located, but at a residential density that is less than the density range specified in the density tier assigned to the lot by its City General Plan land use designation. However, the average unit size of any project that is developed at a residential density which exceeds the base density for the zone in which the lot is located through the application of the Average Unit-Size Density Incentive Program may not exceed the maximum average unit size for the applicable residential density tier as specified in the Average Unit-Size Density Incentive Program Table attached to this chapter as Exhibit B.

30.150.080 ~~Average Unit Size and~~ Inclusionary Housing Requirements for Ownership Housing Projects.

If an Ownership Unit project is developed in accordance with the Average Unit-Size Density Incentive Program of this chapter it shall comply with the City's Inclusionary Housing Ordinance (Chapter 30.160), and if the owner of the Ownership Unit project elects to provide the inclusionary units on-site as part of the Ownership Unit project (as opposed to paying the allowed in-lieu fee allowed by Chapter 30.160), the increased number of residential units to which the owner is entitled under Chapter 30.160 shall also comply with the maximum average unit size for the base density of the project under the Average Unit-Size Density Incentive Program.

30.150.090 Additional Development Incentives.

- A. **Development Standards Generally.** In order to further encourage the development of projects in accordance with the provisions of this Average Unit-Size Density Incentive Program, the development standards listed in this section are allowed for those projects developed and maintained in accordance with the Average Unit-Size Density Incentive Program. Except as otherwise specified in this section, projects developed in accordance with the provisions of the Average Unit-Size Density Incentive Program shall otherwise comply with the development standards applicable to the applicable zone in which the lot is located.
- B. **Market Rate Ownership Projects Within the Upper State Street Area (USS) Overlay Zone.** Projects developed with market rate ownership units, on lots with a City General Plan land use designation of Medium-High Density, and within the Upper State Street Area (USS) Overlay Zone, shall comply with Upper State Street Area (USS) Overlay Zone development standards as required by Chapter 30.85.
- C. **Maximum Height.** Projects developed and maintained in accordance with the Average Unit-Size Density Incentive Program shall conform to the maximum height standards specified within the zone in which the lot is located.
- D. **Maximum Floor Area.** Average Unit-Size Density Incentive Program projects in the USS Overlay Zone are not subject to the USS Overlay Zone Maximum Floor Area limitations of Chapter 30.85, except, that projects developed with market rate ownership units on lots with a City General Plan land use designation of Medium-High Density and located within the USS Overlay Zone shall comply with USS Overlay Zone Maximum Floor Area limitations of Chapter 30.85.
- E. **Setbacks.** Projects developed and maintained in accordance with the Average Unit-Size Density Incentive Program shall observe the following setback standards:
 - 1. ***O-R, C-R, C-G, and M-C Zones and the USS Overlay Zone.*** Projects developed in accordance with the Average Unit-Size Density Incentive Program in the O-R, C-R, C-G, and M-C Zones and the USS Overlay Zone shall observe the following setback standards:
 - a. *Front Setback.*
 - i. State Street and First Blocks of Cross Streets. Projects on lots fronting State Street between Montecito Street and Sola Street, and lots fronting the first block east or west of State Street on streets that cross State Street between and including Montecito Street and Sola Street, shall not be required to provide a front setback.
 - ii. Nonresidentially-Zoned Lots Subject to the USS Overlay Zone. Projects developed on non-residentially-zoned lots within the USS Overlay Zone shall observe a front setback of 10 feet; provided, however, that projects on nonresidentially zoned lots in the Medium-High Density designation and developed with market rate ownership units shall observe the front setback standards of the USS Overlay Zone required by Chapter 30.85.

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- iii. All Other Lots. Projects on lots that do not front on the streets specified in Subparagraph 30.150.090.E.1.a.i, State Street and First Blocks of Cross Streets, shall observe the following front setback standard:
 1. A uniform front setback of five feet shall be provided except where that portion of the structure which intrudes into the required five-foot front setback is appropriately balanced with a front setback area that exceeds the minimum five-foot front setback. The additional compensating setback area shall be in the front yard, and not located farther from the adjacent front lot line than one half of the depth of the lot.
 - b. *Interior Setback Adjacent to Nonresidential Zone*. No interior setback is required for those projects adjacent to a nonresidential zone; provided, however, that projects on nonresidentially-zoned lots in the Medium-High Density designation within the USS Overlay Zone and developed with market rate ownership units shall observe the interior setback standards required by the applicable zone.
 - c. *Interior Setback Adjacent to Residential Zone*. A uniform interior setback of six feet shall be provided except for those projects where that portion of the structure which intrudes into the required six foot interior setback is appropriately balanced with an interior setback area that exceeds the minimum six foot interior setback; provided, however, that projects developed on non-residentially-zoned lots in the Medium-High Density designation within the USS Overlay Zone and developed with market rate ownership units shall observe the interior setback standards required by the applicable zone.
2. ***R-M and R-MH Zones***. Projects on lots developed in accordance with the Average Unit-Size Density Incentive Program in the R-M and R-MH Zones, except for market rate ownership projects within the USS Overlay Zone, shall observe the same setbacks as the R-M and R-MH Zones.
 3. ***CO-HV and CO-CAR Zones***. Lots developed in accordance with the Average Unit-Size Density Incentive Program in the CO-HV and CO-CAR Zones shall observe the setback standards required by the applicable zone
- F. **Parking**. As an alternative to the residential parking requirements specified in Chapter 30.175, Parking Regulations, projects developed under the Average Unit-Size Density Incentive Program may observe the following residential parking requirements; provided, however, that projects on lots in the Medium-High Density designation subject to the USS Overlay Zone and developed with market rate ownership units shall observe the parking requirements required by the applicable zone:
1. ***Studio, One-Bedroom, and Two-Bedroom Residential Units***. A minimum of one parking space shall be provided for each residential unit. The parking spaces may be covered, uncovered, or a combination of both.

2. Three or More Bedroom Residential Units.

- a. *Lots Outside Central Business District.* A minimum of two automobile parking spaces shall be provided for each residential unit with three or more bedrooms on a lot that is located outside of the Central Business District as such district is delineated in Figure 30.175.050.B.
- b. *Lots Within the Central Business District.* A minimum of one automobile parking space shall be provided for each residential unit with three or more bedrooms on a lot that is located within the Central Business District. The parking spaces may be covered, uncovered, or a combination of both.

3. Parking Reductions. Except for the parking reductions provided pursuant to Subsection 30.175.050.A, for development in which 100 percent of the units are developed as rental units affordable to very low or low income households, or Senior Housing, residential units developed under this Chapter shall not qualify for any additional Parking Exceptions or Reductions pursuant to Chapter 30.175, Parking Regulations.

4. Bicycle Parking. A minimum of one covered and secured bicycle parking space shall be provided for each residential unit.

5. Guest Parking. Guest parking is not required.

6. Other Parking Regulations. Other than the number of required off-street parking spaces pursuant to Table 30.175.040, Required Off-Street Parking Spaces, projects developed under this Chapter shall observe all of the parking standards specified in Chapter 30.175, Parking Regulations.

G. Open Yard. Projects developed in accordance with the Average Unit-Size Density Incentive Program shall provide open yard as follows:

1. **Residential Zones.** Projects in residential zones shall provide the open yard requirements specified by Section 30.140.140, Open Yards.

2. **Nonresidential Zones.**

a. Projects in nonresidential zones, in the Medium-High Density designation, within USS Overlay Zone, and developed with market rate ownership units shall provide the Open Yard requirements specified by Section 30.140.140, Open Yards.

b. All other projects in nonresidential zones shall provide open yard as follows:

i. Private open yard, pursuant to Subsection 30.140.140.C.2, Open Yards; and

ii. On lots developed with four or more residential units, one additional area, located on grade or on a roof deck, is required with minimum dimensions of 15 feet long and 15 feet wide for use as a common open yard accessible to all residential units on the lot.

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- iii. An Alternative Open Yard Design that meets the following standards is allowed to replace i and ii above.
 1. Minimum Area: 15% of the net lot area located on the ground or on decks of any height, or on any floor of the building or structure;
 2. Standards and Location: Except those for private open yards, all open yard standards and location requirements, pursuant to Section 30.140.140.D and E., Open Yards, are met; and
 3. Common Open Yard Area. At least one area with a minimum dimension of 20 feet long and 20 feet wide, located on the ground or on decks of any height, or on any floor of the building or structure, that is accessible to all units for use as a common open yard area is provided.

30.150.100 Inclusionary Requirements for Rental Housing Projects.

A. General Requirements

1. *Developments of Ten or More Units*. For all Residential Developments PROJECTS of ten or more residential Rental Housing units, at least 10 percent of the total units on-site shall be constructed and offered at an Affordable Rent as Inclusionary Units restricted for occupancy at Moderate Income to be occupied by Moderate-Income Households as specified herein. Existing residential units that are to be retained shall be included in the number of units in the Residential Development PROJECT for purposes of calculating the number of Inclusionary Units required under this Section.
2. *Developments of Less Than Ten Units But More Than One Unit – Payment of an In-Lieu Fee*. For all Residential Developments PROJECTS with fewer than ten and more than one Rental Housing unit, the Applicant shall pay to the City an In-Lieu Fee equal to an amount specified by Subsection 30.150.120, Calculation of In-Lieu Fee.

B. Density Bonus Units. Any additional Rental Housing units authorized and approved as a density bonus under the State Density Bonus law or the City's Affordable Housing Policies and Procedures shall not be counted in determining the required number of Moderate Income Units.

~~C. Rounding. See Section 30.15.050, Fractions.~~

~~**D.C. Rent Limits for Average Unit-Size Density Program Inclusionary Moderate Income Units**~~. Average Unit-Size Density Program Inclusionary Moderate Income Units shall be restricted for rent at an Affordable Rent for Moderate-Income Households. Nothing herein shall preclude an Applicant/owner from voluntarily agreeing to restrict the Moderate Income Units for rent to very-low or low income households at the target incomes specified for such income categories in the City's Affordable Housing Policies and Procedures.

E.D. Average Unit-Size Density Program Inclusionary Moderate Income Housing Plan Requirement. Every Average Unit-Size Density Program Inclusionary Rental Housing development subject to the requirements of Subsection 30.150.100.A.1 shall include a Moderate Income Housing Plan that meets the standards of Section 30.150.130 as part of the building permit application submittal. No application for a building permit may be issued until a Moderate Income Housing Plan is submitted to and approved by the Community Development Director as being complete. The Community Development Director may require additional information reasonably necessary to clarify and supplement the application or determine the consistency of the proposed Moderate Income Housing Plan with the requirements of this Chapter.

30.150.120 In-Lieu Fees.

- A. **Payment of In-Lieu Fee to City.** All in-lieu fees paid under this Section 30.150.120 shall be deposited into the City's Affordable Housing Inclusionary Fund as provided for in Section 30.160.130 Affordable Housing Inclusionary Fund.
- B. **Calculation of In-Lieu Fee.** The in-lieu fee shall be ~~SET # AT~~ an **INITIAL** amount equal to \$25.00 per square foot based on the net floor area of each Average-Unit Size Density Incentive Program rental unit. **THE IN-LIEU FEE SHALL BE EVALUATED ANNUALLY AND ADJUSTED BY NO LESS THAN ENGINEERING NEWS RECORD (ENR) BUILDING COST INDEX FOR LOS ANGELES.**
- C. **Prorating.** If the calculation for the required number of Moderate Income Units as provided in Section 30.150.100, Inclusionary Requirements, results in a fraction of a unit, the amount of in-lieu fee for such fractional unit shall be determined by multiplying the in-lieu fee by the fraction of a unit.
- D. **Timing of Payment of In-Lieu Fee.** The in-lieu fees shall be paid to the City prior to the issuance of a Certificate of Occupancy.

30.150.130 Moderate Income Housing Standards.

Moderate Income Units required to be constructed by this chapter shall conform to the following standards:

- A. **Design.** Moderate Income Units shall be dispersed evenly throughout a project and shall be comparable in construction quality and exterior design to the Market-Rate Units constructed as part of the development. **THE SIZE OF MODERATE INCOME UNITS SHALL BE DETERMINED IN ACCORDANCE WITH THE CITY'S AFFORDABLE HOUSING POLICIES AND PROCEDURES.** Moderate Income Units ~~may be smaller in aggregate size and~~ may have different interior finishes and features than Market-Rate Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing.
- B. **Bedrooms and Bathrooms.** The average number of bedrooms in the Moderate Income Units shall equal or exceed the average number of bedrooms in the Market-Rate Units of the development. Inclusionary units shall generally have at least one and one-half bathrooms and three bedroom units shall have at least two bathrooms. However, the required number of bathrooms shall not be greater than the number of

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bathrooms in the Market-Rate Units. ~~The minimum unit size of each Moderate Income Unit shall be equal or exceed the Market Rate Unit size with an equivalent bedroom count and be in conformance with the City's Affordable Housing Policies and Procedures.~~

- C. **Timing of Construction.** All Moderate Income Units shall be constructed and occupied concurrently with or prior to the construction and occupancy of Market-Rate Units of the development. In phased developments, Moderate Income Units may be constructed and occupied in proportion to the number of units in each phase of the residential development.
- D. **Duration of Affordability Requirement.** Moderate-Income Units built under this Chapter shall be legally restricted to occupancy by Moderate-Income Households for at least ninety years, pursuant to and in conformance with the City's Affordable Housing Policies and Procedures.

30.150.140 Moderate Income Housing Plan Processing.

- A. **Generally.** The submittal of a Moderate Income Housing Plan and recordation of an approved City affordability control covenant shall be a precondition on the City issuance of a building permit.
- B. **Required Plan Elements.** A Moderate Income Housing Plan shall include the following elements or submittal requirements:
 - 1. The number, location, structure (attached, semi-attached, or detached), and size of the proposed Market-Rate and Moderate Income Units and the basis for calculating the number of Moderate Income Units;
 - 2. A floor or site plan depicting the location of the Moderate Income Units and the Market-Rate Units;
 - 3. The income levels to which each Moderate Income Unit will be made affordable;
 - 4. The methods to be used to advertise the availability of the Moderate Income Units and select the eligible tenants, including preference to be given, if any, to Applicants who live or work in the City in conformance with the City's Affordable Housing Policies and Procedures;
 - 5. For phased Development, a phasing plan that provides for the timely development of the number of Moderate Income Units proportionate to each proposed phase of development as required by paragraph 30.150.130.C, Timing of Construction; and
 - 6. Any other information reasonably requested by the Community Development Director to assist with evaluation of the Plan under the standards of this Chapter.
- C. **Affordability Control Covenants.** Prior to issuance of a building permit, the City affordability control covenant shall be approved and executed by the Community Development Director, executed by the Applicant/Owners, and recorded against the title of any Rental Housing project that includes one or more Moderate Income Units.

Exhibit A

30.150.150 Processing Waivers, Adjustments, and Reductions.

- A. An Applicant may request a waiver, adjustment, or reduction of the requirements of this Chapter only upon a showing that strict application of its requirements would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property.
- B. Requests for waiver, adjustment, or reduction must be submitted in writing to the Community Development Director, together with supporting documentation, concurrently with the application submittal.
- C. 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:
 - 1. That the Applicant will provide the most economical affordable units feasible, meeting the requirements of this Chapter and the City's Affordable Housing Policies and Procedures; and
 - 2. That the Applicant will benefit from the incentives for project as described in this Chapter and elsewhere in the Zoning Ordinance.
- D. Requests shall be acted upon by the Community Development Director within a reasonable time, taking into account the amount and complexity of the relevant information and evidence. The Community Development Director may conduct a public hearing on the matter, or refer the request for recommendations or action by the Planning Commission or City Council. 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.

30.150.100 30.150.160 Exhibits.