

Sec. 10-2.3.802. Conditional Use Permit Required.

When otherwise designated as permitted uses by the provisions of this article, the concurrent sales of gasoline and alcoholic beverages shall require a conditional use permit pursuant to Part IV, Article 6 of this chapter.

Sec. 10-2.3.803. Procedures.

Repealed by §46, Ord. 2109, eff. 6/15/12.

Article 9. Inclusionary Housing**Sec. 10-2.3.901. Purpose.**

The purpose of this article is to facilitate the development and availability of housing affordable to a broad range of households with varying income levels within the City to meet current and future affordable housing needs. Provision of inclusionary units within new residential developments will assure that new affordable housing units are distributed throughout the City in order to provide economically diverse neighborhoods and avoid problems historically associated with concentrated low income housing. It is intended in part to implement state policy that declares that local governments have a responsibility to exercise their powers to facilitate the development of housing to adequately provide for the housing needs of all economic segments of the community, as stated in Government Code Section 65580. It is also intended to implement the Housing Element of the General Plan which calls for the continued implementation of an inclusionary housing program to require either production of affordable housing at moderate, low, and very low income levels; payment of in-lieu fees, or alternative means of compliance to support construction of affordable housing units. (*§4, Ord. 2025, eff. 3/18/04; §1, Ord. 2095, eff. 1/15/11; §4, Ord. 2178, eff. 1/5/18*)

Sec. 10-2.3.902. Definitions.

The definitions contained in Section 10-2.1.303 shall apply to the provisions of this article. Notwithstanding the foregoing, the following definitions shall apply only to this article:

A. Condominium Conversion. A "condominium conversion" means the conversion of the ownership of the units in a rental project from a single ownership to an ownership in which the dwelling units may be sold individually. Such condominium conversions may include, but are not limited to, the conversion of existing multiple unit residential development projects to any of the following, all as defined in the Davis-Stirling Common Interest Development Act, California Civil Code Section 4000 et seq: (a) a community apartment project; (b) a condominium project; and (c) a stock cooperative.

B. Residential Development Project. Any project that either: (1) includes the construction of one (1) or more dwelling units, or (2) includes a condominium conversion. (*§4, Ord. 2025, eff. 3/18/04 and §1, Ord. 2077, eff. 5/8/09; §1, Ord. 2095, eff. 1/15/11; §4, Ord. 2178, eff. 1/5/18*)

Sec. 10-2.3.903. Inclusionary Units or Fee Required.

A. **Requirement – Ownership Projects.** All ownership projects shall either include the number of inclusionary units required under Section 10-2.3.904 or pay the in-lieu fee required under Section 10-2.3.905, unless an alternative is proposed by the developer and approved as described in Section 10-2.3.906. No application for a rezoning, tentative map, parcel map, conditional use permit, design review, or building permit shall be approved, nor shall any such ownership project be constructed or condominium conversion approved, without compliance with this article.

B. **Requirement – Rental Projects.** All rental projects shall include the number of inclusionary units required under Section 10-2.3.904 or pay the in-lieu fee required under Section 10-2.3.905, unless an alternative is proposed by the developer and approved as described in Section 10-2.3.906. No application for a rezoning, tentative map, parcel map, conditional use permit, design review, or building permit shall be approved, nor shall any such rental project be constructed, without compliance with this article.

C. **Exemptions.** Notwithstanding subsections (A) and (B) of this section, this article shall not apply to following:

1. Accessory dwelling units.
2. A single unit being constructed to replace a single unit destroyed by fire, flood, earthquake or other act of nature. (*§4, Ord. 2025, eff. 3/18/04 and §2, Ord. 2077, eff. 5/8/09; §1, Ord. 2095, eff. 1/15/11; §4, Ord. 2178, eff. 1/5/18*)

Sec. 10-2.3.904. Number of Inclusionary Units.

A. **Basic Requirement – Ownership.** The required number of inclusionary units in an ownership project shall depend upon the total number of dwelling units in the project and the type of inclusionary units being included (i.e., whether they are made affordable to moderate income, low income or very low income households). The developer of the ownership project may choose which type of inclusionary units to include, which, in turn, will partially determine the number of inclusionary units that must be included.

1. **New Ownership Projects.** The developer of an ownership project (other than a condominium conversion) shall pay the in-lieu fee specified in Section 10-2.3.905, or include either:
 - a. Ten percent (10%) of the dwelling units as moderate income ownership units;
 - b. Seven percent (7%) of the dwelling units as low income ownership units; or
 - c. Six percent (6%) of the dwelling units as very low income ownership units.

Notwithstanding subsection (C) of this section, a minimum of one (1) inclusionary ownership dwelling unit shall be provided per project.

Table 1: Options for New Ownership Projects (other than a condominium conversion)

	Moderate	Low	Very Low	Pay In-Lieu Fee
Ownership Units	10%	7%	6%	Section 10-2.3.905

2. **Condominium Conversions.** The condominium conversion shall include either fifteen percent (15%) of the dwelling units as low income ownership units or eleven percent (11%) of the dwelling units as very low income units as selected by the applicant, or, if the project is fewer than ten (10) units, pay a fractional fee for low income ownership units as specified in Section 10-2.3.905.

B. **Basic Requirement – Rental.** The required number of inclusionary units in a rental development project shall depend upon the total number of dwelling units in the project and the type of inclusionary units being included (i.e., whether they are made affordable to moderate income, low income or very low income households). The developer of the rental development project may choose which type of inclusionary units to include, which, in turn, will partially determine the number of inclusionary units that must be included.

1. **New Rental Projects.** The developer of a rental development project shall pay the in-lieu fee specified in Section 10-2.3.905, or include either:

- a. Ten percent (10%) of the dwelling units as low income rental units; or
- b. Six percent (6%) of the dwelling units as very low income rental units.

Notwithstanding subsection (C) of this section, a minimum of one (1) inclusionary rental dwelling unit shall be provided per project.

Table 2: Options for Rental Development Projects

	Low	Very Low	Pay In-Lieu Fee
Rental Units	10%	6%	Section 10-2.3.905

C. **Fractional Units.** When the application of the percentages specified above results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is seven-tenths (0.7) or more. If the result includes a fraction below seven-tenths (0.7), the developer shall have the option of rounding up to the next whole number and providing the inclusionary unit on site, or paying a fee in lieu of providing an additional inclusionary unit. The in-lieu fee shall be calculated in accordance with Section 10-2.3.905.

D. **Blended Targeted Income Levels.** The developer may request that the project include inclusionary units that are targeted to a mix of income levels (moderate, low and very low) instead of just to one (1) income level. The final decision regarding the mix of targeted income levels shall be made by the decision-making body pursuant to Section 10-2.3.909.

E. **Partial In-Lieu Fee.** The developer of a residential development project may request to pay the in-lieu fee for a portion of the required units. In this case, the per square foot fee would be decreased equal to the proportion of the required percentage of inclusionary units being provided in accordance with Section 10-2.3.905. The final decision regarding the mix of targeted income levels shall be made by the decision-making body pursuant to Section 10-2.3.909.

F. **Unit Mix.** The unit mix (i.e., the number of bedrooms per unit) of the inclusionary units shall be in the same proportion as the unit mix of the market rate units. For example, if a project has ten (10) two (2) bedroom units and twenty (20) one (1) bedroom units and is required to include three (3) inclusionary units, then the inclusionary units must consist of one (1) two (2) bedroom unit and two (2) one (1) bedroom units. If only one (1) inclusionary unit is required and the other units in the project have various numbers of bedrooms, the developer may select the number of bedrooms for that unit. If inclusionary units cannot mathematically be exactly proportioned in accordance with the market rate units, the unit mix shall be determined by the decision-making body pursuant to Section 10-2.3.909(C).

G. **Location of Inclusionary Units.** Except as provided in Section 10-2.3.906(A), all inclusionary units shall be built on the same site as the remainder of the project, and distributed throughout the project.

H. **Replacement Units.** If a proposed residential development project would result in the demolition or elimination of existing dwelling units that have, or had within the twelve (12) months prior to submittal of the application, rent levels affordable to low income households, and these dwelling units were built less than thirty (30) years ago, the affordable dwelling units must be replaced on a one (1) for one (1) basis affordable to low income households. If the number of required inclusionary units is less than the number of low income units being eliminated, the developer shall either (1) include a number of inclusionary units affordable to low income households in an amount equal to the number of low income units being eliminated or (2) provide the number of inclusionary units required based upon project size (or pay the in-lieu fee if permitted by this article), and then pay an in-lieu fee for the remaining replacement units (over the inclusionary unit amount) calculated in accordance with Section 10-2.3.905 for fractional in-lieu fees.

This subsection (H) does not apply to condominium conversions. (§4, Ord. 2025, eff. 3/18/04; §3-4, Ord. 2077, eff. 5/8/09; §1, Ord. 2085, eff. 2/20/10; §1, Ord. 2095, eff. 1/15/11; §4, Ord. 2178, eff. 1/5/18)

Sec. 10-2.3.905. Affordable Housing In-Lieu Fees.

A. As provided in Section 10-2.3.904, a fee may be paid in lieu of providing (1) inclusionary units in an ownership project (other than condominium conversion), (2) inclusionary units in a rental project, (3) inclusionary units in a condominium conversion project of fewer than seven (7) units, and (4) fractional inclusionary units below seven-tenths (0.7) of a unit.

B. For residential development projects constructed in phases, in-lieu fees shall be paid prior to issuance of each building permit in the proportion that the phase bears to the overall residential development project.

C. Notwithstanding any other provision of this chapter, to the extent that an ownership project (other than condominium conversion) or a rental project involves the demolition of existing dwelling units at a ratio of one-half (0.5) or greater to the construction of new dwelling units, the affordable housing in-lieu fee

and the requirements to provide inclusionary units shall be based upon the number of net new dwelling units to be constructed.

D. The City Council shall, from time to time, adopt a resolution setting forth the amount of the in-lieu fees.

E. Fractional in-lieu fees shall be calculated as follows:

The per square foot in-lieu fee divided by the applicable inclusionary requirement times the average square feet of a unit in the development times the fractional unit.

F. All fees shall be paid by the developer prior to issuance of a building permit for any residential structure in the development project or as determined by the residential development project's adopted conditions of approval.

G. The in-lieu fees shall not exceed the average estimated cost of otherwise providing the required inclusionary units affordable to a very low income household, a low income household or a moderate income household, as applicable, including but not limited to: (1) estimated construction costs, (2) the cost of land, (3) financing costs, (4) consultant costs (including without limitation architecture, engineering, and other costs), and (5) any indirect costs. (§4, Ord. 2025, eff. 3/18/04; §5, Ord. 2077, eff. 5/8/09; §1, Ord. 2085, eff. 2/20/10; §1, Ord. 2095, eff. 1/15/11; §4, Ord. 2178, eff. 1/5/18)

Sec. 10-2.3.906. Alternatives.

The developer may propose an alternative means of compliance with this article instead of provision of inclusionary units or payment of an in-lieu fee according to the following provisions:

A. **Off-Site Construction of Inclusionary Units.** Inclusionary units may be constructed off site only upon a determination by the City that on-site construction is infeasible. If this option is chosen, then the off-site inclusionary units must be constructed prior to or concurrently with construction of the residential development project. The inclusionary unit size and count must meet the same requirements as if the inclusionary units were constructed on site. No certificate of occupancy will be issued for any corresponding market rate unit prior to inclusionary unit construction completion or payment of required in-lieu fees.

B. **Land Dedication.** In lieu of building inclusionary units, the developer may dedicate to the City land within the City that the City determines is suitable for the construction of inclusionary units and is of equivalent or greater value than is produced by applying the City's current in-lieu fee to the inclusionary obligation.

C. **Provision of Moderate Income Rental Inclusionary Units.** A developer of a rental development project may propose to provide inclusionary units affordable to moderate income households. Such a proposal would include a percentage of moderate income units proportionally higher than the percent required for low income rental units. The final decision regarding the inclusion of moderate income rental units shall be made by the decision-making body pursuant to Section 10-2.3.909(C). (§4, Ord. 2025, eff. 3/18/04; §1, Ord. 2095, eff. 1/15/11; §4, Ord. 2178, eff. 1/5/18)

Sec. 10-2.3.907. Credit for Additional Affordable Units.

If the developer completes construction of a greater number of inclusionary units in the project than required by this article, the additional units may be credited toward meeting the requirements of this article by a future project. Upon completion of the additional inclusionary units, the Director shall issue a certificate of inclusionary unit credit documenting the credits. The developer may use the credits in a future project or transfer the credits in writing to another developer. Credits will only be counted toward required inclusionary units with the same bedroom count, the same tenure (rental or ownership), equivalent affordability targets, and in the same area of the City (i.e., within the Core Area, or outside the Core Area). The credits must be used within ten (10) years of issuance. Projects which have obtained a density bonus or which are government subsidized shall not be eligible for credits. (§4, Ord. 2025, eff. 3/18/04; §4, Ord. 2178, eff. 1/5/18)

Sec. 10-2.3.908. Inclusionary Unit Standards.

A. **Design.** Inclusionary units must be dispersed throughout a residential development project and be comparable in construction quality and exterior design to the market rate units. The inclusionary units must have access to all on-site amenities.

B. **Timing.** All inclusionary units must be constructed and occupied concurrently with or prior to the construction and occupancy of market rate units or development. In phased developments, inclusionary units may be constructed and occupied in proportion to the number of units in each phase of the residential development project.

C. **Terms of Affordability.** Rental inclusionary units must remain affordable for fifty-five (55) years, as documented through an affordable housing agreement recorded against the property. Ownership inclusionary units must remain affordable for forty-five (45) years pursuant to an affordable housing agreement recorded against the property. (§4, Ord. 2025, eff. 3/18/04; §4, Ord. 2178, eff. 1/5/18)

Sec. 10-2.3.909. Inclusionary Housing Agreement.

A. **Agreements Required.** Applications for residential development projects shall be approved only concurrently with the approval of an inclusionary housing agreement pursuant to this section. This section shall not apply if the developer chooses to pay a fee in lieu of providing inclusionary units pursuant to Section 10-2.3.904(A).

B. **Information in Application.** Applications for residential development projects shall include the following information in addition to information otherwise required under this Code:

1. The location, structure, proposed tenure (rental or ownership) and size of the proposed market rate and inclusionary units;
2. The calculations used to determine the number of required inclusionary units;
3. A floor plan or site plan depicting the location of the inclusionary units;

4. The income level targets for each inclusionary unit;
5. The mechanisms that will be used to assure that the inclusionary units remain affordable for the required term;
6. For phased developments, a phasing plan;
7. A description of any requested incentives as allowed in subsection (D) of this section;
8. A marketing plan for the process by which qualified households will be reviewed and selected to either purchase or rent affordable units; and
9. Any other information requested by the Community and Economic Development Director.

C. **Approval.** An inclusionary housing agreement between the developer and the City shall be required by the applicable decision-making body as a condition of approval of any tentative map, parcel map, conditional use permit, or design review subject to this article. If the foregoing approvals are not required, an inclusionary housing agreement in a form approved by the Community and Economic Development Director shall be executed prior to issuance of a building permit. The inclusionary housing agreement shall provide for the implementation of the requirements of this article. All inclusionary housing agreements must include, at minimum, the following:

1. Description of the development, including whether the inclusionary units will be rented or owner-occupied;
2. The number, size and location of the inclusionary units, or any approved alternative;
3. Inclusionary incentives by the City (if any);
4. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions that shall be recorded against the property;
5. Provisions for monitoring the ongoing affordability of the units, and the process for marketing units, and qualifying prospective residents' households for income eligibility;
6. Deed restriction acceptable to the City;
7. Administrative fee requirements.

D. **Incentives.**

1. In approving an inclusionary housing agreement, the decision-making body may, in its sole discretion, include one (1) or more of the following incentives to encourage the construction of inclusionary units:

a. **Unit Size Reduction.** The size of the inclusionary units may be smaller than the market rate units, consistent with all other provisions herein.

b. **Interior Finishes.** Inclusionary units 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 current State Building Code standards for new housing.

c. **Density Bonus Qualifying Affordable Units.** If the developer is proposing to provide affordable units in exchange for an increase in density, or concessions, incentives, or waivers/modifications of development standards pursuant to the State Density Bonus Law (Government Code Section 65915) and pursuant to Sections 10-2.3.1001 through 10-2.3.1014, those affordable units may count as inclusionary units provided they meet the requirements outlined in this chapter (Article 9). When a density bonus is granted, the inclusionary requirements of this chapter will apply to the entire project, including the bonus units. (§4, Ord. 2025, eff. 3/18/04; §1, Ord. 2095, eff. 1/15/11; §4, Ord. 2178, eff. 1/5/18)

Sec. 10-2.3.910. Adjustments.

The requirements of this article may be adjusted or waived if the developer demonstrates that applying this article would take property in violation of the United States and/or California Constitutions. The developer shall submit a request for an adjustment or waiver together with the application and such additional information as may be required by the Community and Economic Development Director to make a determination. (§4, Ord. 2025, eff. 3/18/04; §1, Ord. 2095, eff. 1/15/11; §4, Ord. 2178, eff. 1/5/18)

Sec. 10-2.3.911. Use of Funds.

All funds derived from this article shall be placed in a separate fund earmarked for the City's affordable housing program. (§4, Ord. 2178, eff. 1/5/18)