



STAFF REPORT

CITY OF VALLEJO PLANNING COMMISSION

Date of Hearing: February 21, 2007

Agenda Item:

Application Number: Code Text Amendment #07-0001, as governed by Vallejo Municipal Code Chapter 16.86, Amendment to the Zoning Ordinance.

Recommendation: Staff recommends that the Planning Commission review the proposed Ordinance, provide feedback to staff, and hear public comment on this item, then continue the item until the March 5, 2007, Planning Commission to approve the resolution recommending City Council approval of the Code Text Amendment #07-0001, amending Title 16 of the Vallejo Municipal Code by adding Chapter 16.56 entitled "Inclusionary Housing Ordinance."

Location: Citywide

Applicant: City of Vallejo

Project Description: The proposed code text amendment would add Chapter 16.56 to the Vallejo Municipal Code Entitled "Inclusionary Housing Ordinance." The proposed ordinance would require developers of residential or mixed-use developments, or applicants proposing condominium conversions to develop affordable units on-site and concurrently with market-rate units, targeted to specific income levels. Ownership units would be required to provide 10% of total project units affordable to Moderate-Income Households, and 5% affordable to Low-Income Households, except in the case of condominium conversion projects, which would be required to provide 15% affordable to Low-Income Households. Rental projects would be required to include 10% of total project units affordable to Low-Income Households. To assist developers in achieving the requirements under this ordinance, certain incentives may be requested and granted. Alternative compliance measures may be permitted in certain cases.

Environmental Review: An Initial Study resulting in a Negative Declaration was prepared for the proposed text amendment pursuant to California

Environmental Quality Act (CEQA) Section 15061(b)(3), Title 14 of the California Code of Regulations.

Public Notice:

Notice of this pending application and public hearing was published in the Vallejo Times Herald on January 22, 2007.

1. PROJECT DESCRIPTION

The proposed inclusionary housing ordinance would require that all new residential projects provide a certain percentage of affordable units targeted to households of either Low or Moderate income, or comply with the ordinance through alternate means identified in the ordinance. As proposed the ordinance would require for ownership projects that 10% of the units be sold at prices affordable to Moderate-income and 5% of units be sold at prices affordable to Low-income, based upon Area Median Income in Solano County and adjusted for family size. For rental projects, 10% of the units would be required to be affordable to Low-income households. For condominium conversion applications, 15% of the resulting ownership units would be required to be affordable to Low-income households. Alternative compliance measures are outlined, as well as incentives that may assist developers in meeting inclusionary requirement.

Housing costs in the City of Vallejo have become steadily more expensive for owners and renters, as housing costs have risen faster than incomes for many groups in the community. Between 2001 and 2006, the median price of a home in Vallejo increased on average 16.9% per year. In 2006, the median home price for a new home was over \$700,000. With significant production of market-rate for-sale homes in Vallejo that are unaffordable to moderate-income households or below, the city has not achieved an economically integrated, balanced community through the provision of housing. In addition, homebuyers are struggling to keep their homes, having over-extended themselves on mortgage payments. Vallejo is currently in the top 15 cities in the nation in rate of foreclosure. The creation of new ownership units through inclusionary zoning allows families to benefit from the tax incentives, and to live in all neighborhoods within Vallejo. While the city has subsidized the development of several affordable rental developments for the very low income, these units are completely separate from market-rate developments and not geographically dispersed throughout the city. The resources of the city have not been able to achieve the Fair Share Housing Goals allocated by the State for the period of 1999 through 2006. New Housing Element goals will be established for Vallejo for 2007 through 2014 and the resources of the city will very likely be insufficient to facilitate affordable housing production without contribution from the private sector. An inclusionary housing ordinance will require the concurrent production of affordable housing with each new market-rate development, or with the conversion of rental units to condominiums, and is proposed as an additional tool to facilitate the production of housing affordable to very low, low and moderate income households in the City of Vallejo. Certain incentives and alternative compliance measures, such as off-site construction, or acquisition and rehabilitation of rental housing, are described in the ordinance.

2. ENVIRONMENTAL REVIEW

An Initial Study was performed for this project resulting in a Negative Declaration. Adoption of the ordinance in and of itself would not induce population growth or displacement. New homes generated due to implementation of the ordinance would be subject to environmental review on a project specific basis.

3. CONSISTENCY WITH THE GENERAL PLAN

The proposed Code Text Amendment would be compatible with the General Plan.

- Per Objective B.3.ii.2 of the City Housing Element, the City will explore the adoption of an inclusionary housing program, and alternative compliance options.
- Per Objective B.3.iii. the City will encourage the development of affordable housing for lower-income workers employed in Vallejo.
- The proposed inclusionary ordinance may assist in achieving Objective A.1.ii.1.b. Review of regulations that might unduly constrain housing development, such as allowing density bonuses only for projects in the PD zone. The inclusionary ordinance can include current state density bonus provision to comply with State law.
- Objective B.1.iv is to increase types of new development that will qualify for density bonuses, which would be an effect of the inclusionary ordinance.
- By including condominium conversions as subject to the inclusionary ordinance, the ordinance also serves to facilitate Objective B.1.v. to ensure that condominium conversion applications will not adversely affect housing affordability, choice, and balanced neighborhood goals.

4. PUBLIC COMMENTS

Notice of public hearing for the proposed Chapter was published in the Vallejo Times Herald on January 22, 2007.

5. REFERENCES

City of Vallejo General Plan

6. STAFF ANALYSIS

History. At a City Council Study Session in June 2006, the City's Housing and Community Development Division presented inclusionary zoning as one of several methods to facilitate the development of affordable housing in Vallejo. Several jurisdictions in Solano County already have inclusionary ordinances in place (see Attachment 4). After receiving input from the City Council to proceed with the study of inclusionary zoning, staff executed a contract with consulting firm, David Rosen and Associates (DRA), to prepare a comprehensive background study on the impact of inclusionary zoning in Vallejo. With input from staff and the development community, DRA completed a background report in November 2006. Information about the study

was mailed to 99 developers and interested stakeholders, inviting them to view the report on the City's website, or participate in three focus groups that were held specifically to explain the study. The full Background Report and Summary of Key Findings can be found in Attachment 3. On November 7, 2006, the City Council passed a resolution to consider an inclusionary ordinance and to formally notify developers in the Residential Activity List that had an application in process that an inclusionary ordinance, when adopted, may apply to a project that had not received tentative map approval or final planning approvals. On December 5, 2006, the City Council held a study session on inclusionary zoning during which feedback was provided to staff on parameters to be included in a draft ordinance. Staff has incorporated that feedback into the proposed inclusionary ordinance to better address the City's residential development needs. Staff is recommending that the Planning Commission recommend to the City Council the approval of the proposed ordinance, Attachment 1 and Fee Resolution, Attachment 2.

Staff also invited all interested parties to three focus group sessions to answer questions regarding the background study, two held in November, and one on January 3, 2007. Staff also met separately with representatives of the Solano County Association of Realtors, a representative of Northern California Homebuilders Association, and the Vallejo Chamber of Commerce.

Intent. The proposed inclusionary ordinance will have the following benefits:

1. It enables cities to conform to State Housing Element law, even in localities with limited housing development funds, such as Vallejo, by showing that standards will be consistently applied, and illustrating that requirements will actually result in affordable housing in the jurisdiction.
2. It provides the greatest certainty for developers, because it allows the developer to incorporate all requirements before they submit their development application. It also saves time in the entitlement process by eliminating back and forth negotiations. And it enables developers to negotiate their land purchases with an understanding of the city's requirements for the project.
3. It facilitates compliance because an ordinance provides clear obligations, standards and monitoring procedures that ensure that the affordable housing will be built, either on-site or through some other form of contribution by developers, by making the requirement part of the locality's zoning laws and application process. It is also more consistent and fair, and therefore defensible in its application.
4. It essentially requires that affordable units be built concurrently and in an integrated manner with market-rate housing. This reduces issues around concentration of low-income units, and provides a greater array of housing options, resulting in increased economic diversity, and will ultimately result in more homeownership opportunities and rental choices for Vallejo residents.

Proposed Elements of the Ordinance.

The following are the sections proposed in the draft ordinance.

Title and Purpose. This section outlines the findings that provide the rationale for the ordinance and describe the purpose of the ordinance. These include the City's Housing Element objectives that the ordinance would fulfill. As mentioned above, the

ordinance allows the City to facilitate the development of housing at a range of affordability levels, thereby allowing the City to meet State mandated, Fair Share Housing Goals. Inclusionary zoning also allows the community to grow in a more equitable, economically integrated manner. It also allows the City to meet five objectives within the City's certified Housing Element.

Definitions. Terminology specific to the ordinance such as Low Income (51% to 80% of Area Median Income) and Moderate Income (81% to 120% AMI) are defined in this section, based upon Solano County median income and adjusted for household size. Current Area Median Income for Solano County for a family of four is \$74,000. Pursuant to California Redevelopment law, the maximum income limits used to determine affordable sales price are 110% AMI for Moderate, and 70% AMI for Low income categories, and 60% AMI for Low income renters. The definitions section also includes the calculation used for determining affordable sales prices and rents. The formula for determining Affordable Sales Price and Affordable Rent are comparable to the State requirements under Redevelopment Law. This ensures that units will be counted by the State toward Regional Fair Share Housing Goals. The Affordable Sales Price formula includes all housing costs, such as mortgage payment, insurance, taxes, utilities, and assessments or condominium fees as part of the 35% of Moderate household income counted toward housing costs, or 30% of a Low household income. Eligible buyers would be first-time homebuyers, and qualify under appropriate income limits. The process for buyer selection will be established upon adoption of the ordinance in an implementation procedures manual developed by the Housing Division. Affordable rents are no more than 30% of a household's monthly income, including utilities.

Applicability. This section establishes the required percentage of affordable units and the targeted income limits based upon the type of project. The proposed ordinance applies to all residential projects of three units or more, both rental and ownership, mixed-use projects, and condominium conversions. Condominium conversions are proposed to be covered under this inclusionary ordinance in recognition of the fact that conversions are creating new ownership units at a lower cost than new construction, and resulting in a potential loss of market-rate rental units affordable to Low income families. In light of that, conversions are proposed to have a greater inclusionary requirement, targeted to a deeper affordability category.

Discussion: On November 7, 2006, City Council passed a Resolution to provide notice to the public and developers that an Inclusionary Ordinance was being drafted, and that as of November 7th, any Residential Projects with active applications that did not receive a tentative map approval or final planning approvals by the adoption of the inclusionary ordinance would be required to comply. In a focus group on the inclusionary study on January 4, 2007, several developers asked whether their specific projects might be exempted. Due to the need to be consistent in application of the ordinance, and the need to establish a definitive timeframe for application, staff recommends retaining the starting date of November 7, 2006 for ordinance applicability to eligible projects, as it was publicly noticed. This will likely affect approximately 40 units in total. Correspondence from various agencies are in Attachment 6 to this staff report.

As of the end of November 2006, there were 10 residential projects in the pipeline that had not yet received planning approvals, with a total of 571 units. See Attachment 7, the Fall/Winter Residential Activity List. Of those, 180 are by the developer Lennar Mare Island and are covered under a Development Agreement which is not subject to the inclusionary requirement. Of the balance of 391 units, a 285-unit project (Kennedy Homes) has been withdrawn, and 60 units have been approved, leaving 46 units that may be subject to the draft inclusionary ordinance, when adopted. In addition, two proposed projects that may come forward soon are a 223-unit project at Rollingwood and Benicia, and a 300-unit project at the Crossroads. So of 569 new units, a 15% inclusionary requirement would result in approximately 85 new affordable units.

Vallejo's projected total buildout allows for approximately 10,300 additional units; however, this includes more than 2000 units that would be exempted from the inclusionary requirement because they are subject to Development Agreements. Specifically exempted from the proposed ordinance are 1400 housing units on Mare Island proposed for development by Lennar Mare Island, LLC, and the estimated 1200 units in the Waterfront Development Planned Development Master Plan proposed for development by Callahan De Silva Vallejo, LLC. Approximately 800 units in Downtown Vallejo would be subject to a 9% affordability requirement pursuant to a Development Agreement between the City and Triad Downtown Vallejo, LLC.

If ABAG's projections are similar to the last cycle, Vallejo will be allocated a goal of roughly 1800 additional Very Low, Low and Moderate income units in the next 7 years. Given 8300 units, less exempt units, under a buildout scenario, a requirement of 15% would yield 1245 affordable units. In addition, 9% of the approximately 800 new units planned for the downtown under a DDA with the developer Triad will be affordable to Moderate Income, producing about 72 affordable units.

The inclusionary requirements within the proposed ordinance and further implementation procedures and documents that are developed would be applied to the 9% Moderate units by Triad, as well as any units produced under the Waterfront Disposition and Development Agreement to ensure consistent administration and monitoring of affordable housing in Vallejo.

Proposed Percentage Requirement and Targeted Income Level.

1. *Owner-occupied new residential: 10% at Moderate, 5% at Low*
2. *Renter-occupied new residential: 10% at Low*
3. *Condominium Conversions: 15% at Low*

Income targets define the depth of affordability. In other words, the units are required to be affordable to Moderate or Low-income households. Many cities have different income targets for rental units than for ownership units. DRA's study indicates that a 20% at moderate requirement could be accommodated by new ownership developments. However, staff received input during two Focus Groups from various stakeholders on this issue. The Homebuilders Association indicated in a public comment period on November 7, 2006, that a 10% requirement for Moderate could be accommodated within a flexible ordinance. See Attachment 6 for a model ordinance as proposed by HBA and NPH. A

representative from Local SEIU indicated that their union members predominantly earned incomes at 80% Area Median Income (AMI), Low-Income or below. They strongly encouraged a required percentage of units for Low Income households. The consultant's findings indicated that either a 20% moderate requirement or a 10% low requirement could be accommodated by ownership projects. This is discussed in Attachment 5, the Memorandum of Key Findings from DRA and in the background study. The consultant also recommended a 10% requirement at Low Income for new rental, given that the market is cyclical and will likely experience more positive factors for market rental housing in the near future. In order to ensure that housing is provided in a balanced and integrated manner for different income groups, staff is recommending a blended requirement for ownership projects of 10% affordable to Moderate and 5% affordable to Low. Staff is also recommending a 10% affordable to Low requirement for rental projects. In 2006, as the background study indicates, rental housing development was infeasible in Vallejo due to insufficient market rent levels. Indicators have begun to show that rents rose in late 2006 and will continue to rise in 2007, which may bring rental development within the feasible range, however the 10% inclusionary requirement may slow the market trend somewhat. Given that no rental development is currently proposed, the requirement for rental is recommended at this time as well as the requirement for ownership as developers will be able to account for the requirement in their pro forma rental scenarios.

Incentives.

Unit interior or exterior finishes: Incentives related to design refers to whether affordable units must be built exactly like market-rate units or whether some differences in either exteriors or interiors are allowed. The proposed ordinance requires that affordable units have the same proportional bedroom type as the market-rate units (e.g. 15% of total 3-bedroom project units must be affordable units, and 15% of 2-bedroom units, etc.). The proposed ordinance allows different interior finishes of durable and good quality for affordable units, with City approval. From the exterior, affordable units generally should be indistinguishable from market-rate units, unless a higher density product or an alternative compliance measure is approved.

Alternative product type: The proposed ordinance allows the affordable units to be constructed as an alternative product type than market-rate units, thus allowing for example, a townhome or attached product within a single-family detached development, or a stacked flat product in a less dense development. This could provide significant cost savings to the developer, while still allowing for the integration of affordable units within the development. Particular attention must be paid to architecture and site planning to ensure that affordable units are well integrated in the design of the development.

Discussion: Many cities require that affordable inclusionary units look indistinguishable from market rate units on the exterior to ensure that there is not a stigmatization of the affordable units. They also require that units are dispersed throughout the project. Some cities require that interior features be the same, and some allow interior features to differ if they are of good, durable quality materials, to reduce costs. Some cities also allow inclusionary units to be smaller than the other project units, provided they have the same bedroom count. By allowing an alternative product type, e.g. attached vs. detached, for

the affordable units, the flexibility will increase the likelihood of the development occurring on site, rather than a developer opting for an alternative compliance measure.

Parking reduction: The proposed ordinance allows a project with structured parking to apply, with the concurrent submission of a parking study for City approval, for a 20% reduction in total parking spaces required under Vallejo's zoning code. The study must document that reduction will not have an adverse affect on parking conditions in the neighborhood. This reduction does not apply to surface parking or stand alone parking structures at grade. The purpose of this incentive is to assist the developer financially in meeting the inclusionary requirement by allowing a reduction in overall project costs. Costs for structured parking range from \$20,000 per space or more, thus a reduction in spaces may be a significant cost benefit to the developer. In addition, encouraging fewer cars in in-fill development may increase use of public transit, resulting in added benefits for the environment and air quality, consistent with the overall principles of Smart Growth.

Incentive for Larger Units: To encourage larger affordable unit production, the ordinance allows a 4-bedroom unit to count as 1.25 units toward meeting affordability requirements in a particular project. This may encourage some development of larger units for larger households.

Zoning concessions: The proposed ordinance allows for a developer to request a density bonus consistent with State Density Bonus law, and includes the option of meeting the density bonus criteria to request specific concessions, including, but not limited to, changes in height, floor area ratio, density, set back and side yard requirements. This section is included to ensure that the City of Vallejo is compliant with State Density Bonus law. Ownership projects meeting the 15% requirement, would be eligible for a 10% bonus, and rental projects meeting the 10% requirement would be eligible for a 20% bonus. In cases where a Commercial or Planned Development District exist, no density bonus would be applicable, unless the City establishes a base maximum density in these cases from which a density bonus could be calculated. It should be noted that only a small percentage of potential development sites in Vallejo would be eligible for a density bonus as most opportunities exist within commercial districts or Planned Development Districts where there are no limitations on density.

Discussion: DRA's analysis includes the value of certain offsets, including density bonuses consistent with those allowed by the State, unit size reductions, and parking reductions. Cost offsets allow a developer to recoup some of the cost of creating the inclusionary unit, and may, in some cases, almost completely offset the cost of the inclusionary requirement. Most ordinances have some provisions that allow for or that require City-provided cost offsets. The types of cost offsets requested by developers often include the following:

- Fee deferrals or waivers
- Unit size reductions
- Parking reductions
- Allowing different interior finishes and appliances
- Expedited development review processing

- Density bonus options
- Flexible development standards (different setbacks, etc.)

Affordable Housing Plan Required. Project applicants will be required to submit a plan as to how they will meet the requirements of this ordinance with their application to the Planning Division for the application to be considered complete. All plans will be reviewed by the Housing and Community Development Manager for consistency with the ordinance. Applicants will be notified in writing of the consistency determination.

Time Performance Required. Market rate units must be noted on the approved plans and built concurrently with affordable units. If project is phased, affordable units must be incorporated into a phasing plan proportionately with market-rate units. No certificate of occupancy for market rate units shall be completed prior to affordable units receiving Certificates of Occupancy.

Continued Affordability. Most jurisdictions set a term of affordability for both rental and ownership units to ensure a minimum period of affordability. California Redevelopment Law requires a minimum term of 55 years for rental housing and 45 years for ownership housing, so many cities use these as benchmarks, and these are proposed in the draft ordinance. Of ordinances statewide, almost 50% require units to be affordable for 55 years or more, and a quarter require between 30 and 50 years of affordability. Ownership affordability may range from “initial purchase only” to “in perpetuity,” which is essentially starting the time period over at each purchase. Of existing ordinances, over two thirds require 30 years or more of ownership affordability.

Discussion: To ensure that all inclusionary units may be counted by the State toward Fair Share Affordable Housing goals, many cities find it prudent to use the same terms of affordability and definitions of affordability as set by the State Housing and Community Development Department, which would be a minimum of 45 years for ownership and 55 years for rental development. Special exemptions for market-rate sales will be allowed in very limited hardship circumstances. A note and deed of trust will be recorded on ownership units to ensure that the City is notified at time of sale. Some local Realtors have expressed disagreement with limiting the appreciation on a unit for the eligible buyer. They have mentioned that it is a disincentive for maintaining the unit, or even purchasing the unit. It is true that buyers of Inclusionary Units will not benefit from a surge in home appreciation; however, neither are market-rate homebuyers guaranteed appreciation. Inclusionary units allow families, **who would not otherwise be able to purchase a home**, the ability to own a home in the city they grew up in or work in without spending over half of their income, putting them at risk of foreclosure. With regard to maintaining the units, there will be language included in either the Rental Regulatory Agreement or the Ownership Resale Restriction Agreement (See Attachment 8 for sample Resale Restriction Agreement) requiring maintenance standards for the unit. The City has the ability to enforce these provisions, whereas, in the private market, the City has far less ability to enforce maintenance standards. Of course, CC&Rs may be privately enforced on all developments with homeowner associations.

Alternatives to On-Site Construction.

A. Acquisition and rehabilitation may be allowed for same number of rental or owner units or more, of housing at least 40 years old, with rents restricted to Low or Very Low Income households for a minimum of 55 years. The ordinance requires that the acquired units be on a 1:1 basis for the affordable requirement in the market-rate project, with a 55-year minimum regulatory agreement recorded.

B. In lieu of building Affordable Units within an Owner Project, a developer may elect to construct, or make possible construction by another developer, Affordable Units not physically contiguous to the Market Rate Units. At the discretion of the Housing and Community Development Manager or the Manager's designee, off-site construction of Affordable Units pursuant to this subsection (a) may be approved only if:

(1) building permits for the related Affordable Units are issued before building permits for the related Market Rate Units;

(2) final inspections for occupancy for the related Market Rate Units must be completed after certificates of occupancy for the off-site Affordable Units are issued;

(3) the City will require the developer of the Market Rate Units to purchase the site for the off-site Affordable Units, secure all planning entitlements, and record affordability covenants against the site, and secure a building permit for the Affordable Units required of the Market Rate Units prior to issuance of a building permit for the related Market Rate Units; and,

(4) The City will require that the completion of off-site Affordable Units shall be further secured by a letter of credit from the developer in an amount at a minimum equal to the in lieu fee amount described under subsection (c).

C. An In-lieu fee is proposed to be accepted only for fractional units of less than .5, and would be due prior to building permit issuance. The in-lieu fee for both rental and owner units will be calculated as the average affordability gap between the affordable sales price and the median sales price of new construction sales, weighted for Low and Moderate income requirements. The In-lieu fee calculated for 2006 by DRA per Affordable Unit is \$504,100. Therefore a fractional unit fee would result in a fee payment of less than \$252,050. The in-lieu fee will be recalculated administratively at the end of each Calendar year.

Discussion: Most ordinances also have a provision for an alternative method for meeting the affordable requirement, such as in an-lieu fee, where the developer makes a payment to the City for future affordable housing instead of building the affordable unit on-site. Cities may place restriction on when alternatives are allowed in order to ensure that affordable units are produced. Types of alternatives commonly used are:

- Payment of an **in-lieu fee** amount per affordable unit, or per project unit
- **Land dedication** of a threshold value to the public entity for future affordable housing

- **Off-site development** of the units

Case law has shown that allowing for some flexibility within an ordinance is the best method of ensuring that developers have options for compliance. Payment of an in-lieu fee for fractional units or for smaller projects is one method to ensure flexibility. Payment of in-lieu fees entirely in place of on-site construction of units is not recommended or allowed under this ordinance, however, because this has resulted most often, where allowed, in the payment of fees rather than in the production of units. As Vallejo nears buildout, the production of affordable ownership units is a key goal in this policy development. The allowance of in-lieu fee for fractional units may allow the City to add to its financial resources to create new subsidized rental housing for Very Low income households, and so may reach a deeper affordability level than the Inclusionary units provided at Low or Moderate income levels. However, it requires substantially more resources, sites, and time to develop affordable housing through the collection of in-lieu fees and is not a substitute for a must-build requirement. In-lieu fees may be calculated on an affordability gap or a cost to build gap. In-lieu fees proposed in conjunction with this ordinance are calculated as the blended attached/detached affordability gap, as applied on a per project unit basis.

Land dedication is not as desirable an option because the land value may be significantly less than the value of an actual inclusionary unit. This also delays the development of an inclusionary unit until the City has aggregated additional subsidies to assist in creating the affordable units.

Simultaneous, off-site development of units, or development of rental rather than ownership units by the Residential Project developer is a permitted alternative because it would create new affordable units at a lower affordability level than on-site inclusionary units. However, it does not meet the goal of mixed-income development and the distribution of affordable units. In addition, the provision for the acquisition and rehabilitation of older, deteriorated rental stock would rehabilitate and preserve affordable housing, also policy goals of the City, and retain affordability for a 55-year period.

Use and Expenditure of Fees. Any fees collected under ordinance will be used to provide affordable housing. Fees will be collected for administration of the inclusionary program at the initiation of a project. A fee of 1% will also be charged on the resale of each affordable unit which will be for ongoing program administration.

Affordable Housing Agreement. Prior to issuance of a building permit, developers would be required to enter into an Affordable Housing Agreement to be recorded on the subject property.

Exemptions. Projects that have received tentative map approval or other final planning approvals prior to the effective date of the ordinance would not be subject to this ordinance. In addition, the ordinance allows for a process for a developer to request a waiver if a taking is demonstrated.

Fiscal Impact. It is estimated that approximately \$250,000 might be generated per year in in-lieu fees. This estimate is based on at least two projects with fractional unit payments. The cost of administering the inclusionary program will initially be lower, but as more units become part of the City's affordable housing inventory, a half-time staff position would be required to administer the program. Alternatively the City might contract with a consultant to monitor the units. This cost is estimated to range from \$75,000 to \$125,000 per year after full program implementation, as estimated by costs incurred by other Bay Area cities.

Conclusion. The City wishes to encourage the balanced and integrated provision of housing affordable to all income levels. The proposed inclusionary ordinance assists the city in achieving this goal.

7. STAFF RECOMMENDATION

Staff recommends that the Planning Commission make the recommendation to City Council to **APPROVE** CTA #007-0001 subject to the following:

Findings:

- A. Persons of low and moderate income are experiencing increasing difficulty in locating and maintaining adequate, safe and sanitary affordable housing within the City of Vallejo, as housing costs have risen faster than incomes over the past decade. Many persons who work in Vallejo, or who wish to live in Vallejo, cannot afford housing in the city.
- B. An inclusionary background study was prepared by consulting firm, David Rosen and Associates in November 2006, calculating the affordability gap between sales prices and affordable prices in Vallejo, and demonstrating the potential impact of inclusionary requirements in Vallejo; and
- C. An Inclusionary Housing Ordinance has been drafted that would require new ownership and rental residential projects or condominium conversions to provide a specified percentage of affordable housing for Moderate or Low-income households; and
- D. As noted in the City's Housing Element, a regional shortage of affordable housing is contributing to overpayment for housing accommodations, sometimes leading to temporary or permanent homelessness. According to the Association of Bay Area Governments' Regional Housing Needs Projections, the City of Vallejo needs to provide housing affordable to persons of very low, low and moderate income.
- E. Increasing the production and availability of affordable housing is problematic. Prices and rents for affordable housing remain below the level needed to attract new construction. At the same time, escalating land costs and rapidly diminishing amounts of land available for development hinder the provision of affordable dwelling units solely through private action. Federal and State housing finances and subsidy programs are not sufficient by themselves to satisfy the affordable housing needs;

however, programs and activities to expand affordable housing opportunities can be accomplished through public/private partnership action.

- F. The ordinance meets Objective B.3.ii.2 of the City Housing Element, which indicates that the City will study the adoption of an inclusionary housing program, and alternative compliance options.
- G. The ordinance meets Objective B.3.iii. of the City Housing Element to encourage the development of affordable housing for lower-income workers employed in Vallejo.
- H. The ordinance assists in achieving Objective A.1.ii.1.b. of the City Housing Element, the review of regulations that might unduly constrain housing development.
- I. The ordinance includes provisions to bring the City into compliance with State Density Bonus law.
- J. The ordinance supports Objective B.1.iv of the City Housing Element to increase types of new development that will qualify for density bonuses.
- K. By including condominium conversions as subject to the inclusionary ordinance, the ordinance also assists in meeting Objective B.1.v. to ensure that condominium conversion applications will not adversely effect housing affordability, choice, and balanced neighborhood goals.
- L. Requiring affordable units within each housing development serves the goal of maintaining an economically balanced community. Requiring developments of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without affordable units contributes to the shortage of affordable housing but also because zoning and other ordinances concerning new housing in the city should be consistent with the community's goal to foster an adequate supply of housing for persons at all economic levels.

ATTACHMENTS

Attachment 1 – Proposed Ordinance

Attachment 2—Proposed City Council Fee Resolution

Attachment 3—Planning Commission Resolution

Attachment 4—Summary of Other Solano County inclusionary ordinances

Attachment 5—Inclusionary Study by DRA, Addendum Memorandum, and Fee Memo

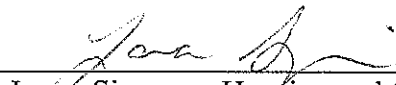
Attachment 6—HBA and NPH model ordinance

Attachment 7—Residential Activity List

Attachment 8—Sample Resale Restriction Agreement

Attachment 9—Correspondence

Prepared by: _____


Laura Simpson, Housing and Community Development Manager

Reviewed by: _____

Don Hazen, Planning Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF VALLEJO ADDING
CHAPTER 16.56 TO THE VALLEJO MUNICIPAL CODE

WHEREAS, Persons of low and moderate income are experiencing increasing difficulty in locating and maintaining adequate, safe and sanitary affordable housing within the City of Vallejo, as housing costs have risen faster than incomes over the past decade. Many persons who work in Vallejo, or who wish to live in Vallejo, cannot afford housing in the city; and

WHEREAS, As noted in the City's Housing Element, a regional shortage of affordable housing is contributing to overpayment for housing accommodations, sometimes leading to temporary or permanent homelessness. According to the Association of Bay Area Governments' Regional Housing Needs Projections, the City of Vallejo should facilitate the provision of housing affordable to persons of very low, low and moderate income; and

WHEREAS, Increasing the production and availability of affordable housing is problematic. Prices and rents for affordable housing remain below the level needed to attract new construction. At the same time, escalating land costs and rapidly diminishing amounts of land available for development hinder the provision of affordable dwelling units solely through private action. Federal and State housing finances and subsidy programs are not sufficient by themselves to satisfy the affordable housing needs; however, programs and activities to expand affordable housing opportunities can be accomplished through public/private partnership action; and

WHEREAS, An inclusionary background study was prepared by consulting firm, David Rosen and Associates in November 2006, calculating the affordability gap between sales prices and affordable prices in Vallejo, and demonstrating the potential impact of inclusionary requirements in Vallejo; and

WHEREAS, An Inclusionary Housing Ordinance has been drafted that would require new ownership and rental residential projects or condominium conversions to provide a specified percentage of affordable housing for Moderate or Low-income households; and

WHEREAS, The proposed Inclusionary Housing Ordinance meets Objective B.3.ii.2 of the City Housing Element, which indicates that the City will study the adoption of an inclusionary housing program, and alternative compliance options; and

WHEREAS, The ordinance meets Objective B.3.iii. of the City Housing Element to encourage the development of affordable housing for lower-income workers employed in Vallejo; and

WHEREAS, The ordinance assists in achieving Objective A.1.ii.1.b. of the City Housing Element, the review of regulations that might unduly constrain housing development; and

WHEREAS, The ordinance includes provisions to bring the City into compliance with State Density Bonus law; and

WHEREAS, The ordinance supports Objective B.1.iv of the City Housing Element to increase types of new development that will qualify for density bonuses; and

WHEREAS, By including condominium conversions as subject to the inclusionary ordinance, the ordinance also assists in meeting Objective B.1.v. to ensure that condominium conversion applications will not adversely effect housing affordability, choice, and balanced neighborhood goals; and

WHEREAS, Requiring affordable units within each housing development serves the goal of maintaining an economically balanced community. Requiring developments of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without affordable units contributes to the shortage of affordable housing but also because zoning and other ordinances concerning new housing in the city should be consistent with the community's goal to foster an adequate supply of housing for persons at all economic levels.

THE COUNCIL OF THE CITY OF VALLEJO DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 16.56 is hereby added to the Vallejo Municipal Code to read as follows:

INCLUSIONARY HOUSING ORDINANCE

- 16.56.010 Purpose**
 - 16.56.020 Definitions**
 - 16.56.030 Applicability**
 - 16.56.040 Incentives**
 - 16.56.045 Affordable Housing Plan Required**
 - 16.56.050 Time Performance Required**
 - 16.56.060 Continued Affordability; City Review of Occupancy**
 - 16.56.070 Alternatives to On-Site Construction**
 - 16.56.080 Use and Expenditure of Fees**
 - 16.56.090 Affordable Housing Agreement**
 - 16.56.100. Enforcement**
 - 16.56.110. Severability**
 - 16.56.120 Exemptions**
- SECTION 2. Effective Date**

16.56.010. Purpose.

The provisions of 16.56.010 through 16.56.130 inclusive, shall be known as the Inclusionary Housing Ordinance. This Ordinance is enacted under the City's general police power. The purpose of this Ordinance is to provide for the development of

affordable housing concurrently and in an integrated manner with market-rate housing, and to require new development to provide affordable housing in a fair and consistent manner, to implement that City's General Plan, including its Housing Element, and to enable the City to comply with State Housing Element law.

16.56.020. Definitions.

A. **Affordable Housing Plan.** Affordable Housing Plan means the plan submitted by the developer of a Residential Project and approved, or modified and approved, by the City that describes how the inclusionary housing requirements will be met by the Residential Project, including but not limited to the number, location, and type of affordable units that will be provided, the timing of the construction of the affordable units for phased developments, buyer screening and selection methodology, and compliance with all other requirements of this chapter and of the rules and regulations adopted to implement this chapter.

B. **Affordable Ownership Price.** Affordable Ownership Price means a sales price that results in a monthly housing payment consistent with California Health and Safety Code Section 50052.5(b), as amended from time to time. The affordable price shall be the sum of the affordable mortgage as calculated in this Section plus a five (5) percent down payment. In addition, eligible buyers shall be responsible for paying customary closing costs. For Low Income Households, average monthly housing payment during the first calendar year of a household's occupancy, including mortgage interest and principal payments on a thirty-year fixed rate mortgage based on the then current Freddie Mac thirty-year mortgage rate or successor index, property taxes, assessments or other government assessments or special taxes, such as special taxes imposed under a community facilities district on the subject Residential Project and applicable to the Affordable Unit, mortgage insurance, homeowner's insurance, homeowners or condominium association dues which apply to the unit being purchased by the eligible homebuyer, allowances for utilities as published annually by the Vallejo Housing Authority, or successor index, and any assessments paid by homeowners, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of seventy percent (70%) of the area median income adjusted for household size.

For Moderate Income Households, average monthly housing payments, during the first calendar year of a household's occupancy, including mortgage interest and principal payments on a thirty-year fixed rate mortgage based on the then current Freddie Mac thirty-year mortgage rate or successor index, property taxes, mortgage insurance, homeowner's insurance, actual homeowners association dues which apply to the unit being purchased by the eligible homebuyer, allowances for utilities as published annually by the Vallejo Housing Authority, or successor index, and any assessments paid by homeowners, is equal to or less than one-twelfth (1/12) of thirty-five percent (35%) of one hundred ten percent (110%) of the area median income allowed for Moderate Income Households, adjusted for household size.

C. **Affordable Rent.** The definition of Affordable Rent shall be consistent with California Health and Safety Code Section 50053, as amended from time to time. Monthly rent, including allowances for utilities as published annually by the Vallejo

Housing Authority or successor index, and all fees for housing services, must be equal to or less than one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of the area median household income, adjusted for household size for Very Low Income Households and sixty percent (60%) of the area median income, adjusted for household size for Low Income Households.

D. Affordable Unit. Living Units that are required under this chapter to be rented at an Affordable Rent or available at an Affordable Ownership Price to specified households, and initially occupied by specified households. Subject to 16.56.020B and C. Affordable Units shall be comparable in overall number of bedrooms, proportion of units in each bedroom category, quality of exterior appearance and overall quality of construction to market rate units in the same residential project. Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing. A minimum of one (1) full bathroom must be provided in two bedroom Affordable Units. All other Affordable Units shall have the identical bathroom count to those in market rate units in the development subject to this chapter and of identical bedroom count.

E. Area Median Income. Area median income as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

F. Condominium Conversion Project. A rental residential development for which the owner has applied for a tentative or parcel map for the conversion of residential property into a condominium, community apartment project or stock cooperative project.

G. Eligible Household. A household whose household income does not exceed the maximum specified in Section 3 for a given Affordable Unit. Affordable Units for ownership shall only be purchased by income eligible households as specified in Section 3 who are also First Time Homebuyers.

H. First Time Homebuyer. A household which has not owned a home for the three calendar years prior to the date they apply for home purchase, with the exception of households which owned a home during the prior three calendar period but lost it through divorce proceedings or as a result of medical expenses resulting from an uninsured medical emergency.

I. Household Income. The combined adjusted gross income for all adult persons living in a Living Unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.

J. Living Unit. One or more rooms designed to be occupied or intended for occupancy as separate living quarters with a stove, sleeping and bathroom facilities.

K. Low Income Household. The definition of Low

Income Household shall be consistent with California Health and Safety Code Section 50079.5 for lower income households, as amended from time to time. Low Income Household means persons and families whose income does not exceed eighty percent (80%) of area median income, adjusted for household size. "Adjusted for household size" shall be consistent with California Health and Safety Code Section 50052.5(h), as amended from time to time. Maximum annual household income for Low Income Households shall be set based on presumed occupancy levels of one person in a studio apartment, two (2) persons in a one (1) bedroom unit, three (3) persons in a two (2) bedroom unit, and one additional person for each additional bedroom thereafter.

L. Low Income Owner Unit. Low Income Owner Unit means a Living Unit in a Residential Project that is offered for purchase at construction completion at an Affordable Ownership Price to a Low Income Household.

M. Low Income Renter Unit. Low Income Renter Unit means a Living Unit in a Residential Project that is offered at an Affordable Rent to a Low Income Household.

N. Market Rate Units. Market Rate Units are Living Units in Residential Projects that are not Affordable Units under subsection (c) of this section.

O. Moderate Income Household. The definition of Moderate Income Household shall be consistent with California Health and Safety Code Section 50093, as amended from time to time. Moderate Income Household means persons and families whose income does not exceed one hundred-twenty percent (120%) of area median income, adjusted for household size. "Adjusted for household size" shall be consistent with California Health and Safety Code Section 50052.5(h), as amended from time to time. Presumed occupancy levels shall be one person in a studio apartment, two (2) persons in a one (1) bedroom unit, three (3) persons in a two (2) bedroom unit, and one additional person for each additional bedroom thereafter.

P. Moderate Income Owner Unit. Moderate Income Owner Unit means a Living Unit in a Residential Project that is offered for purchase at construction completion at an Affordable Ownership Price to a Moderate Income Household.

Q. Owner Project. Owner Project is a Residential Project, or portion thereof, which is intended to be sold to owner-occupants upon completion.

R. Rental Project. A Rental Project is a Residential Project, or portion thereof, which is intended to be rented to tenants upon completion.

S. Residential Project. Any project that includes three (3) or more living units or residential lots, or living units and residential lots which total three (3) or more in Contemporaneous construction of three (3) or more living units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a Residential Project. Construction shall be considered contemporaneous for all units which do not have completed final inspections for occupancy and which have outstanding, at any one time, any one or more of the following: planned district, subdivision map, conditional use

permit or other discretionary City land use approvals, or building permits, or applications for such an approval or permits.

T. Very Low Income Household. The definition of Very Low Income Household shall be consistent with California Health and Safety Code section 50105, as amended from time to time. Very Low Income Household means persons and families whose income does not exceed fifty percent (50%) of area median income, adjusted for household size. "Adjusted for household size" shall be consistent with California Health and Safety Code Section 50052.5(h), as amended from time to time. Maximum annual household income shall be set based on presumed occupancy levels of one person in a studio apartment, two (2) persons in a one (1) bedroom unit, three (3) persons in a two (2) bedroom unit, and one additional person for each additional bedroom thereafter.

U. Very Low Income Renter Unit. Very Low Income Renter Unit means a Living Unit that is offered at an Affordable Rent to a Very Low Income Household.

16.56.030. Applicability.

Subject to the provisions of this chapter all Residential Projects shall provide affordable units as follows:

- A. For Rental Projects:
 - (1) At least ten percent (10%) of all new Living Units shall be Low Income Renter Units.

- B. For Owner Projects:
 - (1) At least five percent (5%) of all new Living Units shall be Low Income Owner Units and ten percent (10%) of all new Living Units shall be Moderate Income Owner Units.

- C. For Condominium Conversion Projects:
 - (1) At least fifteen percent (15%) of all rental units converted to ownership units shall be Low Income Owner Units. In the event this requirement results in a fractional unit obligation, regardless of what fraction, the number of Low Income Owner Units required of the Condominium Conversion Project will be increased by one unit. The alternative compliance options stipulated in Section 16.56.060 of this chapter shall not apply to Condominium Conversion Projects. The number of units in a condominium conversion project are subject to this chapter shall be determined as part of the approval of the housing plan and the tentative or parcel map for the condominium conversion and shall provide for the tenants' rights to purchase units.

- D. For purposes of calculating the number of affordable units required by this section, any additional units authorized as a density bonus pursuant to California Government Code Section 65915(b)(1) or (b)(2), as amended, shall not be counted as part of the Residential Project.

- E. When the application of the Affordable Unit requirements set forth in subsections (a) and (b) results in a number that includes a fraction and where the fraction

is 0.5 or greater, the developer of the Residential Project must construct the next higher whole number of Affordable Units, and where the fraction is less than 0.5, the developer is allowed to pay a fee to the City in lieu of constructing an Affordable Unit pursuant to 16.56.070C. In the case of a 3-unit project or a 4-unit project, developer shall have the option of adding one additional unit which would be designated as an Affordable Unit, or paying the fractional in-lieu fee.

F. Affordable Units must be geographically dispersed throughout the project site.

16.56.040. Incentives.

Residential Projects which are subject to this chapter may request the following as part of the Affordable Housing Plan:

A. Affordable Units may have different interior finishes and features than Market Rate Units in the same Residential Project, so long as the interior finishes and features are durable, of good quality and consistent with contemporary standards for new housing.

B. Affordable Units may be constructed using an alternative housing product type, for example, townhome, in a single-family detached project, than the Market Rate Units in the same Residential Project, but in no case shall Affordable Units be less than 75% of the total square footage of the similar type of Market Rate Units in the Residential Project, and must generally be assimilated into the overall design and character of the Residential Project.

C. A Residential Project with structured parking may provide up to 20% fewer parking spaces per unit than the required number of spaces under Vallejo's zoning code applicable to the Residential Project if the Residential Project developer/owner has prepared a parking study demonstrating that the parking reduction will not have a significant impact on parking in the project vicinity and the City concurs with the findings of the parking study. This parking reduction will not apply to projects with surface parking or stand alone garages constructed at grade.

D. If the Developer commits to four bedroom Affordable Units, each four bedroom Affordable Unit shall be deemed to be 1.25 units for the purpose calculating the total number of Affordable Units in a Residential Project.

E.. The Residential Project developer may request and the City may approve additional zoning code revisions for the Residential Project needed to enable the Project to benefit from all of the incentives offered in this Section 16.56.040 and the provisions of California Government Code Section 65915(b)(1), and (b)(2), as amended, State Density Bonus law. Revisions to the zoning code which qualify for approval under this Section include, and may not be limited to, changes in restrictions on height, floor area ratio, density, set back and side yard requirements.

F. Funds under the control of the City, City of Vallejo Housing Authority or the City of Vallejo Redevelopment Agency cannot be used to grant, finance, or otherwise subsidize Residential Projects unless:

(1) The Residential Project will provide an amount of Affordable Units in excess of the requirements of this chapter; or,

(2) The Residential Project serves households with lower incomes than required under Section 16.56.020A and B while providing the same, or greater, number of Affordable Units required under Section 16.56.030A and B.

16.56.045. Affordable Housing Plan Required.

A. The developer of a Residential Project shall submit, concurrently with or prior to the submission of an application for the first discretionary approval for a Residential Project, a proposal n application as provided by the City describing the proposed Affordable Housing Plan for the Residential Project, in accordance with this chapter and the intended method for implementing the plan, including but not limited to: unit floor plans, affordable unit locations on site plan, number and type of affordable units, proposed affordable rents and prices and proposed market-rate rents or prices, proposed construction schedule, and Affordable Unit marketing plan. .

B. Approval Process of Affordable Housing Plans. The approval process for affordable housing plans will include the following steps:

1. Submission of the affordable housing plan as part of the project application submitted to the Planning Division. Staff shall then refer the affordable housing plan to the Director of the Housing and Community Development who will review and either approve or deny the plan based on compatibility with the following: this chapter, adopted city affordable housing goals, and currently identified city housing needs.

2. The Affordable Housing Plan shall be included as an attachment to the staff report in the public hearings for the planning entitlements requested for the Residential Project.

C. Appeal. The Director's decision on the Affordable Housing Plan may be appealed to City Council by filing a Notice of Appeal within ten days of the Director's decision. In considering the appeal, sections 16.56.130 B and C shall govern.

16.56.050. Time Performance Required.

A. No building permit shall be issued for any Market Rate Unit until the developer of the Residential Project has obtained building permits for Affordable Units sufficient to meet the requirements of Section 16.56.030, or received certification from the Housing and Community Development Manager that the developer has met, or made arrangements satisfactory to the City to meet, an alternative requirement of Section 16.56.060. No final inspection for occupancy for any Market Rate Unit shall be completed until the developer has constructed and received certificate(s) of occupancy for the Affordable Units required by Section 16.56.030 or completed corresponding alternative performance under Section 16.56.060.

B. Conditions to carry out the purposes of this chapter shall be imposed on the first approval for a Residential Project.

C. If the Residential Project is to be constructed in phases, the phasing plan and the Affordable Housing Plan shall delineate the number of affordable units to be built in each phase and the provisions of subsection A shall apply to each phase. If the affordable units are not equally distributed among the phases, then the phasing plan and the Affordable Housing Plan shall determine the manner of compliance with subsection A, and the City may require security or other arrangements satisfactory to the City to assure compliance with this section.

16.56.060. Continued Affordability; City Review of Occupancy.

A. Regulatory agreements consistent with the requirements of this chapter shall be recorded against Residential Projects with rental Affordable Units. For Affordable Units designated for owner occupancy, resale restrictions, deeds restrictions; notes and deeds of trust and/or other documents consistent with the requirements of this chapter shall be recorded against owner-occupied Affordable Units. Only resale restrictions and associated documents will be used to assure continued affordability of owner-occupied Affordable Units, and no equity sharing provisions will be used to assure continued affordability of such Affordable Units.

In the case of Affordable Units that are initially rented, these recorded rent restrictions and associated documents shall be consistent with the California Health and Safety Code Section 33334.3(f)(1)(A), as amended from time to time, but in no case shall the minimum term be less than 55 years.

B. The City Housing and Community Development Manager shall annually certify compliance with rules published by the Manager within six months of the effective date of this chapter to establish rent restrictions, tenant income certification procedures, property management and maintenance standards, occupancy requirements, other compliance standards and associated documents for this chapter. In the case of Affordable Units that are initially sold, these documents shall be consistent with California Health and Safety Code Section 33334.3(f)(1)(B), but in no case shall the minimum term be less than 45 years. In the case of owner-occupied Affordable Units that are transferred during the required term, renewed restrictions shall be entered into on each change of ownership, with a 45 year renewal term. The forms of regulatory agreements, resale restrictions, deeds of trust and other documents authorized by this subsection A, and any change in the form of any such document which materially alters any policy in the document, shall be approved by the City Manager or his designee within six months of the effective date of this chapter.

C. In the case of Affordable Units which are initially owner-occupied, the documents required by subsection A. shall prohibit subsequent rental occupancy, unless approved for hardship reasons by the Housing and Community Development Manager. Such hardship approval shall include provision for United States military personnel who are required to leave the country for active military duty. For Affordable Units which are initially rented, the documents required by subsection A shall provide for continued occupancy for one year, dated from the required annual income certification under the

Regulatory Agreement by households occupying the units whose incomes increase during their occupancy so that they may exceed the maximum household income otherwise permitted for the Affordable Unit.

D. The maximum sales price permitted on resale of an Affordable Unit designated for owner-occupancy shall not exceed: the seller's purchase price paid by the owner/seller at the time the owner/seller acquired the unit under this chapter, increased by the percentage increase, if any, in the area median income during period of the owner/seller's ownership. The documents required by subsection (a) may authorize the seller to recover the depreciated value at time of sale of capital improvements made by the seller that were approved in writing by the City in advance of construction and the seller's necessary costs of sale and may authorize an increase in the maximum allowable sales price to achieve such recovery. The resale restrictions shall allow the City a right of first refusal to purchase any affordable owner-occupancy unit at the maximum price that could be charged to a purchaser household, at the time the owner proposes any sale. The Housing and Community Development Manager shall publish rules enforcing resale restrictions, disclosure statements to be issued to purchasers of resale-restricted owner-occupied Affordable Units, occupancy requirements, and restrictions on third mortgages and cash out refinancing secured by Affordable Units, and cost recovery for capital improvements to owner occupied Affordable Units.

E. No household shall be permitted to begin occupancy of an ownership or rental Affordable Unit unless the City has approved the household's eligibility. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of Affordable Units shall be selected first from the list of identified households, to the maximum extent possible.

16.56.070. Alternatives to On-Site Construction.

A. Rental Rehabilitation. A developer of a renter or owner Residential Development may satisfy the requirements of Section 16.56.030(a) and 16.56.030 (b) by purchasing and rehabilitating, or make possible another developer's purchasing and rehabilitating blighted, older rental housing, restricted to Very Low Income households, as recorded in an Affordable Housing Agreement and regulatory agreement. When electing this alternative compliance option, the Housing and Community Development Manager will have the authority to approve an Affordable Housing Plan. It is the intention of this subsection (d) that it be used only to rehabilitate rental housing that is at least forty (40) years old, suffers from severe deterioration, and is restored through physical rehabilitation to a renewed useful life of fifty-five (55) years. The unit and bedroom count distribution must remain comparable and proportionate to the market rate Residential Project. A fifty-five year rent restriction must be recorded against the property, and all other provisions of this chapter will apply to the rehabilitated affordable rental housing.

B. In lieu of building Affordable Units within an Owner Project, a developer may elect to construct, or make possible construction by another developer, Affordable Units not physically contiguous to the Market Rate Units. At the discretion of the

Housing and Community Development Manager or the Manager's designee, off-site construction of Affordable Units pursuant to this subsection (a) may be approved only if:

- (1) construction has started or, if construction not required, certificates of occupancy and a regulatory agreement or resale restriction agreements are recorded for the related Affordable Units before building permits are issued for the related Market Rate Units;
- (2) final inspections for occupancy for the related Market Rate Units must be completed after certificates of occupancy for the off-site Affordable Units are issued;
- (3) the City will require the developer of the Market Rate Units to purchase the site for the off-site Affordable Units, secure all planning entitlements, and record affordability covenants against the site, and secure a building permit for the Affordable Units required of the Market Rate Units prior to issuance of a building permit for the related Market Rate Units; and,
- (4) The City will require that the completion of off-site Affordable Units shall be further secured by a letter of credit from the developer in an amount at a minimum equal to the in lieu fee amount described under subsection (c) and recorded in an Affordable Housing Agreement.

C. In-lieu Fees. At the discretion of the City Council, a developer may pay a fee to the City in lieu of building Affordable Units within a Residential Project only under the following condition:

- (1) When the application of the requirements set forth in 16.56.030A or B results in a number that includes a fraction, a developer is allowed to pay a fee to the City if the resulting fractional amount is lower than 0.5.

In lieu fees shall be paid upon issuance of building permits for Market Rate Units in a Residential Project. If building permits are issued for only part of a Residential Project, the fee amount shall be based only on the number of units then permitted.

The City Council shall establish the in lieu fee by resolution in an amount that that is adequate, at a minimum, to cover the difference between the Affordable Ownership Price defined in 16.56.020B and the median price of a newly constructed Market Rate ownership home in Vallejo for the preceding calendar year, weighted for Low and Moderate income requirements. The fee will be revised and published annually by February 15th by the Housing and Community Development Manager based on the percent increase or decrease in the median sale price of a newly constructed home in Vallejo for the preceding twelve (12) month period, using standard accepted real estate data services, e.g. Dataquick.

16.56.080. Use and Expenditure of Fees.

A. The City Council may, by resolution, establish reasonable fees and deposits for the administration of this chapter. The fees collected under this chapter and all earnings from investment of the fees shall be expended exclusively to provide or assure continued provision of affordable housing through acquisition, construction, development assistance, rehabilitation, financing, rent subsidies or other methods, and for costs of administering programs which serve those ends. Funds will be tracked separately within an Inclusionary Housing Fund Account. Funds expended to administer this program may be reimbursed through fees collected under this ordinance.

B. The City will charge the seller of any owner-occupied Affordable Unit an asset management fee of one percent (1%) of the restricted resale price to a new Affordable Unit homebuyer. These asset management fees will be used by the City Manager to defray the costs of assuring compliance with the resale restriction provisions of this chapter.

16.56.090 Affordable Housing Agreement.

Developers of Residential Projects will be required to enter into affordable housing agreements with the City to document the obligations of the developer under this chapter. The affordable housing agreement must be approved by the Housing and Community Development Manager and executed by the developer prior to completion of a final map for a single family detached housing development. If the foregoing approvals are not required, then the affordable housing agreement must be approved by the City and executed by the developer prior to issuance of a grading or building permit, whichever occurs first.

For a multifamily development, the Affordable Housing Agreement must be approved by the City and executed by the developer prior to issuance of entitlement approval or design review approval of the market rate residential development.

16.56.095. Rules and Regulations to Implement Inclusionary Housing Ordinance.

The City Manager may adopt rules and regulations to assist in the implementation of this chapter, including but not limited to provisions for the calculation of eligible buyers or tenants, screening and/or prescreening of eligible buyers or tenants, methods of selection of buyers or tenants, suggested design, size, type and location of affordable units, and implementation documentation and requirements, such as deeds of trust, regulatory agreements and the like.

16.56.100. Enforcement.

A. The City Attorney is authorized to enforce the provisions of this chapter and all regulatory agreements and resale controls placed on affordable units, by civil action and any other proceeding or method permitted by law.

B. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any developer from the requirements of this chapter.

16.56.110. Severability.

If any clause, sentence, section, or part of this chapter, or any fee or requirement imposed upon any person or entity, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part, or such person or entity, and shall not affect or impair any of the remaining provisions, clauses, sentences, sections, or parts or the effect of this chapter on other persons or entities. It is hereby declared to be the intention of the City Council that this chapter would have been adopted had such unconstitutional, illegal, or invalid clause, sentence, section, or part not been included herein, or had such person or entity been expressly exempted from the application of this chapter.

16.56.120. Exemptions.

A. Projects with active planning applications as of November 7, 2006, that have received all discretionary land use approvals necessary under Chapter 16 for the project, including, but not limited to, rezoning, general plan change, major subdivision, vesting tentative map, parcel map, use permit, planned development or site development permit, or have an executed development agreement with the City prior to the effective date of the Ordinance adopting this chapter will be exempt from this chapter. If such a project is not built and the developer/owner later returns for amendments to the discretionary land use approvals, or because the entitlement has expired, the Residential Project shall then comply with this Chapter to the extent permitted by law.

16.56.130. Adjustments or Waivers.

A. The requirements of this Chapter may be adjusted or waived if the Developer demonstrates to the satisfaction of the City Council that there is not a reasonable relationship between the impact of a proposed Residential Project and the requirements of this Article, or that applying the requirement of this Article would take property in violation of the United States or California Constitutions.

B. To receive an adjustment or waiver, the Developer must request it when applying for first approval of the Residential Project.

C. The matter shall be considered before the City Council within thirty days. In making the finding or determination, or in considering any appeal, the City Council may assume the following: (1) the Developer is subject to the inclusionary housing requirements in this Article; (2) availability of any incentives, affordable financing, or subsidies; and (3) the most economical affordable housing product in terms of construction, design, location, and tenure. For purposes of a taking determination, the Developer has the burden of providing economic and financial documentation and other evidence necessary to establish that application of this Article would constitute a taking of the property without just compensation.

D. If it is determined that the application of the provisions in this Article would constitute a taking, the inclusionary requirements for the Residential Project shall be modified to reduce the inclusionary housing obligations to the extent and only to the extent necessary to avoid a taking. If it is determined that no taking would occur by

application of this Article, the requirements of the Article remain applicable and no approvals for the Residential Project shall be issued unless the Developer has executed an Affordable Housing Plan pursuant to the requirements of this Article.

SECTION 2. Effective Date.

..... This ordinance shall take effect thirty days after final passage.