

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY  
REPEALING AND REPLACING CHAPTER 17.47 RE: INCLUSIONARY HOUSING

The City Council of the City of Daly City, DOES ORDAIN as follows:

SECTION 1. Chapter 17.47 of Title 17 of the Daly City Municipal Code is hereby repealed in its entirety.

SECTION 2. Chapter 17.47 of Title 17 of the Daly City Municipal Code is hereby added to read as follows:

Chapter 17.47

**INCLUSIONARY HOUSING**

**Section 17.47.010 Purpose**

- A. The purpose of this chapter is to enhance the public welfare by establishing policies that require the development of housing affordable to households of low- and moderate-incomes, meet the City's regional share of housing needs, and implement the goals and objectives of the City's general plan and housing element.
- B. The adoption of a City-wide inclusionary housing program will also assist in alleviating the use of available residential land solely for the benefit of households that are able to afford market-rate housing because such market-rate development will be required to contribute to the provision of affordable housing for the entire Daly City community.
- C. The City Council desires to provide incentives in this chapter for Inclusionary Units to be located on the same site as market-rate residential development to provide for integration of low- and moderate-income households with households in market-rate neighborhoods and to disperse Inclusionary Units throughout the City where new residential development occurs.
- D. The City Council desires to provide and maintain affordable housing opportunities in the community through an inclusionary housing program for both ownership and rental housing.

**Section 17.47.020. Findings**

The City Council finds and determines:

- A. Lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of the City. The City will not be able to contribute to the attainment of state housing goals or retain a healthy environment without additional affordable housing. The housing affordability problem has an impact

upon a broad range of income groups, and no single housing program will be sufficient to meet the housing need.

- B. A lack of new affordable units will have a substantial negative impact on the environment and economic climate because:
  - 1. Housing will have to be built elsewhere, far from employment centers and therefore commutes will increase, causing increased traffic and transit demand and consequent noise and air pollution; and  
City businesses will find it more difficult to attract and retain the workers they need. Affordable housing policies contribute to a healthy job and housing balance by providing more affordable housing close to employment centers.
- C. The California Legislature has required each local government agency to develop a comprehensive, long-term general plan establishing policies for future development. As specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must:
  - 1. "Encourage the development of a variety of types of housing for all income levels, including multifamily rental housing;"  
"[A]ssist in the development of adequate housing to meet the needs of low- and moderate-income households;" and
  - 3. "Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action."
- D. The citizens of the City seek a well-planned, aesthetically pleasing and balanced community, with housing affordable to low- and moderate-income households. Affordable housing should be available throughout the City, and not restricted to a few neighborhoods and areas.
- E. Federal and state funds for the construction of new affordable housing are insufficient to fully address the problem of affordable housing within the City. Nor has the private housing market provided adequate housing opportunities affordable to low- and moderate-income households.
- F. The City is aware that there may be times when affordable housing requirements make market-rate housing more expensive. In weighing all the factors, including the significant need for affordable housing, the City has made the decision that the community's interests are best served by the adoption of the inclusionary housing ordinance.

#### **Section 17.47.030. Definitions**

As used in this chapter, the following terms shall have the following meanings:

"Affordable Housing Plan" means a plan containing all of the information specified in and submitted in compliance with Section \_\_\_\_ of this chapter and describing the manner in which Inclusionary Units will be provided in conformity with this chapter and the Inclusionary Housing Guidelines.

"Affordable Housing Project" means a Residential Development that is subject to a deed restriction with a term of at least 55 years that restricts all of the residential units other than manager's units for occupancy by, or sale to, low-, very low-, or moderate-income households at Affordable Rents or Affordable Sales Prices.

"Affordable Rent" means a monthly rent plus Utility Allowance that does not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of seventy percent (70%) of Area Median Income for a household of the Assumed Household Size for the dwelling unit.

"Affordable Sales Price" means a sales price that results in a monthly housing cost (including mortgage payments, mortgage insurance, (if any), homeowners' insurance, property taxes, homeowners' association costs, assessments (if any), and a Utility Allowance, that does not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income for households of the Assumed Household Size for the dwelling unit.

"Alternative In Lieu Fee" means the in-lieu fee that is paid when the Developer elects to pay a fee as an alternative to building an Inclusionary Unit.

"Area Median Income" means the annual median income for San Mateo County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of Daly City in the event that such median income figures are no longer published in the California Code of Regulations.

"Assumed Household Size" means, for the purpose of establishing Affordable Sales Prices and Affordable Rent, a household with a total number of members equal to the number of bedrooms in the dwelling unit, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and subject to applicable federal rules (if any). For example, the Assumed Household Size for a 3-bedroom home is a 4-person household.

"City" means the City of Daly City, City Manager of the City of Daly City or his or her designee.

"City Council" means the elected legislative body of the City of Daly City.

"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 Civil Code Section 1351; (a) a community apartment project; (b) a condominium project; and (c) a stock cooperative.

"Density bonus units" means dwelling units approved in a Residential Development pursuant to California Government Code Section 65915 et seq. that are in excess of the maximum residential density otherwise permitted by the Daly City general plan or zoning ordinance.

"Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, that seeks City approvals for all or part of a residential or commercial development.

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

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

"For-Sale Project" means a Residential Development, or portion thereof, that includes the creation of one or more dwelling units that may be sold individually, including a condominium, stock cooperative, community apartment, or attached or detached single-family home, and also includes a residential Condominium Conversion and the creation of dwelling units that may be sold individually, but are initially rented rather than sold.

"Impact Fee" means a fee that may be due for Residential Developments for which a Planning Permit or an Affordable Housing Plan has been approved by the City prior to July 1, 2018. The impact fee, based on a 2014 Nexus Study, was required for Rental Projects and was an alternative for For-sale projects pursuant to the former affordable housing ordinance.

"Inclusionary Housing Agreement" means a written agreement between a developer and the City as provided by Section 17.47.130.

"Inclusionary Housing Guidelines" means the written administrative guidelines detailing procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter.

"Inclusionary Unit" means a dwelling unit that pursuant to this chapter is required to be offered at Affordable Rent or Affordable Sales Price to Low-Income Households or Moderate-Income Households, and that is subject to a deed restriction as required by this chapter.

"Low-income household" means a household whose annual income does not exceed the qualifying limits set for "lower income households" in Section 50079.5 of the California Health and Safety Code.

"Market-Rate Unit" means a dwelling unit in a Residential Development that is not an Inclusionary Unit.

"Moderate-income household" means a household whose income does not exceed the qualifying limits set for "persons and families of low or moderate income" in Section 50093(b) of the California Health and Safety Code.

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

"Rental Project" means a Residential Development, or portion thereof, that creates dwelling units that cannot be sold individually.

"Rental" means and refers to a dwelling unit that is not a for-sale dwelling unit, and does not include any dwelling unit, whether offered for rental or sale, that may be sold as a result of the lawful subdivision of the parcel upon which the dwelling unit is located or creation of the

unit in accordance with the Subdivision Map Act (California Government Code Section 66410 et seq.), or any Residential Development including such rental dwelling units.

“Required In Lieu Fee” means the in lieu fee required to be paid for residential developments below the threshold for providing Inclusionary Units. This threshold is fifteen (15) units for for-sale projects, and twenty (20) units for rental projects.

"Residential Development" means any project that requires a building permit for which an application must be submitted to the City, and that would create five or more new additional, or modified dwelling units by: (i) the construction or alteration of structures, (ii) the conversion of a use to residential from any other use, or (iii) the conversion to for-sale residential use from rental residential use.

“Utility Allowance” means an allowance for utilities reflecting the figures for the applicable unit type in the most recent utility allowance schedule published by the San Mateo County Housing Department.

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

#### **Section 17.47.040      Operative Date of Chapter.**

The provisions of this chapter shall be operative on July 1, 2018.

#### **Section 17.47.050      Applicability.**

The provisions of this chapter shall apply to all Residential Developments, except for any Residential Development that is exempt under Section 17.47.060 of this chapter.

#### **Section 17.47.060      Exemptions.**

The requirements of this chapter do not apply to:

- A. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction of the site does not increase the number of residential units by five or more units.
- B. Projects that are not Residential Developments as defined in Section 17.47.030.
- C. Residential Developments for which a Planning Permit or an Affordable Housing Plan has been approved by the City prior to July 1, 2018. For such Residential Developments, the affordable housing requirements set forth in the approved Planning Permits or Affordable Housing Plan shall apply; provided however, upon the expiration of any Planning Permit, the Residential Development shall be subject to the requirements of this chapter, and shall not proceed until such time as an Affordable Housing Plan is approved in conjunction with any other required Planning Permit or amendment thereto for the Residential Project. Developers of Residential Developments for which a Planning Permit or an Affordable Housing Plan has been approved by the City prior to July 1, 2018, who are subject to payment of an Impact Fee shall be required to pay the Impact Fee in effect as of the date of the City’s approval of the Planning Permit or Affordable

Housing Plan for the Residential Development; provided however, if the In Impact Fee is not paid within twelve (12) months from February 1, 2019, then the Impact Fee shall be payable in the amount that is in effect on the date of issuance of building permits for the Residential Development.

Residential Developments for which neither a Planning Permit nor an Affordable Housing Plan has been approved prior to July 1, 2018 are subject to the requirements of this chapter.

#### **Section 17.47.070      Affordable Housing Requirements**

Residential developments with fewer than 20 rental units or 15 ownership units will pay the Required in Lieu Fees established in the City's Affordable Housing Fee schedule.

- A. Except as otherwise permitted by this chapter, all new Residential Developments not subject to the Required In Lieu Fees above shall include Inclusionary Units. Calculations of the number of Inclusionary Units required by this section shall be based on the number of dwelling units in the Residential Development excluding any Density Bonus Units.
- B. On-site inclusionary requirement. Unless otherwise exempted or excepted from this chapter, Residential Developments shall include Inclusionary Units on the same site as the Residential Development as follows:
  - 1. For-Sale Projects: twenty percent (20%) of the dwelling units in the Residential Development shall be sold at an Affordable Sales Price to households whose annual income does not exceed Moderate Income.  
  
Rental Projects: ten percent (10%) of the dwelling units in the Residential Development shall be made available for rent at an Affordable Rent to households whose annual income does not exceed Low Income.
  - 3. In the event tenure-type is not known at the time of entitlement, developers shall submit an Affordable Housing Plan that describes how they will comply with affordable housing requirements under both rental and ownership scenarios.
- C. Fractional units. In computing the total number of Inclusionary Units required in a Residential Development, fractions of one-half (1/2) or greater shall be rounded up to the next highest whole number, and fractions of less than one-half (1/2) shall be rounded down to the next lowest whole number.
- D. Residential Development with both for-sale and rental units. When a Residential Development includes both for-sale and rental dwelling units, the provisions of this chapter that apply to for-sale Residential Developments shall apply to that portion of the development that consists of for-sale dwelling units, and the provisions of this chapter that apply to rental Residential Developments shall apply to that portion of the development that consists of rental dwelling units.

**Section 17.47.080 On-Site Inclusionary Housing Incentives.**

- A. The Developer of a Residential Development that will provide all required Inclusionary Units on the same site as the Market-Rate Units may, at the Developer's option, submit a written request for a density bonus, waivers, incentives, or concessions pursuant to California Government Code Section 65915 *et seq.* and Chapter 17.52 of this Code if the Residential Development includes on-site affordable dwelling units that meet the thresholds for density bonus pursuant to California Government Code Section 65915 *et seq.*.
- B. Affordable Housing Plan. Any requests for waivers, concessions or incentives shall be included in the proposed Affordable Housing Plan submitted at the time of application for the First Approval, and any incentives authorized by the City pursuant to Chapter 17.52 of this Code shall be included in the Affordable Housing Plan, if approved by the City, for the Residential Development.

**Section 17.47.090 Timing of Construction of Inclusionary Units**

- A. All required Inclusionary Units shall be constructed and made available for occupancy prior to or concurrently with the Market-Rate Units in the Residential Development. To implement this requirement, [the City will not issue building permits for more than a proportional number of the Market-Rate Units within a Residential Development until it has issued building permits for the proportional number of Inclusionary Units to be included in the development. In addition, the City will not approve final inspections or certificates of occupancy for more than a proportional number of the Market-Rate Units within a Residential Development until it has approved final inspections or certificates of occupancy for a proportional number of the Inclusionary Units within the development.]
- B. For phased developments, the City will not issue building permits for more than a proportional number of the Market-Rate Units within a construction phase in a Residential Development until it has issued building permits for the proportional number of Inclusionary Units to be included in that construction phase. In addition, the City will not approve final inspections or certificates of occupancy for more than a proportional number of the Market-Rate Units within a construction phase until it has approved final inspections or certificates of occupancy for a proportional number of the Inclusionary Units within that construction phase.

**Section 17.47.100 Development and Design Standards for Inclusionary Units**

- A. Single-family detached Inclusionary Units shall be dispersed throughout the Residential Development. Townhouse, row-house, and multifamily Inclusionary Units shall be located so as not to create a geographic concentration of Inclusionary Units within the Residential Development.
- B. The quality of design and overall quality of construction of the Inclusionary Units shall be consistent with the design of all Market-Rate Units in the Residential Development and meet all site, design, and construction standards included in

Title 15 (Buildings and Construction), Title 16 (Subdivisions), and Title 17 (Zoning) of this code, including but not limited to compliance with all design guidelines included in applicable specific plans or otherwise adopted by the City Council, and the Inclusionary Housing Guidelines. Inclusionary Units shall have functionally equivalent parking when parking is provided to the Market-Rate Units.

- D. The Inclusionary Units shall have the same amenities as the Market-Rate Units, including the same access to and enjoyment of common open space and facilities in the Residential Development.
- E. The Inclusionary Units shall have the same proportion of unit types as the Market-Rate Units in the Residential Development.
- F. The Inclusionary Units shall have a comparable square footage and the same bedroom count and bedroom count ratio as the Market-Rate Units.

#### **Section 17.47.110 Minimum Requirements**

The requirements of this chapter are minimum requirements and shall not preclude a Residential Development from including additional affordable units or affordable units with lower rents or sales prices than required by this chapter.

#### **Section 17.47.110 Compliance Alternatives**

- A. Alternative In-Lieu Fees. In lieu of constructing the on-site Inclusionary Units required by this chapter, a developer may elect to pay an Alternative In Lieu fee in accordance with this Section.
  - 1. Alternative In Lieu Fees shall be payable in full at the time of issuance of building permits for the Residential Development or applicable phase thereof. No application for a rezoning, tentative map, parcel map, conditional use permit, design review, or building permit shall be approved, nor shall any Residential Development be constructed, or condominium conversion approved without compliance with this section. For phased developments, payments may be made for each phase of the Residential Development prior to issuance of a building permit for that phase.

Rental Residential Developments. The Alternative In Lieu Fee for rental Residential Developments shall be equal to the total livable square footage of the development multiplied by the Alternative in lieu fee established in the City's Affordable Housing Fee schedule an amount equal to the approximate per unit cost that the City would incur to subsidize the development of an equal number of rental Inclusionary Units such that they could be offered for rent at Affordable Rent.
  - 3. Fractional Units. In calculating the amount of the Alternative In Lieu Fee, any fractional unit obligation will be rounded up to the nearest whole number.

4. The amount of Alternative In Lieu Fees shall be established by resolution of the City Council and may include without limitation estimated costs of (1) administration, (2) construction, (3) land, (4) financing, (5) professional fees (including without limitation architecture, engineering, and other costs), and (6) indirect costs.
  5. The City shall not issue building permits for any Market-Rate Unit in the Residential Development prior to the payment in full of all applicable Alternative In Lieu Fees.
  6. All Alternative In Lieu Fees collected under this section shall be deposited in the City's affordable housing trust fund established pursuant to Section 17.47.150 of this chapter.
- B. Combination of Fees and Units. If the Residential Development consists of more than fifty (50) rental units, a developer may elect to provide a combination of on-site inclusionary units and payment of Required In Lieu Fees.
1. The number of on-site inclusionary units provided must be at least half of the required number of inclusionary units, or at least five percent of the total units in the project.
  2. The Required In Lieu Fees shall be paid for the remaining balance of required on-site inclusionary units.

#### **Section 17.47.120 Continuing Affordability and Initial Occupancy**

- A. The Inclusionary Housing Guidelines shall include standard documents, in a form approved by the City Attorney, to ensure the continued affordability of the Inclusionary Units approved for each Residential Development. The documents may include, without limitation, Inclusionary Housing Agreements, regulatory agreements, deeds of trust, resale restrictions, rights of first refusal, options to purchase, and/or other documents that shall be recorded against the Residential Development and the Inclusionary Units.
- B. Unless otherwise specified by the chapter, all Inclusionary Units shall be subject to recorded restrictions that require the units to remain affordable to the targeted income group for no less than fifty-five (55) years.
- C. Any household that occupies an Inclusionary Unit must occupy that unit as its principal residence, unless otherwise approved in writing by the City for rental to a third party for a limited period of time due to household hardship, as specified in the Inclusionary Housing Guidelines.
- D. No household may begin occupancy of an Inclusionary Unit until the household has been determined to be eligible to occupy that unit. Rental Inclusionary Units shall continue to be rented to income eligible households at an Affordable Rent for the entire term of the inclusionary housing restriction. The Inclusionary Housing Guidelines shall establish standards for determining household income,

minimum and maximum occupancy, affordable housing cost, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.

- E. Officials, employees, or consultants of the City, and members of boards and commissions thereof, shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an Inclusionary Unit. The Inclusionary Housing Guidelines may include conflict of interest provisions relating to the administration of this chapter and the eligibility of persons to occupy Inclusionary Units.

#### **Section 17.47.130 Affordable Housing Plan and Inclusionary Housing Agreement**

- A. An Affordable Housing Plan shall be submitted as part of the application for First Approval of any Residential Development. No application for a First Approval for a Residential Development may be deemed complete unless an Affordable Housing Plan is submitted in conformance with the provisions of this chapter. Approval of an Affordable Housing Plan is a condition of any tentative map, parcel map or building permit for any development for which this chapter applies. This section does not apply to projects where the requirements of the chapter are satisfied by payment of a fee under Section \_\_\_\_.
- B. For each construction phase, the Affordable Housing Plan shall specify, at the same level of detail as the application for the Residential Development, at least all of the following information:
  - 1. Whether the development is for sale or rental and the type of structure (attached; semi-attached, detached);  
  
How the inclusionary housing requirement will be satisfied pursuant to this chapter;
  - 3. For all Inclusionary Units- the number of units, unit type, tenure, number of bedrooms and baths, approximate location/floor plan, size and design, construction and completion schedule;
  - 4. Phasing of Inclusionary Units in relation to Market-Rate units in compliance with Section 17.47.090;
  - 5. Marketing plan, including the manner in which Inclusionary Units will be offered to the public in a nondiscriminatory and equitable manner;
  - 6. Specific methods to be used to verify household incomes, and to maintain the affordability of the Inclusionary Units;
  - 7. A reliable financing mechanism for the ongoing administration and monitoring of rental Inclusionary Units;
  - 8. Any other information that is reasonably necessary to evaluate the compliance of the Affordable Housing Plan with the requirements of this chapter and the Inclusionary Housing Guidelines.

- C. Upon submittal, the City shall determine if the Affordable Housing Plan is complete and conforms to the provisions of this chapter and the Inclusionary Housing Guidelines. If the Affordable Housing Plan is incomplete or not in compliance, it will be returned to the developer with a list of deficiencies or the information required. Any decision deeming the Affordable Housing Plan to be out of conformity with this chapter may be appealed to the City Council in accordance with procedures for notice and hearing contained in Title \_\_ of the Municipal Code.
- D. The Affordable Housing Plan shall be reviewed as part of the First Approval of any Residential Development. The Affordable Housing Plan shall be approved if it conforms to the provisions of this chapter and the Inclusionary Housing Guidelines. A condition shall be attached to the First Approval of any Residential Development to require recordation of the Inclusionary Housing Agreement described in subsection G. of this section prior to the approval of any final or parcel map or building permit for the Residential Development.
- E. A request for a minor modification of an approved Affordable Housing Plan may be granted if the modification is substantially in compliance with the original Affordable Housing Plan and conditions of approval. Other modifications to the Affordable Housing Plan shall be processed in the same manner as the original plan.

In the event the tenure type of a development changes, a revised Affordable Housing Plan, compliant with the requirements described in this Ordinance for the new tenure type must be approved by the City.

- F. Following the first approval of a Residential Development, the City shall prepare an Inclusionary Housing Agreement providing for implementation of the Affordable Housing Plan and consistent with the Inclusionary Housing Guidelines. Prior to the approval of any final or parcel map or issuance of any building permit for a Residential Development subject to this chapter, the Inclusionary Housing Agreement shall be executed by the City and the applicant and recorded against the entire Residential Development property to ensure that the agreement will be enforceable against any successor in interest. The Inclusionary Housing Agreement will include, without limitation (i) a description of the development, including whether the affordable units will be rented or owner-occupied; (ii) the number, size and location of the Inclusionary Units; (iii) incentives provided by the City (if any), including the nature and amount of any local public funding; (iv) provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions; (v) provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident households for income eligibility; and (vi) any additional obligations relevant to the compliance with this chapter. The Inclusionary Housing Agreement shall not be amended without the prior written consent of the City and shall not be amended prior to any necessary amendments to applicable planning permits.

- G. The City Council, by resolution, may establish fees for the ongoing administration and monitoring of the Inclusionary Units, which fees may be updated periodically, as required.

#### **Section 17.47.140 For-Sale Units**

For-Sale Inclusionary Units shall be subject to the following requirements.

- A. Initial Sale. For-Sale Inclusionary Units must be initially sold at an Affordable Sales Price to households whose income is no greater than Moderate-Income and shall be subject to recorded resale restrictions.
- B. Transfer. Upon any transfer of a For-Sale Inclusionary Unit prior to the expiration of the fifty-five (55) year affordability period, renewed restrictions will be entered into with a fifty-five (55) year renewal term.
- C. Resale. The maximum sales price permitted upon resale of an Inclusionary Unit designated for owner-occupancy shall be the greater of:
  - 1. The sum of the original purchase price the owner paid for the home plus the depreciated value of any capital improvements purchased and installed by the owner and approved in writing by the City prior to their installation pursuant to the City's capital improvements policy described in the Below Market-Rate Ownership Unit Program Guidelines and Information Manual; or  
  
The current Affordable Sales Price for the unit based on current Area Median Income limits plus the depreciated value of any capital improvements purchased and installed by the owner and approved in writing by the City prior to their installation pursuant to the City's capital improvements policy described in the Below Market-Rate Ownership Unit Program Guidelines and Information Manual.
- D. Maintenance of Unit. The owner of the Inclusionary Unit will be responsible for compliance with housing maintenance standards as described in the Inclusionary Housing Guidelines.
- E. Changes in Title. Subject to reasonable procedures that the City may require, title to the Inclusionary Unit may be transferred pursuant to the Below Market-Rate Ownership Unit Program Guidelines and/or Inclusionary Housing Guidelines. F. Annual Certifications. The owner of the affordable unit shall certify annually that the owner occupies the unit as the owner's primary residence.
- F. Failure of an owner to comply with the requirements of this section shall be a violation of this chapter, and the City shall be permitted to seek enforcement against an owner in violation pursuant to Section 17.47.180, in addition to any other remedy available to it under law or equity.

### **Section 17.47.150 Affordable Housing Trust Fund**

- A. Unless otherwise required by law, all in lieu fees, fees, promissory note repayments, shared appreciation payments, and other funds collected under this chapter shall be deposited into a separate account to be designated as the City of Daly City affordable housing trust fund. The City may elect to deposit funds from other sources into the fund.
- B. The moneys in the affordable housing trust fund and all earnings from investment of the moneys in the affordable housing trust fund shall be expended exclusively to provide housing affordable to extremely low-income, very low-income, lower income, and moderate-income households in the City of Daly City and administration and compliance monitoring of the inclusionary housing program.

### **Section 17.47.160 Compliance Monitoring**

The Inclusionary Housing Guidelines and each Inclusionary Housing Agreement shall include provisions for the monitoring by the City of each Inclusionary Unit for compliance with the provisions of this chapter, the Inclusionary Housing Guidelines, and the applicable Inclusionary Housing Agreement. Such provisions shall require annual compliance reports to be submitted to the City by the owner, and the City shall conduct periodic on-site audits to ensure compliance with all applicable laws, policies, and agreements. The City Council may adopt fees for the costs of monitoring and compliance by the City, which shall be deposited into the affordable housing trust fund for that purpose.

### **Section 17.47.170 Waiver**

- A. Notwithstanding any other provision of this chapter, the requirements of this chapter may be waived, adjusted, or reduced if an applicant shows, based on substantial evidence, that applying the requirements of this chapter would take property in violation of the United States or California Constitutions.
- B. Any request for a waiver, adjustment, or reduction under this section shall be submitted to the City concurrently with the Affordable Housing Plan required by Section \_\_\_ of this chapter. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
- C. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the Affordable Housing Plan and is subject to the appeal process for Affordable Housing Plans in Section 17.47.130.
- D. In making a determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:
  - 1. That the applicant will provide the most economical Inclusionary Units feasible, meeting the requirements of this chapter and the Inclusionary Housing Guidelines.  
That the applicant is likely to obtain housing subsidies when such funds are reasonably available.

- E. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

#### **Section 17.47.180 Implementation and Enforcement**

- A. The City shall adopt guidelines to assist in the implementation and administration of all aspects of this chapter.
- B. The City shall evaluate the effectiveness of the ordinance codified in this chapter one (1) year after the operative date of this chapter.
- C. The City Attorney shall be authorized to enforce the provisions of this chapter and all Inclusionary Housing Agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on Inclusionary Units by civil action and any other proceedings or methods permitted by law.
- D. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant or owner from the requirements of this chapter. No permit, license, map, or other approval or entitlement for a Residential Development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been satisfied.
- E. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

**SECTION 3: Severability.** If any provision of this Ordinance is held by any court or by any Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision thereof which had previously been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding.

**SECTION 4: Environmental Determination.** The City Council of the City of Daly City finds and determines that the implementation of measures described in this Chapter is in furtherance police powers of the City of Daly City, and that these purposes are exempt from the provisions of the California Environmental Quality Act (CEQA); Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code, as provided in categorical exemption within CEQA's categorical exemption for activities involving regulation of activities.

SECTION 5: Publication/Summary Pursuant to the provisions of Government Code Section 36933, a summary of this ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post it in the City Clerk's office a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary and (2) post in the City Clerk's office a certified copy of the full text of this ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting. This ordinance shall become effective thirty (30) days from and after its adoption.

Introduced this 26<sup>th</sup> day of November 2018.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the 10<sup>th</sup> day of December 2018, by the following vote:

AYES, Councilmembers Daus-Magbual, DiGiovanni,

Manalo, Sylvester, Buenaventura

NOES, Councilmembers None

Absent, Councilmembers: None

K. Annette Hipona

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

RAYMOND A. BUENAVENTURA

MAYOR OF THE CITY OF DALY CITY