

# Inclusionary Housing Program

When housing prices spiked in the 1990s, many cities looked for ways to help make housing more affordable. One such tool that many jurisdictions implemented was **INCLUSIONARY HOUSING REGULATIONS**. Under these laws, developers are required to set aside a certain number of units within their residential development project and make them affordable to lower income households.

As part of their inclusionary housing program, many cities also included provisions that allow developers to deviate from the strict adherence of the policy, so long as it is found that the alternative means of compliance meets the intent of the jurisdiction's inclusionary housing policies, and is consistent with the housing affordability and fair housing choice goals specified in its long-range housing plan.

This info-bulletin provides an overview of Carlsbad's Inclusionary Housing Program and describes how it helps address affordable housing needs while advancing equitable development goals consistent with the city's adopted Housing Element.

## NEED FOR LOCAL INCLUSIONARY HOUSING

The state faces a serious housing problem that not only threatens its economic security, the lack of access to affordable housing can have a direct impact upon the health, safety, diversity, and welfare of Carlsbad residents. To retain a healthy livable environment and meet state mandated housing goals, more needs to be done to accommodate locally available and affordable housing stock.

To help address this need, the city's inclusionary housing ordinance, originally adopted in 1993, established the legal basis for requiring affordable (inclusionary) housing units in new residential development in the city. The law applies to all proposed development projects that include residential units and requires that a minimum of 15% of the units within a project be affordable to lower-income households.

Since its implementation, the inclusionary housing ordinance has proven to be extremely effective. From 1995 to 2020, the city produced 19,026 housing units, of which roughly 13% were made affordable through this program. And it is anticipated that the city will generate over 500 additional affordable units over the next eight-year period.



## HOUSEHOLD INCOME & AFFORDABILITY

We hear this a lot --- How do we make housing more affordable? The term "affordable housing" can be used to describe housing that receives some form of subsidy/restriction that forcibly keeps rents and mortgages low. It can also mean housing that's naturally affordable simply because of market supply and demand. In order to make a meaningful difference in providing affordable housing, the solution should not be looked at as an "either-or" approach between privately produced housing and subsidized housing...it requires both.

To help understand what qualifies as affordable, the U.S. Department of Housing and Urban Development (HUD) establishes income ranges for different household types, which they have grouped into five "income categories:" extremely low, very low, low, moderate and above-moderate household income. The household income for each of these categories is based on a percentage of the region's Area Median Income or AMI.

Carlsbad falls within the San Diego County region, which has an AMI of \$95,100 (2021) per year for a four-person household. In comparison, the city's actual median income is closer to \$108,000, but under state law the city must use the county AMI. To help illustrate, the table below shows the income levels for a family of four.

Income Category	% of AMI	Household Income <sup>1,2</sup>
Extremely Low	<30%	<\$28,500
Very Low	30 - 50%	\$28,500 - \$47,600
Low	51 - 80%	\$47,600 - \$76,000
Moderate	81 - 120%	\$77,000 - \$114,100
Above Moderate	>120%	>114,100

<sup>1</sup> AMI as of April 2021 was \$95,100 for family of four; <sup>2</sup> Figures rounded.

For housing costs to be considered affordable, a family’s monthly rent/mortgage payment should not exceed 30% of the gross annual household income of any given income category. So, a low-income family of four with a gross annual income of \$55,000 should pay no more than \$1,375 per month for housing.

For a rental unit, total housing costs include the monthly rent payment as well as consideration for a utility allowance. With for-sale units, total housing costs include the mortgage payment, homeowner association dues, property taxes, mortgage insurance and any other related assessments.

To learn more about HCD and housing, please see our Info-Bulletin: Carlsbad Housing Plan ([IB-137](#)).



## INCLUSIONARY HOUSING REQUIREMENTS

The city’s Inclusionary Housing Ordinance ([CMC §21.85](#)) was passed by the City Council in 1993, and established the legal basis for requiring inclusionary housing in new residential development in the city. The following provides a summary of key standards required under the ordinance for new residential development in the city.

### Number of units required

- All residential development projects proposing seven or more housing units are required to provide at least 15% of the total units (including density bonus units) to be restricted for low-income households.

For projects proposing six or fewer units, refer to Alternative #1 under the “Alternative Means of Compliance” section of this info-bulletin.

- Inclusionary unit requirements apply to all residential development projects (rental or for-sale product), including mixed-use projects.
- When calculating, fractional units  $\geq 0.5$  must be rounded up to the next whole number.

**Example:** An applicant proposes to satisfy its inclusionary requirements for a 112-unit residential development by reserving 15% of the units for low-income households, or 17 units ( $112 \times 0.15 = 16.8$ , rounded up to 17). The remaining 95 units (112 units minus 17) may be sold at market rate.

### Duration units protected

- Inclusionary *rental* units shall remain restricted and affordable to the designated income group for not less than 55 years.
- Inclusionary *for-sale* units shall remain restricted and affordable to the designated income group for not less than 30 years.

### Development standards

- Inclusionary units should be located throughout the development rather than clustered in one area.
- The inclusionary units must be indistinguishable from the market-rate units in the development, at least outwardly.
- The inclusionary units must be constructed prior to or concurrent with development of the market-rate units, and prior to final building permit approval of the market-rate units.
- Residents of the inclusionary units must have access to the same amenities – such as pool, fitness center and parking – as residents of the market-rate units.
- The inclusionary units must include a similar mix and number of bedrooms as the market-rate units.
- When ten or more inclusionary units are required, at least ten percent of those required units must provide at least three bedrooms.
- To the extent possible, projects using for-sale units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs.



## ALTERNATIVE MEANS OF COMPLIANCE

The city understands that various constraints may frustrate a developer's ability to meet the strict letter of the city's inclusionary housing regulations. As such, the ordinance allows for the City Council to authorize "alternative means of compliance" when it is found that the alternative meets the intent of the city's Inclusionary Housing Ordinance ([CMC §21.85](#)) and the goals and policies of the city's [2021-2029 Housing Element](#).

Council Policy Statement No. 57 ([Policy 57](#)) lists those alternatives that have been found to meet the intent of the city inclusionary code and help address its affordable housing needs. These alternative means of compliance are summarized in the sections below, but please refer to [Policy 57](#) for the specific requirements.

### Alternative #1: Payment of in-lieu fee

Rather than constructing the inclusionary unit as part of the development project, applicants proposing ≤six units may instead pay a fee.

- \$8,529 for a new single-family detached home
- \$15 per square foot of net building area for each proposed market-rate unit.

The rates above are effective 2022. Please check the city's [Fee Schedule](#) for the most current rates.

"Net building area" means the aggregate gross floor area of all the unrestricted dwelling units within a development, excluding areas outside the dwelling unit's

habitable space such as garages, carports, parking areas, porches, patios, open space, and excluding common areas such as lobbies, common hallways, stairways, elevators and equipment spaces.

Collected in-lieu fees are deposited into the city's Housing Trust Fund, and applied towards the furthering of the city's affordable housing needs pursuant to Council Policy Statement No. 90 ([Policy 90](#)).

### Alternative #2: Varying housing affordability

In addition to providing more housing available for low income families, the city also recognizes a need to increase housing stock for other targeted and needed housing affordability levels such as moderate, very low- and extremely low-income households. As such, so long as the total average gross income restriction for the required inclusionary units does not exceed 80% of the AMI, the makeup of the inclusionary units can be comprised on any combination of income categories.



### Alternative #3: Increases in residential density

While not specific to the city's inclusionary housing ordinance, sometimes there is a request from a property owner to increase their residential density above what is authorized under the city's current land use plans. In exchange for the increased density, the city will require that any future development on the site meet the following additional inclusionary housing requirements.

- At least 20% of the total residential units are restricted for low-income households; or,
- A least 15% of the total residential units are restricted for low-income households and an additional 10% are restricted for moderate-income households; or,
- At least 15% of the total residential units are restricted for very low-income households.

This has been applied to properties that received an increase in residential density as part of the [2015 General Plan](#) update and the [2021-29 Housing Element](#).

#### Alternative #4: Reduction credit

Residential development (for-sale or rental product) can reduce its inclusionary housing obligations from 15% to 12.5%, under the following conditions.

- All affordable units must be made available to very low- or extremely low-income households.
- Affordable units are located on the same site as the market-rate units.
- No financial assistance from the city is provided.

**Example:** “A 78-unit residential development is proposed, which requires that 15% of the units be reserved for low-income (12 units). If the developer voluntarily agrees to make inclusionary units available to very low-income households, then the developer may receive an incentive reduction credit. Under this scenario, 10 units in a 78-unit development projects equates to 12.8%, which meets the minimum inclusionary housing requirement.

#### Alternative #5: Use of accessory dwelling units

Pursuant to [CMC §21.85.070.B](#), construction of up to 15 accessory dwelling units (ADU) can be used to satisfy inclusionary housing requirements. Refer to our info-bulletin on ADUs ([IB-111](#)) for additional information. The standards below provide additional specifications for when this allowance can be used.

- The project proposes  $\geq 200$  residential detached dwelling units.
- The ADU may be an attached or detached product type (Junior ADU prohibited) .
- The ADUs shall have an affordability term ( $\leq 80\%$  AMI with rents  $\leq 70\%$  AMI) of at least 30 years.

Notwithstanding the above, for projects proposing  $\leq 6$  units, the in-lieu fee may be waived if a detached or attached ADU or Junior ADU is constructed concurrent with construction of the market-rate unit, deed restricted for low-income households for 30-years, and occupied by income-qualified families.

#### Alternative #6: Off-site construction

Circumstances may arise in which the public interest would be better served by allowing some or all of the required inclusionary units to be developed at an



alternative site. This is referred to as a “Combined Inclusionary Housing Project” or “Combined Project.” To qualify, the following requirements must be met.

- The inclusionary calculation requirements shall be based on the total number of market-rate units to be provided, as opposed to the total number of residential units in the project. See example below.

**Example:** An applicant proposes to satisfy its inclusionary requirements for a 112-unit project by building 15% of the units for low-income households off-site. This leaves 85% of the units for market rate, for a total residential unit count of 132 units ( $112 \div 0.85 = 131.8$ , rounded to 132). Using the total residential unit count, the number of inclusionary units required is 20 ( $132 \times 0.15 = 19.8$ , rounded to 20).

- The decision-making authority of the permit application may approve a Combined Project subject to the following findings.
  - The site has not or will not receive a density increase or density bonus.
  - Site conditions make it physically infeasible to accommodate the inclusionary units on-site.
  - Significant price and product type disparities make it financially infeasible to accommodate the inclusionary units on-site.
  - There is a documented lack of development capacity to deliver affordable housing on-site.
  - The off-site option provides greater financial feasibility/cost effectiveness than the on-site.
  - The off-site option provides better access to jobs, schools, transit, and services.
  - The off-site option supports housing goals and policies in the city’s Housing Element.

Notwithstanding, the City Council shall retain final permit approval authority, including approval of the Affordable Housing Agreement, on any Combined Project that requires financial assistance from the city.



### Alternative #7: Inclusionary housing credit bank

For projects that build inclusionary units in excess of code requirements, and where the city is financially participating in the project, the city can sell those excess units in the form of credits to other developers to satisfy their inclusionary requirement. The proceeds from the credit sales are deposited into the city's Housing Trust Fund and redistributed pursuant to [Policy 90](#).

- **Bank Creation.** The City Council may approve the creation of an inclusionary housing credit bank, subject to the following findings.
  - The inclusionary units are in excess of the minimum number of units required under the city's Inclusionary Housing Ordinance; or
  - The inclusionary units are part of a 100% affordable housing project; and
  - The inclusionary units are constructed and received final inspection; and
  - The city financially contributed to the construction of the project.
- **Credit Purchase Eligibility.** Projects proposing more than seven, but no more than 50 residential units are eligible to purchase credits.
- **Credit Price.** The price for each inclusionary unit shall be determined by dividing the city's financial contribution by the total number excess inclusionary units, subject to annual CPI adjustments.

- **Credit Bank.** Applicants must pay the credit price of available credits from the oldest established inclusionary housing bank that is located within the same city quadrant in which the market-rate units are located, or if none available, sites which are contiguous to the quadrant in which the units are proposed.
- **Credit Purchase Ratio** – The amount of credits to be purchased shall be based on the following.
  - 7 to 20 units: 1.0 credit/inclusionary unit
  - 21 to 35 units: 1.5 credits/inclusionary unit
  - 36 to 50 units: 2.0 credits/inclusionary unit
- **Credit Purchase Approval.** The decision-making authority of the development project is authorized to approve credit purchases, so long as the findings below are met. Should a request to purchase credits occur after discretionary approval, the Community Development Director or the Housing & Homeless Services Director shall have the authority to approve credits, subject to the same findings.
  - The project site is located within the same [Growth Management Plan](#) quadrant that the housing credit is located, or if nonavailable, sites which are contiguous (share a common boarder) with the quadrant in which the units are proposed.
  - Sufficient housing credits available to purchase.
- **Credit Price Payment.** Payment of credit purchases shall be due prior to recordation of the final map or issuance of a building permit, in situations where the project does not include a subdivision. If the project entitlements expire, credits will be made available to another eligible project(s).



## Alternatives not listed, but may be considered

The City Council may approve other alternatives means of compliance not listed in [Policy 57](#) when evidence is provided that the alternative helps achieve relevant Housing Element policies and goals and assists the city in meeting its state housing requirements.

As part of the City Council's consideration, the applicant must also show why compliance with current inclusionary housing regulations would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, available financial subsidies, and approved alternatives listed in [Policy 57](#).



## AFFORDABLE HOUSING AGREEMENTS

An Affordable Housing Agreement (AHA) is a legally binding agreement between the developer and the city to ensure that the inclusionary requirements of a residential development are satisfied. [CMC §21.85.140](#) provides the specific requirements of the AHA, but the more significant components are listed below.

- A project condition shall be added to projects subject to the inclusionary ordinance and [Policy 57](#) requiring that an AHA be reviewed, approved, and

recorded prior to Final Map or issuance of building permits, whichever is first.

- Among other items, the AHA must include the number of required inclusionary units, the unit sizes, location, affordability tenure, required findings, terms and conditions of affordability and unit production schedule.
- The AHA and all relevant terms and conditions shall be recorded against the entire development.
- The AHA shall bind all future owners and successors in interest for the term of years specified therein.

## APPROVAL AUTHORITY

The approval authority for the development project subject to these standards is as follows:

- The decision-making authority for the underlying permit application(s) shall have the authority to approve projects found consistent with [Policy 57](#).
- Development projects that propose an alternative means of compliance that is not specifically provided for in the CMC or [Policy 57](#) shall be considered by the Housing Commission for a recommendation to the City Council.
- Approval authority of the AHA is as follows:
  - AHA that are consistent with [CMC §21.85](#) and [Policy 57](#) and do not request financial assistance from the city shall first be considered by the Affordable Housing Policy Team for a recommendation to the H&HS Director.
  - Affordable Housing Agreements that propose a deviation(s) to [Policy 57](#) or request financial assistance shall first be considered by the Affordable Housing Policy Team and Housing Commission for a recommendation to the City Council, which has the authority to issue final approval of the alternative.

## YOUR OPTIONS FOR SERVICE

To schedule an appointment or to learn more about this program, please contact the Planning Division at 442-339-2600 or via email at [Planning@carlsbadca.gov](mailto:Planning@carlsbadca.gov) or the Housing & Homeless Services Department at 442-339-4721 or via email at [Housing@carlsbadca.gov](mailto:Housing@carlsbadca.gov).

