

ORDINANCE NO. 2299, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 14.04.020 "PURPOSE" AND 14.04.070 "ALTERNATIVES" OF CHAPTER 14.04 "INCLUSIONARY HOUSING" OF TITLE 14 "HOUSING" OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO CLARIFY THE INTENT OF THE CHAPTER AND TO ALLOW PAYMENT OF IN-LIEU FEES FOR ALL RESIDENTIAL PROJECTS AS DETERMINED BY CITY COUNCIL

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

Section 1. Section 14.04.020 (Purpose) of Chapter 14.04 (Inclusionary Housing) of Title 14 (Housing) is hereby amended to read as follows (additions in underline, deletions in strikeout):

The purpose of this chapter is to further the city's efforts to require housing available to extremely low-income, very low-income, low-income, and moderate-income households. The housing element of the city's general plan implements the established policy of the state of California that each community should foster an adequate supply of housing for persons at all economic levels.

Providing the inclusionary units required by this chapter will help to ensure that part of Morgan Hill's remaining developable land is used to provide affordable housing to encourage an economically balanced community. Requiring builders of new market-rate housing to include some housing affordable to households at a range of incomes is consistent with the goal of fostering an adequate supply of housing for persons at all income levels and serves the goal of mixed-income housing. Furthermore, the production of inclusionary units is intended to assist the City in meeting its Regional Housing Need Allocation.

The inclusionary housing ordinance is required in order to promote and protect the public health, safety, and general welfare while preserving and enhancing economic diversity and inclusiveness within the city.

Section 2. Section 14.04.070 (Alternatives) of Chapter 14.04 (Inclusionary Housing) of Title 14 (Housing) is hereby amended to read as follows (additions in underline, deletions in strikeout):

14.04.070 Alternatives.

In lieu of building Inclusionary Units within a Residential Project, an Applicant may propose to satisfy the requirements of this Chapter by one of the following alternative modes of compliance, provided that the Applicant includes such proposal in its application for the First Approval of the Residential Project, and further provided that the criteria stated in the relevant subsection below are satisfied.

- A. Rental units in for-sale projects. Where owner-occupied Inclusionary Units are required by Section 14.04.040 of this Chapter, an Applicant may instead elect to construct as part of the Residential Project the same or a greater number of rental units, affordable to extremely low-, very low-, low- and moderate-income households in the proportions and at the rents as prescribed in Section 14.04.030 of this Chapter. Substitution of rental units shall be allowed under this subsection only if either: (1) the rental units are at least equal in number of bedrooms to the owner-occupancy units that would have been allowed, or (2) any comparative deficiency in the number of bedrooms is compensated for by additional units and/or affordability to households with lower incomes.
- B. Off-site construction. An Applicant may propose to construct, or make possible construction by another developer, units that will not be physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the City determines this will provide greater public benefit). Off-site construction pursuant to this subsection shall be approved only if:
1. An Inclusionary Affordable Housing Agreement acceptable to the City Manager or his or her designee that requires an equal or greater number of Inclusionary Units as required under Section 14.04.040 of this Chapter is recorded;
 2. Approval has been secured for the off-site units not later than the time the Residential Project is approved, and completion of the off-site units is secured by a requirement that Certificates of Occupancy for the related market-rate units will be issued after Certificates of Occupancy have been issued for the Inclusionary Units, provided that the time requirements set forth in this subsection for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, financing requirements, or other factors, if the City determines this will provide greater public benefit;
 3. The off-site units will be greater in number, larger, or will be affordable to households with lower incomes than would otherwise be required by Section 14.04.040 of this Chapter;
 4. Financing or a viable financing plan is in place for the off-site units;
 5. If the off-site units receive any public assistance, the developer of the market-rate project will contribute economic value to the off-site units equivalent to the cost that would have been incurred to provide the required number of Inclusionary Units on-site in the Residential Project; and
 6. The City may require that completion of off-site units shall be further secured by the developer's agreement to pay an In-Lieu Fee in the amount approved by City Council in the event the off-site units are not timely completed.
- C. Land dedication. An Applicant may propose to dedicate without cost to the City, a lot or lots within or contiguous to the Residential Project, sufficient to accommodate at least the required Inclusionary Units for the Residential Project. An election to dedicate land in lieu of compliance with other provisions of this Chapter shall be allowed only if:

1. The value of the lot or lots to be dedicated is sufficient to make development of the otherwise required Inclusionary Units economically feasible, and financing or a viable financing plan is in place for at least the required number of Inclusionary Units; and

2. The lot or lots are zoned for and suitable for construction of affordable housing at a feasible cost, served by utilities, streets, and other infra-structure; there are no hazardous materials present or other material constraints on development of affordable housing on the lot or lots; and land use approvals have been obtained as necessary for the development of the Inclusionary Units on the lot or lots.

D. In-lieu housing fee.

1. An in-lieu housing fee may be paid in addition to building or in-lieu of building as follows:

a. As provided in Section 14.04.040A, whenever application of the requirements of this Chapter results in a fractional number of .49 or less of required Inclusionary Units.

b. For all other residential projects, upon determination by City Council that payment of an in-lieu fee is preferred to building Inclusionary Units onsite, or one of the other alternatives described in 14.04.070 A through C above, considering the following:

- i. Whether the production of the proposed Inclusionary Units will fill a need in an affordable housing category or some other prioritized housing need area.
- ii. Whether the proposed Inclusionary Units are in a category for which the City has already met its RHNA goal and therefore payment of a fee may be preferred.
- iii. Whether there is a specific identifiable project that the City can support with the fees.
- iv. Whether affordable units are appropriate in the specific project.

2. The initial In-Lieu Fee schedule shall be set by City Council resolution or other action of the City Council so that the fee amounts are not greater than the difference between: (a) the amount of a conventional permanent loan that an inclusionary unit would support based on the Affordable Rent or Affordable Sales Price for the Inclusionary Unit; and (b) the estimated total development cost of a prototypical Inclusionary Unit.

3. The City Council may annually review the fees authorized by this subsection by resolution, and may, based on that review, adjust the fee amount. For any annual period during which the City Council does not review the fee authorized by this subsection, fee amounts shall be adjusted once by the City Manager or his or her designee based on the construction cost index.

4. In-Lieu Fees shall be calculated based on the fee schedule in effect at the time the

fee is paid. In-Lieu Fees shall be paid prior to 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. Where payment is delayed, in the event of default or for any other reason, the amount of the In-Lieu Fee payable under this subsection shall be based upon the fee schedule in effect at the time the fee is paid.

Section 2. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. Effective Date; Posting. This Ordinance shall take effect on April 20, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF MARCH 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF MARCH 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Larry Carr, Yvonne Martinez Beltran, John McKay, Rich Constantine
NOES: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: Rene Spring

APPROVED:



RICH CONSTANTINE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

DATE: 3/27/2019

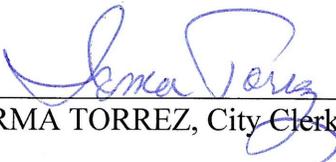
Effective April 20, 2019

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2299, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 20th day of March 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 3/27/2019



IRMA TORREZ, City Clerk

