

CHAPTER 20.310 INCLUSIONARY HOUSING

Section 20.310.010 Purpose and Intent

It is the intent of this chapter to establish requirements for the inclusion of affordable housing units for low-, very-low-, extremely-low-, and moderate-income households in residential projects that require development plans.

Section 20.310.020 Applicability, Definitions

The provisions of this chapter shall apply to all residential projects of one (1) or more units, including rental and for-sale market-rate dwelling units, condominium or cooperative conversions, and time extensions of development plan approvals for previously approved residential projects.

The provisions of this chapter shall also apply to density bonus units provided pursuant to the Density Bonus Ordinance adopted as required by section 65915 of the Government Code. Developers are entitled to density bonuses and/or other incentives provided pursuant to the Density Bonus Ordinance adopted as required by Section 65915 of the Government Code. The provisions of this chapter, however, must still be met for density bonus projects.

Please refer to Chapter 20.600 (Definitions) for definitions that apply throughout this Zoning Ordinance.

Section 20.310.030 Exemptions

This chapter shall not apply to the following, except at the discretion of the City:

- A. Any project developed pursuant to the terms of an existing development agreement entered into pursuant to Government Code Section 65964 et seq. before the effective date of this Zoning Ordinance. Inclusionary requirements, if any, shall be as set forth in such development agreement.
- B. Non-residential uses, except in the case of single-room-occupancy hotels.
- C. The construction of a new residential structure that replaces a residential structure that was destroyed or demolished within two (2) years prior to the application for a building permit, provided that the number of residential units is not increased.
- D. Accessory dwelling units developed in accordance with Chapter 20.410 (Accessory Dwelling Units and Accessory Structures).

Section 20.310.040 Inclusionary Requirements

A. Requirements for For-Sale Single-Family Units:

1. **Inclusionary requirement.** No development plan for a for-sale single-family residential project of one (1) or more units subject to this chapter (including time extensions) shall be approved unless an in-lieu fee is paid to provide housing opportunities for target households in the City in accordance with Section 20.310.050 (In-Lieu Fee). Alternatively, the requirements of this chapter may be satisfied on- or off-site through the reservation of new units or existing market-rate units for target households, as described in Section 20.310.060 (Options for Providing Inclusionary Units). The final determination if an in-lieu fee will be accepted or if the development must provide the required inclusionary units shall be based on review by the City Council.

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2. **Calculation of inclusionary requirement.** The calculation of the amount of in-lieu fee to be paid shall be based on the total number of housing units in the development prior to including any increase in the allowable number of such housing units authorized by any density bonus granted pursuant to Government Code Section 65915 et seq.

B. **Requirements for Rental Units.**

1. **Inclusionary requirement.** No rental residential project of more than six (6) units that is subject to this chapter shall be approved unless fifteen percent (15%) of such housing units are reserved for target households, unless a higher percentage is requested by the applicant/developer, or an in-lieu fee is paid to provide housing opportunities for target households in the City. The number of inclusionary units by target household shall be determined by supporting the deficit identified in the City's most recent Annual Housing Element Report to assist, to the greatest extent possible, in meeting its self-certification goals and regional share needs as set forth in the Housing Element of the General Plan. The amount of the in-lieu fee shall be determined in accordance with Section 20.310.050 (In-Lieu Fee). Notwithstanding the above, the number of inclusionary units reserved for moderate-income households in any proposed residential project may not exceed twenty-five percent (25%). There is no limit on the number of inclusionary units reserved for those qualifying as extremely low-, very low-, or low-income households.
2. **Calculation of inclusionary requirement.** Rental projects of six (6) or less units shall pay an in-lieu fee. The provisions of Section 20.310.050 (In-Lieu Fee) shall apply to the total number of housing units ~~calculation of the number of inclusionary units~~ to be built in any rental housing development. ~~If the calculation of the number of inclusionary units to be reserved results in a fraction of a whole number, the developer shall either reserve one (1) additional housing unit or pay a partial in-lieu fee equal to the remaining fraction.~~ The amount of the in-lieu fee shall be determined in accordance with Section 20.310.050 (In-Lieu Fee).
3. **Design and construction of inclusionary units.** The design and exterior appearance of the inclusionary units shall be compatible with and substantially the same as the market-rate units within the development, and shall contain proportionately the same or a larger number of bedrooms and square footage per unit as the market-rate units.

The inclusionary units shall be constructed either prior to or simultaneously with the market-rate units within the development. If the development is being constructed in phases, the percentage of inclusionary units to be constructed in each phase shall be equivalent to fifteen percent (15%) of the total number of market-rate units being constructed in that phase.
4. **Rental restriction.** The rent to be charged for an inclusionary unit shall be restricted to be affordable to target households within the definition of Section 20.310.020 (Applicability, Definitions). Such rental restrictions shall be effective for a minimum of fifty-five (55) years.

Additionally, said property shall be restricted in perpetuity to prohibit the conversion of the rental inclusionary units to a condominium, stock cooperative, community apartment, or such other form of ownership that would eliminate the inclusionary units as rental units.

C. **Requirements for Condominiums and Condominium or Cooperative Conversions:**

1. **Inclusionary requirements.** No for-sale condominium project or condominium/cooperative conversion project subject to this chapter (including time extensions) shall be approved unless at least fifteen percent (15%) of such housing units are reserved for target households or an in-lieu fee is paid to provide housing opportunities for target households in the City. The inclusionary requirements for condominium or condominium/cooperative conversion projects shall be determined by the City and may include the options in Section 20.310.060 (Options for Providing Inclusionary Units).
2. **Requirements for rental units.** If inclusionary units are required to be reserved for rental purposes, the requirements of Section 20.310.040.B (Requirements for Rental Units) shall apply.

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3. **Requirements for for-sale units.** If inclusionary units are required to be reserved as for-sale units, the requirements of Section 20.310.040.B (Requirements for Rental Units) shall apply, excepting Section 20.310.040.B.4 (Rental Restrictions). For-sale inclusionary units shall be sold at an affordable sales price to target households.

The initial sale price of for-sale inclusionary units shall be restricted to ensure that the price is affordable to target households within the definition of Section 20.310.040.B (Requirements for Rental Units) for a minimum of fifty-five (55) years. Resale of units shall be structured to recapture a percentage of the difference between the affordable price and the market value of the unit as determined by the City. This difference shall be used by the City to provide other for-sale housing opportunities at the same affordability level.

4. **Calculation of in-lieu fee.** If an in-lieu fee is required, said fee shall be calculated in accordance with Section 20.310.050 (In-Lieu Fee).

Section 20.310.050 In-Lieu Fee

- A. For residential rental and for-sale projects, developers may pay a fee in lieu of reserving units for target households where the City Council has approved the payment of an in-lieu fee. The amount of the ~~in~~-in-lieu fee shall be determined in accordance with Section 20.310.050 (In-Lieu Fee).
- B. The amount of the in-lieu fee shall be calculated by applying the in-lieu fee to the total number of housing units in the housing development.
- C. The amount of the in-lieu fee ~~for each required inclusionary unit~~ shall be determined by the City in accordance with this section, and shall be paid at the time of issuance of building permits for the first residential units in a development project subject to this chapter.
- ~~D.~~ All in-lieu fees collected hereunder shall be used by the City exclusively to provide housing opportunities for extremely-low-, very-low-, low-, or moderate-income households anywhere within the City. All in-lieu fees shall be held in a separate account, with interest accruing to said account. All funds in the account, including interest, shall be spent in any manner authorized by law as the City deems appropriate, and at such times as the City deems appropriate, solely to provide housing opportunities for extremely-low-, very-low-, low-, or moderate-income households and associated, reasonable administrative costs not to exceed 2% of fees collected in the previous fiscal year.
- ~~E.~~ At the discretion of the City, when a developer is authorized to pay an in-lieu fee, an irrevocable dedication of land or other non-monetary contribution of a value not less than the sum of the otherwise required in-lieu fee may be accepted as an alternative to paying the in-lieu fee if said non-monetary contribution will be effective in furthering the goals and policies of the Housing Element of the General Plan or this chapter. The determination of the City shall be final in this regard. The valuation of any land offered in place of an in-lieu fee shall be determined by an appraisal made by a qualified agent mutually agreed upon by the City and the applicant, with costs for the appraisal borne by the applicant.

Section 20.310.060 Options for Providing Inclusionary Units

- A. On-site inclusionary units for new for-sale residential projects may be provided as "for-sale" or rental units on-site in compliance with the requirements of Section 20.310.040 (Inclusionary Requirements) at the determination of the City Council. On-site inclusionary units for new rental residential projects shall be provided as rental units in compliance with the requirements of Section 20.310.040 (Inclusionary Requirements).
- B. Off-site provision of inclusionary units for new for-sale residential projects may be provided as "for-sale" or rental units at another site within the City or in existing market-rate developments in conformance with the requirements of Section 20.310.040 (Inclusionary Requirements) at the determination of the City Council. The location of these units shall be at the discretion of the City. Off-site provision of inclusionary units for

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- new rental residential projects shall be provided as rental units at another site within the City or in existing market-rate developments in conformance with the requirements of Section 20.310.040 (Inclusionary Requirements).
- C. On- or off-site inclusionary units reserved for rental or for-sale developments shall be rented or sold at an affordable rent or sales price to target households. The affordable rent or sales price should be based upon California Housing and Community Development's Official State Income Limits.
 - D. Inclusionary unit credits. If an applicant of a new for-sale or rental development provides newly constructed off-site rental units to meet the inclusionary requirements, and such rental units exceed the number of inclusionary units required by this chapter, the excess units may be used to meet the inclusionary unit requirements for another applicant. Any sale of "inclusionary unit credits" shall be a civil transaction with no regulation by the City (i.e., the inclusionary unit credits may be sold at whatever price the market will bear). All inclusionary units must be deed restricted to comply with the requirements of Section 20.310.040 (Inclusionary Requirements).

Section 20.310.070 Incentives

- A. Certain types of affordable housing are relatively more desirable in satisfying the City's affordable housing goals and the goals of the Housing Element of the General Plan. As an incentive to assist the City in providing this housing, applicants may receive additional credit for such units, thereby reducing the total inclusionary housing requirement. Whether such credit is appropriate and, if so, the amount of such additional credit shall be determined by the City based on the housing needs identified in the Housing Element of the General Plan and the credit the units provide toward the City's self-certification affordable housing goals.
- B. Although nothing in this chapter establishes a right to receive any incentive from the City or any other party or agency to enable the applicant to meet the obligations of this chapter, the City, at its sole discretion, may waive or modify certain development standards to assist the applicant in meeting the City's housing needs as described in Section 20.310.070.A (Incentives).
- C. Projects are entitled to density bonuses and/or other incentives in accordance with state law, and applicants are encouraged to use local, state, or federal assistance to meet the requirements of this chapter. The requirements of this chapter shall not, however, require the City to agree to a density increase beyond that allowed by state's Density Bonus Law.

Section 20.310.080 Inclusionary Housing Agreement

- A. **Agreement Required.** Applicants/developers subject to this chapter who are required to provide rental or for-sale inclusionary units shall agree to enter into an inclusionary housing agreement with the City. The terms of the draft agreement shall be reviewed and revised as appropriate by the Director and approved by the City.

Following execution of the agreement by all parties, the completed inclusionary housing agreement, or memorandum thereof, shall be recorded and the conditions recorded as a deed restriction on the parcel(s) or unit(s) designated for the location of inclusionary units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The inclusionary housing agreement shall be binding to all future owners and successors in interest.

- B. **Agreement Items.** The inclusionary housing agreement shall include the following:
 1. The total number of inclusionary units.
 2. The location, unit size (square feet), and number of bedrooms of the inclusionary units.
 3. A description of the household income group(s) to be accommodated by the housing development, and the standards for determining the corresponding affordable rent or affordable sales price and housing cost.

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4. The household/unit size assumptions used for the purpose of calculating housing costs shall be as follows (unless an adjustment is agreed to by the City, or the applicable state or federal funding source has different requirements):
 - a. One (1)-bedroom units shall be based on the median income for a household of two (2),
 - b. Two (2)-bedroom units shall be based on the median income for a household of three (3),
 - c. Three (3)-bedroom units shall be based on the median income for a household of four (4), and
 - d. Four (4)-bedroom units shall be based on the median income for a household of five (5).
 5. Tenure of affordability for inclusionary units (fifty-five (55)-year minimum).
 6. A schedule for completion and occupancy of inclusionary units.
 7. A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third-party beneficiaries under the agreement).
 8. For for-sale units, conditions governing the initial sale and resale of inclusionary units to eligible households to ensure continued compliance with the restrictions of this chapter.
 9. For for-sale units, a condition requiring disclosure by the developer to the buyer of inclusionary units of the existence of the deed restrictions affecting the re-sale of the property.
 10. For rental units, conditions establishing rules and procedures for qualifying tenants, setting rental rates, filling vacancies, and operating and maintaining units as rental inclusionary units for target households.
 11. For rental units, a method to annually monitor inclusionary units to ensure continued compliance with the restrictions of this chapter that identifies the number of bedrooms and monthly rent or cost of each inclusionary unit, the income of each person occupying said unit for the prior year, vacancy information for each inclusionary unit for the prior year, a copy of the annual lease agreement for each of the affected unit(s), and any other information as required by the City.
 12. For rental units, any tenant who is displaced by another City of San Marcos affordable housing project shall be eligible to be placed on a waiting list for the Project in accordance with applicable Fair Housing law, upon application by the displaced and verification by the City, subject to income qualification. All such displacees shall be subject to standards and tenant selection and eligibility criteria as mandated by law, including income requirements for inclusionary units. Any affordable housing development requiring tenant relocation must provide a relocation plan consistent with applicable law and regulations, which plan must be drafted and finalized within 12 months of the initiation of any relocation efforts, and which must be developed by a qualified third-party relocation consultant acceptable to the City.
 13. Conditions granting the City or its designee the first right of refusal to buy the on-site for-sale inclusionary unit(s) for the purposes of preserving and maintaining affordable housing.

Section 20.310.090 Administration

For purposes of this chapter, the City shall act by and through the City Council or its designee, the City Manager.

A developer and/or subsequent purchaser of an inclusionary unit shall be required to pay such fee as may be established by resolution of the City Council to recover the cost to the City of administration of the provisions of this chapter.

Section 20.310.100 Building Permit

No building permit shall be issued for any residential project subject to this chapter unless the Director has certified that the proposed development has complied with or is otherwise exempt from the provisions of this chapter.



TITLE 20 ZONING ORDINANCE APRIL 30, 2025 PUBLIC WORKSHOP

City staff conducted a virtual public workshop on proposed updates to 13 chapters to the Zoning Ordinance (TA23-0001) on April 30, 2025, at 6 pm. The workshop provided an overview of the updates to those 13 chapters proposed to be incorporated in the Zoning Ordinance and solicited feedback on the changes. No official decisions were made at this meeting.

Detailed information on the updates to the Zoning Ordinance are posted on the City's website at this address:

<https://www.san-marcos.net/home/showpublisheddocument/29422/638810223541070000>

Further information about the April 30, 2025, Public Workshop can be obtained from Sarah Cluff, Associate Planner, by calling 760-744-1050 extension 3227, or via email scluff@san-marcos.net