

SUBCHAPTER 6

INCLUSIONARY HOUSING

SUBCHAPTER 6: INCLUSIONARY HOUSING

SECTION 6.01.00. PURPOSE.

The purpose of this subchapter is to enhance the public welfare by ensuring that further housing development contributes to the attainment of the Town's General Plan Housing Element goals, policies and programs by:

- (1) Increasing the stock of dwelling units accessible to the handicapped.
- (2) Increasing the stock of dwelling units affordable by households of low or moderate income.
- (3) Requiring housing in-lieu fee contributions for the production or preservation of affordable units.

A limited amount of land remains for development of housing in the Town. The General Plan Housing Element emphasizes actual production or purchase of affordable units as preferable to in-lieu fee contributions. To ensure that remaining residentially-designated land is utilized in a manner consistent with the Town's housing policies, the Town declares that each residential development creating two or more new lots or dwelling units shall provide inclusionary units or shall contribute to the Town's in-lieu housing fund.

SECTION 6.02.00. DEFINITIONS.

For the purposes of this subchapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

Affordable unit: A dwelling unit affordable to households of low or moderate income as determined by the Housing Authority.

Applicant: Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks Town permits and approvals.

At one location: All adjacent land owned or controlled by the applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road or other public or private right-of-way, or separated only by other land of the applicant.

Density bonus: An increase in the number of units otherwise allowed for any particular lot or parcel.

SUBCHAPTER 6: INCLUSIONARY HOUSING

Dwelling unit: One or more rooms, including a kitchen or kitchenette and sanitary facilities, occupied for living and sleeping purposes by not more than one household. Secondary dwelling units as defined in Section 4.05.02 of the Zoning Ordinance are not considered dwelling units for the purposes of this subchapter.

Handicapped Accessible Unit: A dwelling unit meeting the special requirements as set forth in federal and state law for handicapped persons.

Housing Authority: The Housing Authority of the County of Marin, a public body, corporate and politic, created under the Housing Authority Law of the State of California, or its successor.

Housing Director: The Executive Director of the Housing Authority.

HUD: The United States Department of Housing and Urban Development or its successor.

Inclusionary unit: An ownership or rental dwelling unit which is affordable by households with low or moderate income, or a handicapped accessible dwelling unit.

In-lieu housing fee: A fee paid to the Town by an applicant for residential development in the Town, in lieu of providing the required inclusionary units or lots.

Lot: Land occupied by, or to be occupied by, a dwelling unit.

Low and moderate income: Those income levels determined periodically by the Housing Authority using median income levels and family sizes. Generally, 50% to 80% of median income indicates a low income household, and 80% to 120% of median income indicates a moderate income household.

Median Income: Refers to the median income for the San Francisco Primary Metropolitan Statistical Area (PMSA) determined by HUD, adjusted for family size and updated annually.

New: Not previously existing in a numerical sense. For example, the subdivision of an existing lot into two lots will create only one new lot.

SUBCHAPTER 6: INCLUSIONARY HOUSING

Resale controls: Legal restrictions by which the price of affordable units will be controlled to ensure that the unit remains affordable by low or moderate income households on resale.

Residential development: A housing project, condominium conversion, or land subdivision, at one location, including all units for which permits have been applied for or approved.

SECTION 6.03.00. GENERAL INCLUSIONARY REQUIREMENTS.

- (a) Any residential development creating 2 through 9 new lots or dwelling units (whichever is greater), but not providing one or more affordable units, shall make a pro rata monetary contribution to the Town's in-lieu housing fund in accordance with the provisions of Section 6.08.00 of this subchapter.
- (b) Any residential development creating 10 or more new lots or dwelling units (whichever is greater) shall:
1. Provide 5% of the total number as handicapped accessible units as defined herein.
 2. Provide 10% of the total number as units affordable by low or moderate income households in perpetuity; a minimum of 5% shall be affordable to low income households. In developments for which only one affordable unit is required, it may be for moderate income households. No more than 50% of affordable units shall double as handicapped accessible units required in (1) above.
- In applying the 10% figure, any decimal fraction less than 0.50 may be disregarded and any decimal fraction equal to or greater than 0.50 shall be construed as requiring one affordable unit.
- (c) If on-site provision of inclusionary units is determined by the Town to be infeasible, the applicant may provide an equal number of off-site units within the Tiburon Planning Area as inclusionary units in perpetuity. This may entail working with non-profit sponsors to acquire or rehabilitate existing dwelling units. Innovative off-site proposals which produce permanently-affordable units are encouraged when on-site provision of units is determined to be infeasible.

SUBCHAPTER 6: INCLUSIONARY HOUSING

- (d) If the Town finds that on-site construction or off-site provision of inclusionary units is infeasible, then the Town may allow payment of in-lieu fees in accordance with Section 6.08.00. However, the on-site provision of inclusionary units is strongly preferred, and in-lieu fees should be viewed only as a last resort in projects creating 10 or more new lots or dwelling units.
- (e) Any residential development creating 2 or more new lots or dwelling units (whichever is greater) shall be subject to conditions ensuring compliance with the provisions of this subchapter. Such conditions may specify the timing of construction or purchase of inclusionary units (or payment of in-lieu fees), the number of inclusionary units at appropriate price levels, provisions for income certification and screening of potential purchasers and/or renters of inclusionary units, and resale control mechanisms. Said conditions may require a written agreement between the applicant and the Town or its designee, indicating the number, type, location, sales price, approximate size and construction scheduling of inclusionary units and such reasonable information as is required to determine compliance.
- (f) All inclusionary units in a project should be constructed concurrently with or prior to the construction of non-inclusionary units, unless the Town finds that extenuating circumstances exist which render this infeasible.
- (g) Inclusionary units may vary in design from the non-inclusionary units, so long as the project remains architecturally harmonious. Attached units, smaller lots, reduced parking standards, and other design variations may be permitted in inclusionary units to reduce costs.
- (h) The applicant shall have the option of reducing the interior amenity level and the square footage of the inclusionary units below that of the non-inclusionary units, provided all such units conform to the requirements of applicable building and housing codes.
- (i) To fast-track processing of residential developments qualifying for density bonuses, the Town shall allow the retention of outside development consultants, to be screened by the Town, for purposes of primary processing of the development through the Town's permit procedures.

SUBCHAPTER 6: INCLUSIONARY HOUSING

- (j) The Town shall waive certain application and development fees for the inclusionary units in a proposed development.

SECTION 6.04.00. REQUIREMENTS FOR RENTAL DEVELOPMENTS.

- (a) Affordable rental units shall be offered at rent levels not exceeding the maximum housing unit rental price affordable by low income households (50% to 80% of median income), as determined by the Housing Authority.
- (b) The Town shall contract with the Housing Authority to monitor the developer and/or management agent's compliance with the requirements established for rent levels and income eligibility for the inclusionary rental units. The developer or owner shall retain final discretion in the selection of tenants, provided that the same rental terms and conditions are applied to tenants of inclusionary units as are applied to tenants of non-inclusionary units in the development, except as to rent levels and income, or as required to comply with government subsidy programs.
- (c) The Housing Authority shall be the designated authority on behalf of the Town to require guarantees, to enter into recorded agreements with developers, and to take other appropriate steps necessary to ensure that the required low income rental units are provided and that they are rented to low income households. When this has been assured to the satisfaction of the Housing Authority, the Housing Director shall prepare a certification indicating that the developer or owner has complied with the requirements of this section, and shall transmit it to the Town.

SECTION 6.05.00. REQUIREMENTS FOR OWNERSHIP DEVELOPMENTS.

- (a) Inclusionary ownership units for moderate income households shall be sold at prices affordable to moderate income households as determined by the Housing Authority. Low income units shall be sold at prices affordable to low income households as determined by the Housing Authority. The inclusionary unit sales prices and the parameters used to calculate the sales prices shall be determined by the Housing Authority.
- (b) The applicant shall be required, for a period of not less than one hundred twenty (120) days from the date of the Town's issuance of an occupancy permit for the inclusionary units, to offer to the Housing Authority (or individuals selected and

SUBCHAPTER 6: INCLUSIONARY HOUSING

qualified by the Housing Authority), the Town, or a party designated by the Town, all inclusionary units required by this subchapter, for sale to eligible purchasers. Sale and resale restrictions will be removed from the units in the event the Housing Authority, the Town, or a Town designee does not, within said one hundred twenty (120) days, complete the sale to an eligible purchaser, or elect to purchase the units for subsequent sale to an eligible purchaser. The Housing Authority shall advise all prospective purchasers of the resale restrictions applicable to inclusionary units.

- (c) Upon written notification of the availability of inclusionary units by the developer to the Housing Authority 120 days prior to anticipated completion of the inclusionary units, the Housing Authority shall advertise the inclusionary units to the general public and shall seek and screen qualified purchasers through a process involving applications and interviews. Where necessary, the Housing Authority shall hold a lottery to select purchasers. The same terms and conditions (except income) shall apply to purchasers of inclusionary units as are applied to purchasers of non-inclusionary units in the development.
- (d) Every purchaser of an inclusionary unit shall acknowledge in a form acceptable to the Town that the unit is being purchased for the purchaser's primary residence and that continuous owner-occupancy is a condition of eligibility under the program. The Housing Authority shall verify this acknowledgement. Failure by the purchaser to maintain eligibility for homeowner's property tax exemption, or to accept receipt of a certified or registered letter sent by the Town, shall be construed to mean that the inclusionary unit is not the primary place of residence of the purchaser.

SECTION 6.06.00. DENSITY BONUSES.

- (a) Pursuant to Government Code Section 65915 et seq., the town shall provide density bonuses of twenty-five percent for projects which provide twenty percent of the total units of a residential development for lower income households, ten percent of the total units of a residential development for very low income households, or fifty percent of the total units of a residential development for people 62 years of age or older, or 55 years of age or older in a senior citizen housing development; or the town shall provide a density bonus of ten percent for condominium projects which provide twenty percent of the total units for moderate income households, in addition to the other incentives described in sections 6.03 (g), (h), (i) and (j).
- (b) Applicants who propose residential development which complies with the affordability requirements described in section (a) may submit to the town a proposal for the specific incentive described in sections 6.03(g), (h), (i) and (j). The town shall award the incentive unless either of the following written findings is made based upon substantial

SUBCHAPTER 6: INCLUSIONARY HOUSING

evidence:

- (1) The incentive is not required in order to provide for affordable housing costs, or
 - (2) The incentive would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.
- (c) The town shall grant density bonuses which allow the re-establishment of developments containing affordable housing units when such developments are destroyed by fire, earthquake, or similar disaster, even when such developments may exceed current allowable densities.

SECTION 6.07.00. CONTROL OF RESALE.

The Town shall require the following resale conditions in order to maintain the availability of inclusionary units in perpetuity:

1. The resale price of an inclusionary unit shall be limited to the lowest of:
 - (a) the purchase price plus an increase based on the percentage increase in the Consumer Price Index for the San Francisco Bay Area for all urban consumers since the date of previous purchase; or
 - (b) the purchase price plus an increase, based on the percentage increase in the median income since the date of purchase; or
 - (c) the fair market value.
2. Ownership inclusionary units being sold shall be offered to the Housing Authority or its assignee at the price determined according to subdivision 1 of this Section, for a period of 120 days from the date a notification of intent to sell is given by the first purchaser or subsequent purchaser(s). Ownership inclusionary units shall be resold only to low or moderate income households as determined to be eligible for inclusionary units by the Housing Authority. The seller shall not levy or charge any additional fees in connection with the sale, nor shall any "finder's fee" or other monetary consideration be allowed on resale other than customary real estate commissions and closing costs.

SUBCHAPTER 6: INCLUSIONARY HOUSING

3. At the time of purchase, the owners of any inclusionary unit shall execute a Resale Restriction Agreement and Option to Purchase provided by the Housing Authority, stating the restrictions imposed pursuant to this subchapter, including but not limited to all applicable resale controls and occupancy restrictions. This Resale Restriction Agreement and Option to Purchase shall be recorded in the Office of the County Recorder and shall afford the Housing Authority and the Town the right to enforce the declaration of restrictions.
4. The Housing Authority shall be responsible for monitoring and facilitating the resale of inclusionary units. Any abuse in the resale provisions shall be referred to the Town for action.

SECTION 6.08.00. AMOUNT OF IN-LIEU HOUSING FEE.

- (a) In-lieu housing fees shall be calculated on the basis of the difference between the affordable purchase price of a dwelling unit for which a moderate income family (earning 80% of median income) can qualify, and the estimated cost of constructing a market rate unit of appropriate size, to be determined by the Town. The Town's in-lieu housing fee shall be revised semi-annually by the Planning Director and shall include current fixed-rate mortgage rates, median incomes, construction costs and site/land development costs as determined by the Town. The total in-lieu fee shall be calculated by multiplying the required number of inclusionary units (including exact fractions of a unit) by the per-unit in-lieu housing fee (see Exhibit "A").
- (b) The in-lieu housing fee shall constitute a lien on the property. The recorded lien notice shall include a provision for foreclosure under power of sale in case of default.
- (c) Unless otherwise specified in conditions of project approval, the payment of in-lieu housing fees shall be at the time of issuance of the first building permit associated with the project, or as otherwise required by state law.

SECTION 6.09.00. USE AND ANNUAL REPORTING OF FEE REVENUES.

- (a) Revenues raised by payment of housing in-lieu fees shall be placed in a segregated Town-wide housing in-lieu fund.
- (b) Revenues collected, including interest earned, under the provisions of this subchapter shall be used for the following purposes:
 1. Design and construction of permanently affordable units.

SUBCHAPTER 6: INCLUSIONARY HOUSING

2. Other actions which would directly preserve, conserve, rehabilitate, or increase the supply of affordable units in the Tiburon Planning Area.
- (c) No later than January 30 of each year, the Town Manager shall prepare a report for the Town Council to make findings with respect to any fees in the Town-wide housing in-lieu fund remaining unexpended or uncommitted for five years or more after their deposit. The findings shall identify the purpose to which the fees are to be put and shall demonstrate a reasonable relationship between the fees and the purpose for which they were collected. The findings need only be made for moneys in the possession of the Town.
- (d) The Town Council shall review the report at a noticed public hearing and shall refund to the current owners of record on a prorated basis the unexpended portion of the fees, with interest, for which a purpose cannot be demonstrated pursuant to subsection (c) above.

SECTION 6.10.00. EXEMPTIONS.

The construction of a two-family dwelling (or of two detached single family dwellings) on any lot in the R-2 zone which lawfully existed as of January 1, 1992 shall not be subject to the provisions of this subchapter.

SECTION 6.11.00. APPEAL.

Any person aggrieved by the denial, conditioning, suspension or revocation of a building or occupancy permit or other development permit pursuant to provisions of this subchapter, may appeal such action or determination to the Town Council.

EXHIBIT A
TOWN OF TIBURON IN LIEU FEE CALCULATION
 (for illustration purposes only)

1. Cost to construct a modest single-family dwelling unit of 1500* square feet.

Assumptions:

A.	Land and site development costs.	\$250,000*
B.	Construction costs @ \$125* per sq. ft.	\$187,500
C.	Total of A and B above.	\$437,500

2. Moderate income purchase price affordability calculation.

Assumptions:

4-person* household at 80% of median income = \$39,900.

9.5%* fixed rate mortgage, 90%* loan to value ratio, 10%* down-payment.

25%* for mortgage payment

Mortgage payment equates to: \$831

Loan Amount equates to: \$98,800

Affordable purchase price: \$109,800

3. In-lieu housing fee calculation (using these variables):

A.	Total Construction Cost:	\$437,500
B.	Affordable Purchase Price:	<u>\$109,825</u>
C.	In-lieu housing fee (per unit):	\$327,675

* Denotes a variable subject to determination by the Planning Director or Housing Authority.