

**ORDINANCE 487**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAMON ADDING  
CHAPTER XII - INCLUSIONARY HOUSING (RESIDENTIAL DEVELOPMENT  
PROJECTS), SECTIONS C4-175 THROUGH 189, AND CHAPTER XIII -  
AFFORDABLE HOUSING COMMERCIAL LINKAGE FEE (COMMERCIAL  
DEVELOPMENT PROJECTS), SECTIONS C4-190 THROUGH 204, TO TITLE C,  
DIVISION C4 OF THE SAN RAMON MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF SAN RAMON DOES ORDAIN as follows:

**SECTION I:** CHAPTER XII, Inclusionary Housing (Residential Development Projects) is hereby added to Title C, Division C4 of the San Ramon Municipal Code to read:

**CHAPTER XII**  
Inclusionary Housing (Residential Development Projects)

**Section C4-175. Basis and Purpose.**

In enacting the Ordinance codified in this Chapter, the City Council finds as follows:

- A. The Legislature of the State of California has found that the availability of housing is of vital statewide importance, and that providing decent housing for all Californians requires the cooperative participation of government and the private sector. The Legislature has further found that local governments have a responsibility to use the powers vested in them to make adequate provisions for the housing needs of all economic segments of the community. This Chapter is intended to utilize the police powers of the City of San Ramon, a Charter City, to enhance the public welfare by making adequate provision for the housing needs of all economic segments of the community through exercise of its land use authority in approving residential development projects. This Chapter will ensure that market-rate housing mitigates its impacts on the need for affordable housing by establishing policies which require the development of housing affordable to households of very low-, low-, and moderate-incomes, assist in meeting the City's share of the region's housing need, and help implement the goals, policies, and objectives of the General Plan and the Housing Element.
- B. The Housing Element of the City's General Plan has a goal of encouraging the development of affordable housing to help meet the City's assigned share of the regional housing need and has adopted a policy of encouraging the development of a diverse housing stock that provides a range of affordability levels. To implement this goal, the City has committed to increase the production of affordable units at all income levels; in part through production of the on-site construction and payment of affordable housing fees to the City to be used for development of very low-, low-, and moderate-income households. This Chapter provides alternatives that allow for creativity in achieving the overall goal of producing and retaining affordable units.

- C. Land prices are a key factor preventing development of new affordable housing. New housing construction in the City which does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the affordable units and affordable housing fees required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing. At the same time, new market-rate housing contributes to the demand for goods and services in the City, increasing local service employment at wage levels which often do not permit employees to afford housing in the City. The "Development Fee Study", prepared in 2017 (the "Nexus Study"), prepared by Keyser-Marston Associates (KMA), quantifies the impacts of new market-rate units on the need for affordable housing in the City and the justified affordable housing fees to mitigate those impacts. The affordable housing fees authorized by this Chapter are required to be reasonably related to the need for affordable housing associated with market-rate housing as demonstrated by the most current Nexus Study.
- D. An economically-balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some affordable housing is fair, not only because new development without affordable units contributes to the shortage of affordable housing but also because Zoning and other Ordinances concerning new housing production in the City should be consistent with the community's goal of fostering an adequate supply of housing for households at all affordability levels and should address the need for affordable housing related to market-rate housing production. This is particularly true of very low-income housing. The City of San Ramon Regional Housing Need Allocation (RHNA) for the period 2014-2022 requires facilitating the development of 516 new very low-income units and 279 new low-income units. As of 2017, only 102 such units have been created.
- E. The City is experiencing the loss of affordable housing due to the expiration of covenants restricting rents in some affordable housing developments. Affordable housing fees may provide a source of financing to enable the City to preserve existing affordable housing that would otherwise be lost.
- F. The limited production of rental housing and the displacement of rental housing units through conversions to residential condominiums reduce the City's rental housing supply, which causes increased rental housing costs and decreased housing affordability. The provision of affordable units within residential condominium conversion projects provides affordable housing ownership opportunities that help offset the loss of affordable rental units.

**Section C4-176. Definitions.**

As used in this Chapter, each of the following terms shall be defined as follows:

"Accessory dwelling unit" shall have the same meaning as that term defined in Title D of the San Ramon Municipal Code.

"Affordable ownership cost" means a sales price resulting in projected average monthly

housing payments, during the first calendar year of a household's occupancy, including but not limited to interest, principal, mortgage insurance, property taxes, homeowners' insurance, homeowners' association dues, if any, and a reasonable allowance for utilities, property maintenance, and repairs, not exceeding the following:

1. Very low-income households: 50 percent of the annual area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.
2. Low-income households: 80 percent of the annual area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.
3. Moderate-income households: 120 percent of the annual area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.

"Affordable rent" means monthly rental housing expenses, including all fees for housing services and a reasonable allowance for utilities, not exceeding the following:

1. Extremely low-income households: 30 percent of the annual area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.
2. Very low-income households: 50 percent of the annual area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.
3. Low-income households: 80 percent of the annual area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.
4. Moderate-income households: 120 percent of the annual area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12, but in no event greater than market rent.

"Affordable units" means living units which are required under this Chapter to be rented at affordable rent or available at an affordable ownership cost to eligible households.

"Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks City real property residential development permits or approvals.

"Area median income" means median income for Contra Costa County, adjusted for household size, as published pursuant to California Code of Regulations, Title 25, Section 6932 and California Health and Safety Code section 50093 as may be amended.

“Assumed household size” means one person in a studio apartment, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter, unless a federal standard applicable to the development requires the use of a different assumed household size, in which case the federal standard shall apply.

“Construction cost index” means the Engineering News Record McGraw-Hill Construction Weekly Building Cost Index for San Francisco. If that index ceases to exist, the Community Development Director shall substitute another construction cost index which in his or her judgment is as nearly equivalent to the original index as possible.

“Eligible buyer” means an eligible household qualified to purchase an affordable unit.

“Eligible household” means a household whose household income (as defined) does not exceed the maximum specified for a very low-, low-, or moderate-income household as applicable for a given affordable unit.

“First approval” means the first of the following approvals to occur with respect to a residential project: development plan approval, subdivision approval, land use permit approval, design review approval, other discretionary land use approval, or building permit.

“For-sale project” means a residential project, or portion thereof, that includes the creation of two or more residential living units that may be sold individually, including a condominium, stock cooperative, community apartment, or attached or detached single-family home. A for-sale project also includes a residential condominium conversion project and the creation of residential living units that may be sold individually, but are initially rented rather than sold.

“Household income” means the combined adjusted gross income for all adult persons living in a living unit as calculated for the purpose of the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor provision.

1. “Extremely low-income household” means a household whose income does not exceed the extremely low-income limits pursuant to the published standard.
2. “Very low-income household” means a household whose income does not exceed the very low-income limits pursuant to the published standard.
3. “Low income-household” means a household whose income does not exceed the low-income limits pursuant to the published standard.
4. “Moderate-income household” means a household whose income does not exceed the moderate-income limits pursuant to the published standard.

“Market-rate units” means new living units in residential projects which are not affordable units (as defined).

“Rental project” means a residential project, or portion thereof, that creates living units that cannot be sold individually, except that construction of any accessory dwelling unit shall not be considered a rental project.

“Residential project” means any project containing two or more net new living units or residential lots, or living units and residential lots which total two or more net new units and/or lots in combination, built pursuant to or contained in an application for a development plan, subdivision map, land use permit, other discretionary City land use approval, or building permit. An accessory dwelling unit built on an existing residential lot is not considered a residential project and is not subject to this Chapter. A residential condominium conversion project is considered a residential project and is subject to this Chapter. The provisions of this section shall be interpreted broadly to effect the purposes of this Chapter and to prevent evasion of its terms.

**Section C4-177. Inclusionary Housing Requirements.**

The Inclusionary Housing Requirements of this Chapter shall apply to all new residential projects consisting of two or more residential units. Calculations of the number of affordable units required by this Section shall be based on the number of dwelling units in the residential development, excluding any density bonus units as defined in state law or provisions of this code. For mixed-use development projects, the Inclusionary Housing Requirement is determined by: (1) calculating the base Inclusionary Housing Requirement for the commercial use, and (2) calculating the base Inclusionary Housing Requirement for the residential use.

A. For-Sale Projects. The following basic requirements apply to all new for-sale projects unless an alternative is provided by this Chapter:

1. Fewer than Ten Dwelling Units. All for-sale single-family and multi-family residential development projects between two (2) and nine (9) dwelling units may pay an affordable housing fee in-lieu of construction of affordable units. The fee shall be equivalent to 25 percent of the development’s total new residential livable square footage (excluding garages) multiplied by the City’s cost per square foot rate as set forth in the City’s Fee Resolution. The formula below shall be used in calculating the amount of the affordable housing in-lieu fee:

(25 percent of the total livable residential square footage, excluding garage) multiplied by (per square foot fee) equals (total affordable housing in-lieu fee).

The City shall deposit these fees into an Affordable Housing Fund as set forth in Section C4-180 to mitigate the impact of the project on the need for affordable housing units.

2. Multi-Family Residential Developments. All for-sale multi-family residential development projects of ten (10) dwelling units or more shall develop and reserve 15 percent or more of all for-sale units as affordable units to be sold to very low-, low-, and moderate-income households.

- a. Allocation of Units to Income Levels. Of the 15 percent affordable units provided

pursuant to this subsection, units shall be allocated to households with very low-, low-, and moderate-income levels as follows. The applicant is not precluded from increasing the level of affordability in the project:

	<b>For-Sale Multi-Family Units</b>
Very low-income households	20%
Low-income households	30%
Moderate-income households	50%

3. Single-Family Detached Residential Developments. All for-sale single-family detached residential development projects of ten (10) dwelling units or more shall develop and reserve 10 percent or more of all for-sale units as affordable units to be sold to moderate-income households. Construction of accessory dwelling units would not satisfy the Inclusionary Requirement of the project. Alternatively, the single-family detached residential project can opt to pay an affordable housing fee equivalent to 10 percent of the development's total new residential livable square footage (excluding garages) multiplied by the City's cost per square foot rate as set forth in the City's Fee Resolution. The formula below shall be used in calculating the amount of the affordable housing in-lieu fee:

(10 percent of the total livable residential square footage, excluding garage) multiplied by (per square foot fee) equals (total affordable housing in-lieu fee).  
 The City shall deposit these fees into an Affordable Housing Fund as set forth in Section C4-180 to mitigate the impact of the project on the need for affordable housing units.

4. Exceptions. For the purpose of calculating the number of affordable units required by this section, any accessory dwelling units and any additional units authorized as a density bonus pursuant to State law or provisions of this Code shall not be counted as part of the for-sale project.
5. Fractional Units. In computing the total number of affordable 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.
6. Where the calculation of the allocation results in fewer units than would otherwise be required pursuant to subsection (A.2) of this section, one additional unit should be allocated to the income level with a decimal fraction closest to 0.50.
7. Design and Distribution of Affordable Units. On-site affordable units shall be comparable to the market rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction. Affordable unit size should be generally representative of the unit sizes within the market-rate portion of residential projects, as acceptable to the Community Development Director. Interior features and finishes in affordable units shall be durable, of good

quality and consistent with contemporary standards for new housing. The affordable units shall be dispersed throughout the residential project in a manner acceptable to the Community Development Director unless an alternative is approved by the review authority.

8. Affordable units provided pursuant to one of the alternatives set forth in this Chapter shall be approved and completed no later than time prescribed in this Chapter.

B. Rental Projects. The following basic requirements apply to all new rental projects unless an alternative is provided by this Chapter:

1. Fewer than Ten Dwelling Units. All rental residential development projects between two (2) and nine (9) dwelling units may pay an affordable housing fee in-lieu of construction of affordable units. The fee shall be equivalent to 25 percent of the development's total new residential livable square footage (excluding garages) multiplied by the City's cost per square foot rate as set forth in the City's Fee Resolution. The formula below shall be used in calculating the amount of the affordable housing in-lieu fee:

(25 percent of the total livable residential square footage, excluding garage) multiplied by (per square foot fee) equals (total affordable housing in-lieu fee).

The City shall deposit these fees into an Affordable Housing Fund as set forth in Section C4-180 to mitigate the impact of the project on the need for affordable housing units.

2. All rental residential development projects of ten (10) dwelling units or more shall develop and reserve 15 percent or more of all rental units as affordable units to be rented to very low- and low-income households.
  - a. Allocation of Units to Income Levels. Of the 15 percent affordable units provided pursuant to this subsection, units shall be allocated to households with very low- and low-income levels as follows. The applicant is not precluded from increasing the level of affordability in the project.

<b>Rental Units</b>	
Very low-income households	50%
Low-income households	50%

3. Exceptions. For the purpose of calculating the number of affordable units required by this section, any accessory dwelling units and any additional units authorized as a density bonus pursuant to State law or provisions of this Code shall not be counted as part of the rental project.
4. Fractional Units. In computing the total number of affordable 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.

5. Where the calculation of the allocation results in fewer units than would otherwise be required pursuant to subsection (B.2) of this section, one additional unit should be allocated to the income level with a decimal fraction closest to 0.50.
  6. Design and Distribution of Affordable Units. On-site affordable units shall be comparable to the market rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction. Affordable unit size should be generally representative of the unit sizes within the market-rate portion of residential projects, as acceptable to the Community Development Director. Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing. The affordable units shall be dispersed throughout the residential project in a manner acceptable to the Community Development Director unless an alternative is approved by the review authority.
  7. Affordable units provided pursuant to one of the alternatives set forth in this Chapter shall be approved and completed no later than time prescribed in this Chapter.
- C. For residential projects that include both a for-sale project and a rental project, the provisions of subsection (A) of this section shall apply to the for-sale project, and the provisions of subsection (B) shall apply to the rental project.
- D. Exemptions from Inclusionary Housing Requirements. This Chapter shall not apply to the following:
1. Existing residences which are altered, improved, restored, repaired, expanded or extended, provided that the number of units is not increased, except that this Chapter shall pertain to the subdivision of land for the conversion of apartments to condominiums.
  2. The construction of a new residential structure which replaces a residential structure that was destroyed or demolished within two years prior to the approval of a building permit for the new residential structure, provided that the number of residential units is not increased from the number of residential units of the previously destroyed or demolished residential structure.
  3. Accessory dwelling units not constructed to fulfill Inclusionary Housing Requirements.
  4. Those residential units which have obtained approval of a Vesting Tentative Map or a Development Agreement prior to the effective date of this Ordinance.

**Section C4-178. Timing of Performance.**

A. Affordable Housing Plan.

1. Any application for the first approval of a residential project shall include an

Affordable Housing Plan describing how the project will comply with the provisions of this Chapter. The Affordable Housing Plan shall be processed concurrently with all other applications required for the residential project. As an alternative to compliance with the Inclusionary Housing Requirements, an applicant may propose one or a combination of the alternatives listed in Section C4-179 as part of the Affordable Housing Plan.

2. The Affordable Housing Plan shall be considered by and acted upon by the review authority with authority to approve the residential project. Before approving the Affordable Housing Plan, the review authority shall consider whether the Affordable Housing Plan conforms to this Chapter. The review authority may approve an alternative or a combination of alternatives listed in Section C4-179 if it concludes that the alternative conforms to the standards in Section C4-177. The review authority may also modify the timing requirements for construction and occupancy of market-rate units to accommodate phasing schedules, model variations, or other factors, if the review authority determines this will provide greater public benefit.
3. The approved Affordable Housing Plan for a residential project, or for a building phase in a residential project, where phasing has been approved as part of discretionary project approvals, may be amended prior to issuance of any building permit for the residential project or building phase, if applicable. If the applicant desires any other modification to the approved Affordable Housing Plan, that modification shall be acted upon prior to issuance of any building permit by the review authority that previously approved the Affordable Housing Plan.

B. Affordable Housing Agreement.

1. Affordable Housing Agreement shall be entered into by the City and the project owner prior to final map approval, or where a map is not being processed, prior to issuance of any building permit for such lots or units. If the project's affordable housing obligation will be met entirely through the payment of affordable housing fees, no Affordable Housing Agreement shall be required.
2. The Affordable Housing Agreement shall specify the number, type, location, size, and phasing of all affordable housing units, occupancy requirements, eligibility requirements, provisions for income certification and screening of potential purchasers or renters of units, resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved Affordable Housing Plan, as determined by the Community Development Director.
3. To assure the affordability of the unit, the Affordable Housing Agreement shall be recorded with the property deed prior to the sale of the unit or prior to final inspection for a rental project.

C. Conditions of Approval. Any tentative map, land use permit, or site development review approving residential development projects subject to this Chapter shall contain conditions

sufficient to ensure compliance with the provisions of this Chapter. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a residential project. Additional conditions regarding the approved Affordable Housing Plan may be imposed on later City approvals or actions, including without limitation, planned unit development approvals, subdivision approvals, land use permits, and building permits.

D. Concurrent Construction. All affordable units in a project or phase of a project shall be constructed concurrently with market-rate units, unless the review authority determines that extenuating circumstances exist that make concurrent construction infeasible or impractical.

E. Certificate of Occupancy. In any residential project, no final certification of occupancy of any market-rate unit shall be completed until the permittee has either:

1. Completed construction of on-site affordable units sufficient to meet the requirements of the Affordable Housing Agreement; or
2. Paid affordable housing fees consistent with City-adopted procedures for payment; or
3. Completed corresponding alternative performance under Section C4-179.

F. Continued Affordability.

1. The terms of the Affordable Housing Agreements required by subsection (B) of this section for affordable ownership units shall be for a term of 30-years and affordable rental units shall be for a term of 55-years. In the case of ownership affordable units that are transferred during the required term, each change of ownership will require a new 30-year term to be recorded.
2. For-sale affordable units which are initially owner-occupied shall not be rented by the owner, except in cases of substantial hardship including, but not limited to, active military duty and illness, and on specified terms as provided in a resale restriction agreement or other agreement acceptable to the Community Development Director.
3. The maximum sales price permitted on resale of an affordable unit designated for owner-occupancy shall be the lower of: (1) fair market value; or (2) the seller's lawful purchase price, increased by the rate of increase of annual area median income during the seller's ownership. The sales price may also be modified to account for capital improvements made by the seller, deferred maintenance, and the seller's necessary costs of sale. The resale restrictions shall provide an option (first right of refusal) to the City to purchase any affordable owner-occupancy unit at any time the owner proposes sale.
4. If the property owner is unable to sell any or all of the affordable units to eligible buyers after exhausting commercially reasonable efforts to do so for a period of 120 days, upon 90 additional days' notice to the City and on satisfaction of such further conditions as may be included in City-approved restrictions (such as a further opportunity to identify an eligible buyer, sale to a nonprofit affordable housing organization, or additional marketing by owner), the owner may sell the unit at a fair-

market value and shall pay the City an amount equal to the difference between the sales price and the affordable ownership cost.

The amount paid to the City shall be deposited into the City's Affordable Housing Fund as defined in Section C4-180. After such a sale, the unit shall not be subject to any affordable housing requirement of this Chapter.

- G. **Monitoring of Compliance.** Each Affordable Housing Agreement shall include provisions for the monitoring by the City of each residential development and each inclusionary unit for compliance with the terms of this Chapter. Such provisions may include annual compliance reports to be submitted to the City by the property owner and the City may conduct periodic on-site audits to ensure compliance with all applicable laws, policies, and agreements.

**Section C4-179. Alternatives to Constructing New Affordable Units.**

As an alternative to compliance with the other provisions of this Chapter, an applicant proposing a new residential project may propose one or a combination of the following alternatives as part of its Affordable Housing Plan. The review authority may approve the alternative if the alternative conforms to the standards in the relevant subsection. Any affordable units provided by an applicant pursuant to one of the following alternatives shall comply with the standards contained in Section C4-178, and shall be roughly equivalent in value to the Inclusionary Housing Requirement contained in Section C4-177.

- A. **Voluntary Provision of Rental Units.** Where ownership affordable units are required in a for-sale project by Section C4-177, the applicant may ask to initially provide rental units affordable to very low-, low- and moderate-income households at rents as prescribed in subsection (A)(1) of this section.
1. At least 15 percent of all units in the residential project shall be exclusively offered for rent to very low- and low-income households. Of the units in the residential project, 50 percent shall be exclusively offered to very low-income households at rents affordable to very low-income households, and 50 percent shall be exclusively offered to low-income households at rents affordable to low-income households. Variations that provide a higher total percentage of affordable units may be considered.
  2. The affordable rental units shall be comparable in size and type to the market-rate units, including the number of bedrooms per unit.
  3. A rent regulatory agreement acceptable to the Community Development Director, and consistent with the requirements of this Chapter, shall be recorded against the residential project prior to any final inspection for occupancy of any unit in the residential project.
  4. The rent regulatory agreement shall be in place for 30-years or until such time as the units are sold, whichever occurs first. The rent regulatory agreement shall include provisions for sale of the affordable units and relocation benefits for tenants of the

affordable units if the owner of the residential project later determines to offer any affordable units in the residential project for sale. The owner shall provide all notices to prospective tenants of the residential project required by State law and shall additionally, at the time sale of the units is proposed, provide all tenants of the rental affordable units with the same notices, rights, and relocation benefits for residential condominium conversion projects. The owner shall provide as many ownership affordable units at affordable ownership cost as were originally required by the project approval. At the time of sale, resale restrictions, deeds of trust and/or other documents acceptable to the Community Development Director, all consistent with the requirements of this Chapter, shall be recorded against the ownership affordable units for a term of 30-years.

5. The Community Development Director may, from time to time, establish affordable rents in compliance with the requirements of this Chapter and based on recently available data.
- B. Off-Site Development. Some or all of the required affordable units may be constructed off-site, or an existing off-site development may be acquired and rehabilitated to provide some or all of the required affordable units. This type of alternative may be allowed if the review authority determines that the combination of location, unit size, unit type, pricing, and timing of availability of the proposed off-site affordable units would provide equivalent or greater benefit than would result from providing those affordable units on-site, or if the review authority City determines that on-site construction of those affordable units would be infeasible. Any off-site affordable units must be constructed or rehabilitated prior to or concurrently with construction of the on-site residential development. The off-site development location must be located within the City of San Ramon and be appropriately zoned with all required entitlements issued for the off-site development alternative before building permits are issued for the on-site residential development.
- C. Preservation of Affordable Units at Risk of Loss. The applicant may propose to preserve existing affordable units at risk of loss to provide the affordable housing required by this Chapter.
1. The review authority may approve preservation of affordable units at risk of loss pursuant to this subsection only if the proposal meets all of the following conditions:
    - a. The affordable units to be preserved shall be affordable to very low- and low-income households; and
    - b. The term of affordability shall be extended for a minimum of 55-years for rental affordable units and for a minimum of 30-years for ownership affordable units; and
    - c. The affordable units to be preserved shall be shown as at-risk of loss in the Housing Element of the City's General Plan, or the review authority must find at a public hearing that the affordable units are eligible to, and reasonably expected to, convert to market-rate units in the next five years due to termination of subsidy

contracts, mortgage prepayment, or expiration of restrictions on use; and

- d. Prior to occupancy of the residential project, the affordable units to be preserved shall be in safe and sanitary condition and in compliance with all codes.
2. No building permit shall be issued for any new units in the residential project until all of the required regulatory agreements are deemed acceptable to the Community Development Director and have been recorded to extend the term of affordability for the affordable units at risk of loss as required by this subsection.
- D. Land Dedication. An applicant may dedicate land to the City or City-designated local non-profit housing developer in lieu of construction of some or all of the required affordable units, if the review authority finds:
1. The dedication of land in lieu of constructing affordable units is consistent with the Chapter's goal of creating, preserving, maintaining, and protecting housing for very low-, low- and moderate-income households; and
  2. The dedicated land is useable for its intended purpose, is free of toxic substances and contaminated soils, and is fully improved with infrastructure, adjacent utilities, grading, and all development-impact fees paid excluding any affordable housing fees; and
  3. The proposed land dedication is of sufficient size to construct or exceed the number of affordable units that the applicant would otherwise be required to construct by Section C4-177.
- E. The review authority may accept any combination of on-site construction, off-site construction, affordable housing fees and land dedication or any other feasible alternative that in the review authority's determination would provide equivalent or greater benefit than that which would result from providing on-site affordable units.

**Section C4-180. Affordable Housing Fund.**

Affordable housing fees shall be deposited into an "Affordable Housing Fund" ("Fund").

- A. All monies collected pursuant to this Chapter shall be deposited into the Fund.
- B. Payment of the affordable housing fee shall be added as a condition of approval for development projects subject to this Chapter.
- C. The fee amount shall be established by resolution adopted by the City Council, which may be amended from time to time by the Council.
- D. All monies in the Fund, together with any interest earnings on such monies less administrative charges, shall be used or committed to use by the City for the purpose of providing or supporting very low-, low-, and moderate-income ownership or rental housing

in the City.

- E. The City shall prepare an annual report to the City Council identifying the balance of monies in the Fund, the affordable units provided and any monies committed to providing or supporting very low-, low-, and moderate-income housing. The annual report shall also include a review of administrative charges.

**Section C4-181. Enforcement.**

- A. The Community Development Director shall enforce this Chapter, and its provisions shall be binding on all agents, successors, and assigns of an applicant. The Community Development Director may suspend or revoke any building permit or approval upon finding a violation of any provision of this Chapter. No land use approval, building permit, or certificate of occupancy shall be issued for any residential development unless exempt from or in compliance with this Chapter. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.
- B. 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 C4-182. 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 there is no reasonable relationship between the impact of a proposed residential project and the requirements of this Chapter, or 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 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 by the review authority for the application in the same manner and at the same time as the Affordable Housing Plan. It may only be approved following adoption of written findings to the extent necessary to avoid an unconstitutional result.

**Section C4-183. Expedient Processing of Development Application**

The Community Development Director shall make all reasonable efforts to expedite the processing of development applications with inclusionary housing obligations under this Chapter. If any such application is not approved within four (4) months following the date the application was deemed complete, the Director shall report in writing and in an oral presentation to the City Council on the status of the project.

**Section C4-184 through C4-189. Reserved.**

**SECTION II:** CHAPTER XIII, Affordable Housing Commercial Linkage Fee (Commercial Development Projects) is hereby added to Title C, Division C4 of the San Ramon Municipal Code to read:

**CHAPTER XIII**

. Affordable Housing Commercial Linkage Fee (Commercial Development Projects)

**Section C4-190. Purpose.**

The purpose of this Chapter is to:

- A. Enhance the public welfare by imposing an affordable housing commercial linkage fee consistent with the Mitigation Fee Act (Government Code §§66000, et seq.) whereby developers of commercial development projects will mitigate the impacts of their projects on the need for affordable housing by contribution to the supply of housing for households with extremely low-, very low-, low-, and moderate-incomes; and
- B. Implement the General Plan 2035 Housing Element by creating a mechanism to provide benefits to the community from new commercial development in the form of affordable housing, and to thereby help meet the needs of all socio-economic elements of the community as provided in the Housing Element; and
- C. Implement the 2017 Development Fee Study by Keyser-Marston Associates (KMA) linking commercial development and the need for additional affordable housing.

**Section C4-191. Definitions.**

The following words and terms as used in this Chapter shall have the following meaning:

- A. “Affordable housing commercial linkage fee”, also referred to herein as “commercial linkage fee”, means the fee paid by developers of commercial development projects to mitigate the impacts that such developments have on the demand for affordable housing in the City.
- B. “Affordable Housing Fund” means a fund or account designated by the City to maintain and account for all monies received pursuant to this Chapter.
- C. “Building permit” includes full structural building permits as well as partial permits such as foundation-only permits.
- D. “Commercial development project” means the new construction of non-residential retail space including, but not limited to, retail, service, office, restaurant, entertainment, lodging, industrial, warehouse and manufacturing uses.
- E. “Developer” means the person(s) or legal entity(ies), who also may be the property owner, who is seeking real property permits or approvals from the City for a commercial development project.

- F. "Project" means any approval of a commercial development project including, without limitation, a development plan or development plan amendment, rezoning, tentative map, parcel map, land use permit, minor use permit, minor exceptions, variances, building permit or architectural review.

**Section C4-192. Affordable Housing Commercial Linkage Fee Imposed.**

A. Applicability.

An affordable housing commercial linkage fee is imposed on all new construction of commercial development projects, including mixed use projects, regardless of zoning designation of the project site, unless otherwise exempted under this Chapter. Payment of the commercial linkage fee shall be added as a condition of approval for all development projects subject to this Chapter. The fee amount shall be established by resolution adopted by the City Council, which may be amended from time to time by the Council. Fees shall not exceed the cost of mitigating the impact of commercial development projects on the need for affordable housing in the City. For mixed use projects, the commercial linkage fee (as set forth in this Chapter) is imposed on that portion of the project that consists of new commercial development; the City's Inclusionary Housing Requirements for residential projects (as set forth in Chapter XII of this Code) will apply to the residential portion of a mixed use projects.

B. Calculation of Fee.

The amount of the fee, as further described in the fee resolution, is imposed on a per square foot basis for net new gross floor area. The formula below shall be used in calculating the amount of the commercial linkage fee:

(Gross square feet nonresidential floor area, excluding structured parking) minus (existing gross square feet of floor area) multiplied by (per square foot fee) equals (total commercial linkage fee).

C. Timing of Payment.

Commercial linkage fees shall be paid following the filing of a building permit application and prior to issuance of the first building permit for the project. A developer may pay all or a portion of the fee owed at any time prior to issuance of the building permit, at the rate in effect at the time payment is made. For phased projects, the amount due shall be paid on a pro rata basis across the entire square footage of the approved development, and each portion shall be paid prior to the issuance of any building permit for each phase.

**Section C4-193. Exemptions from Payment of Affordable Housing Commercial Linkage Fee.**

- A. The commercial linkage fee shall not apply to commercial development projects adding 5,000 square feet or less of new net square footage.

- B. The commercial linkage fee shall not apply to projects that fall within one or more of the following categories:
1. Schools and places of public assembly;
  2. Public facilities;
  3. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, so long as the square footage and use of the building remains the same, and construction of the replacement building begins within one (1) year of the damage's occurrence. Upon request by the Applicant, the review authority may extend the time for replacement for an additional year if the review authority determines that the Applicant has proceeded in good faith and has exercised due diligence in replacing the building in a timely manner.

**Section C4-194. Alternative to Payment of Affordable Housing Commercial Linkage Fee.**

As an alternative to payment of the commercial linkage fee, a developer may request to mitigate the housing impacts through construction of affordable residential units on an appropriate housing site, the dedication of land for affordable housing, or the provision of other resources to provide affordable housing. The review authority may approve this request if the proposed alternative furthers affordable housing opportunities in the City that is at least equal in value to the payment of the commercial linkage fee. A developer requesting an alternative must submit their request at the time the original application is filed.

**Section C4-195. Affordable Housing Fund.**

Affordable Housing Commercial Linkage fees shall be deposited into an "Affordable Housing Commercial Linkage Fund" ("Fund").

- A. All monies collected pursuant to this Chapter shall be deposited into the Fund.
- B. Payment of the affordable housing fee shall be added as a condition of approval for development projects subject to this Chapter.
- C. The fee amount shall be established by resolution adopted by the City Council, which may be amended from time to time by the Council.
- D. All monies in the Fund, together with any interest earnings on such monies less administrative charges, shall be used or committed to use by the City for the purpose of providing or supporting very low-, low-, and moderate-income ownership or rental housing in the City.
- E. The City shall prepare an annual report to the City Council identifying the balance of monies in the Fund, the affordable units provided and any monies committed to providing or supporting very low-, low-, and moderate-income housing. The annual report shall also include a review of administrative charges.

**Section C4-196. Enforcement.**

- A. The Community Development Director shall enforce this Chapter, and its provisions shall be binding on all agents, successors, and assigns of an applicant. The Community Development Director may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. No land use approval, building permit, or certificate of occupancy shall be issued for any commercial development unless exempt from or in compliance with this chapter. The Community Development Director may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.
- B. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the approval authority from any other remedy or relief to which it otherwise would be entitled under law or equity

**Section C4-197. 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 there is no reasonable relationship between the impact of a proposed commercial project and the requirements of this Chapter, or 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 at the time of development application. 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 by the approval authority for the application in the same manner and at the same time as the project. It may only be approved following adoption of written findings to the extent necessary to avoid an unconstitutional result.

**Section C4-198 through C4-204.** Reserved.

**SECTION III: CEQA**

The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15378 and 15061 of the CEQA Guidelines in that the activity has no potential for resulting in a direct or reasonably foreseeable indirect physical change in the environment.

**SECTION IV: Severability**

If any part of this Ordinance is held invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of the Ordinance if such invalid portion thereof had been deleted.

**SECTION V: Effective Date**

This Ordinance shall take effect thirty (30) days from the date of its passage. Before the expiration of fifteen (15) days after its passage, this Ordinance shall be posted in three (3) places

within the City of San Ramon along with the names of the members of the City Council voting for and against the same.

The foregoing Ordinance was introduced at the meeting of the City Council of the City of San Ramon on March 12, 2019 and after public hearing, was adopted on April 9, 2019 by the following vote:

**AYES:** *Cm. Hudson, O'Loane, Perkins, Zafar, and Mayor Clarkson*

**NOES:**

**ABSENT:**

**ABSTAIN:**



Bill Clarkson, Mayor

**ATTEST:**



Christina Franco, City Clerk