

**RESOLUTION 21-49**

**CITY OF MILLBRAE, COUNTY OF SAN MATEO  
STATE OF CALIFORNIA**

**\*\*\***

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILLBRAE  
ADOPTING AFFORDABLE HOUSING REQUIREMENTS AND PROGRAM  
REGULATIONS**

**WHEREAS**, the State of California requires local governments to plan to meet the housing needs of all income groups. Specifically, "local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community" pursuant to the State Government Code Section 65580;

**WHEREAS**, there is a demand for affordable housing designed for very low, low, and moderate income households in the City of Millbrae as documented in the City of Millbrae Housing Element;

**WHEREAS**, The Housing Element contains goals (Goal H1 Reinforce the City's Commitment to Meeting Housing Needs; Goal H3 Provide New Housing and Address Affordable Housing and Other Special Needs) calling for the development of housing that is affordable to a diversity of Millbrae households;

**WHEREAS**, the Housing Element contains strategies for achieving these goals, such as HIP-29 (Inclusionary Housing and/or Impact Fee Requirements);

**WHEREAS**, the City considered a fee study entitled "Affordable Housing Fractional In-Lieu Fee Nexus Study" dated May 2021 and prepared by Harris & Associates, which included an economic feasibility analysis which concluded the proposed inclusionary housing requirements would be feasible;

**WHEREAS**, the City concurrently adopted Article XXXIII of the Millbrae Municipal Code, which provides that the Millbrae City Council shall adopt and may amend from time to time by resolution the Affordable Housing Requirements and Program Regulations consistent with the provisions of Article XXXIII and the Housing Element of the Millbrae General Plan for the purpose of carrying out the administration of Article XXXIII;

**WHEREAS**, the City hereby establishes inclusionary affordable housing requirements for the provision of new on-site housing units on projects that include ten (10) or more residential units that will be required to be restricted to occupancy by

qualifying very low, low, and moderate income households to be constructed within private development projects;

**WHEREAS**, the City hereby additionally imposes an affordable housing in-lieu fee, established concurrently by separate resolution, on residential development projects consisting of four (4) to nine (9) units, or when the calculation of the affordable housing units in development projects of ten (10) or more units results in a fractional unit less than 0.5. The fee is based on the Affordable Housing Fractional In-Lieu Nexus Fee Study and will be contributed to the City's Affordable Housing Fund and used to fund the development of affordable housing and related programs in the City; and

**WHEREAS**, the City Council desires to create requirements and program regulations to implement Article XXXIII.


**NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MILLBRAE** hereby adopts the Affordable Housing Requirements and Program Regulations, consisting of the Affordable Housing Inclusionary Requirements for Residential Development Projects, attached hereto as Exhibit A, and the Affordable Housing Program Regulations, attached hereto as Exhibit B. Terms not defined in Exhibit A or Exhibit B are as defined in Millbrae Municipal Code Article XXXIII.

**BE IT FURTHER RESOLVED** that this Resolution is not a project under the requirements of the California Environmental Quality Act ("CEQA") because it has no potential for resulting in a physical change in the environment, either directly or ultimately, in that changing the affordability of residences has no potential for resulting in physical change to the environment, either directly or indirectly. In the event this Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment in that the resolution contains no provisions modifying the physical design, development, or construction of residences.

**REGULARLY PASSED AND ADOPTED** this 13<sup>th</sup> day of July, 2021.


  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

I do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Millbrae this 13<sup>th</sup> day of July 2021, by the following vote:

AYES:	COUNCILMEMBERS:	Schneider, Oliva, Papan, Fung and Holober
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None
EXCUSED:	COUNCILMEMBERS:	None

 7/21/2021  
\_\_\_\_\_  
CITY CLERK



## EXHIBIT A

### Affordable Housing Inclusionary Requirements for Residential Development Projects

Terms used in this Affordable Housing Inclusionary Requirements for Residential Development Project shall have the meaning set forth in Article XXXIII and XXXIV of the Millbrae Municipal Code.

For residential development projects (including mixed-use projects containing residential units) of ten (10) or more units, on-site inclusionary units shall be provided for the following income levels:

Income Category	Ownership Units	Rental Units
<b>Very Low Income</b>		10%
<b>Low Income</b>		5%
<b>Moderate Income</b>	15%	-
<b>TOTAL</b>	15%	15%

- A. Ownership Units. Fifteen percent (15%) of the total units in the residential development project shall be set aside for occupancy by and shall be affordable to Moderate Income households.
- B. Rental Units. Fifteen percent (15%) of the total units in the residential development project shall be set aside for occupancy by and shall be affordable to Very Low (10%) and Low Income (5%) households. The developer of rental units may request an alternative compliance method as described in these Affordable Housing Program Regulations.
- C. Dwelling units in a residential development project that are designated for sale, but initially rented, shall comply with the requirements in these Affordable Housing Program Regulations.
- D. In determining the number of inclusionary units required, any decimal fraction 0.5 or above shall be rounded up to the nearest whole number. The requirement for each individual income category percentage is calculated separately to determine whether the fraction is rounded up and an additional unit is provided or payment of the affordable housing in lieu fee is made. For example, a 65-unit rental project would require the provision of a total of seven (7) very low income inclusionary units AND three low-income inclusionary units, and a fee payment for a 0.25 low income rental unit fractional fee. A 65-unit ownership project would require ten (10) moderate income inclusionary units.
- E. Fees in-lieu of constructing required inclusionary units shall not be allowed except for the provisions for fractional units defined below. The developer of rental units

may request an alternative compliance method as described in these Affordable Housing Program Regulations.

- F. In the following situations an affordable housing in-lieu fee may be paid instead of on-site construction of an inclusionary unit:
1. For residential development projects consisting of 4 to 9 units, or
  2. When the calculation of the inclusionary units in development projects of 10 or more units results in a fractional unit less than 0.5.

As an alternative to payment of the fee, the property owner has the option to provide an additional on-site inclusionary unit.

## **EXHIBIT B**

### **Affordable Housing Program Regulations**

#### **I. Program Definitions**

Terms used in these Affordable Housing Program Regulations shall have the meaning set forth in Article XXXIII and XXXIV of the Millbrae Municipal Code.

#### **II. Household Size Appropriate for the Unit**

- A. "Household Size Appropriate for the Unit" means the following: for studio apartments - one person; for one-bedroom units – two persons; for two-bedroom units– three persons; for three-bedroom units - four persons; and for four-bedroom units – five persons.

#### **III. Ownership Unit Affordable Housing Standards**

- A. Affordable Housing Agreement. The developer shall enter into an Affordable Housing Agreement with the City, which shall contain the requirements in these Affordable Housing Program Regulations that pertain to for sale units.
- B. Price of Units. The maximum sales price of inclusionary units shall be set at a price, including a reasonable down payment, that results in monthly housing costs that do not exceed 35 percent of 110 percent of area median income, divided by 12, adjusted for household size appropriate for the unit. Monthly housing costs include interest, principal, mortgage insurance, homeowners insurance, property taxes, homeowners association fees, and a reasonable allowance for repairs, maintenance, and utilities. The City shall utilize the California Department of Housing and Community Development (HCD) income limits for San Mateo County, as published annually in California Code of Regulations Title 25, Section 6932 (or its successor provision) for each household size, to establish the maximum allowable sales prices, adjusted by unit size. The initial sales prices for affordable units shall be established by the City at the time of building permit issuance for each project (the "Initial Affordable Purchase Price").
- C. Sales Restrictions. Inclusionary units shall be sold or resold only to eligible moderate or lower-income households, as applicable. The City, or its designee, shall determine the eligibility of such households. A recorded restriction, enforceable by the City and in a form specified by the City, limiting the resale of such units to eligible households, shall be recorded on initial sale of all affordable units (the "Resale Restriction Agreement"). The duration of such restrictions shall be 45 years, and shall be reapplied and recorded upon each resale or transfer of the unit that occurs while the restriction is in place.



The Resale Restriction Agreement shall provide that the City has an option to purchase the inclusionary unit upon owner default under the Resale Restriction Agreement or upon the sale of the unit. The City's option to purchase may be assigned to a qualifying moderate or lower income household, as applicable, or nonprofit entity that provides services and support to lower income households.

The City or its designee shall be responsible for qualification of buyers in accord with its marketing policies regulating inclusionary units. The seller shall pay costs associated with buyer qualification and sale of the inclusionary units.

- D. Unit Appreciation. The resale affordable price for the inclusionary unit shall be the lower of:
1. Median Income. The initial affordable purchase price increased (but not decreased) by an amount, if any, equal to the initial affordable purchase price multiplied by the percentage increase in the Area Median Income for San Mateo County between the effective date of the Resale Restriction Agreement and the date that the City receives a notice of proposed transfer or the date that an event of default is declared under the Resale Restriction Agreement.
  2. Fair Market Value. The fair market value of the inclusionary unit determined as of the date that the City receives a notice of proposed transfer or the date that an event of default is declared under the Resale Restriction Agreement.
- E. Occupancy Restrictions. Inclusionary units shall be the principal residence of their owners. Renting, leasing, subleasing or subletting shall not be permitted for more than two months in any year and shall require prior written approval from the City. Violation of these occupancy restrictions will be a default under the Resale Restriction Agreement and trigger the City's option to purchase the property.

#### **IV. Rental Unit Affordable Housing Standards**

- A. Rental Rates. The monthly rent to be charged for an inclusionary unit in a rental project shall not exceed 30 percent of 50 percent of Area Median Income, divided by 12, for Very Low Income households and 30 percent of 60 percent of Area Median Income for Low Income households, divided by 12, as those terms are defined in Millbrae Municipal Code section 10.05.3310, adjusted for household size appropriate for the unit. The City Council will annually adopt by resolution maximum allowable rental rates, for each bedroom size, consistent with this subsection (A).
- B. Move-in Costs. Total costs and security deposits to occupy a unit shall be limited to first month's rent, plus a deposit not to exceed two month's rent.

- C. **Rental Restriction.** Owner shall enter into an Affordable Housing Agreement with the City which shall be recorded on the property prior to recordation of a final or parcel map or issuance of the first building permit. The Affordable Housing Agreement shall specify the location of the inclusionary units and the number of bedrooms. The Affordable Housing Agreement shall also include the requirements in this Affordable Housing Requirements and Program Regulations as they relate to rental units.
- D. **Occupancy.** The City or its designee shall be responsible for qualification of renters in accord with its marketing policies regulating inclusionary units. The developer shall pay costs associated with renter qualification and rental of the inclusionary units. The project owner or its designee shall be responsible to maintain occupancy of rental inclusionary units. Annual leases shall be offered to tenants of inclusionary units. The tenants' income and eligibility shall be verified upon annual lease renewal. If a tenant's income rises above the income level designated for the inclusionary unit occupied by that tenant, the tenant's rent shall increase to 30 percent of the tenant's actual income. If any tenant's income exceeds the limits for a moderate income household, the project owner may increase the rent to market rate rents upon ninety (90) days' notice to tenant, and the next unit available will become an inclusionary unit at the income designation of the inclusionary unit that was brought to market rate rent. If the tenant chooses to vacate the inclusionary unit, then the inclusionary unit shall be rented to an eligible household at the original affordability designation of the unit.

Each project owner shall submit an annual report to the Community Development Director identifying for each inclusionary unit the monthly rent, vacancy information for the prior year, income and income verification for tenants, and other information as required by the City.

The rental restrictions shall have a term of fifty-five (55) years.

- E. **Alternative Compliance.** Upon application and approval by the decision making authority, an applicant for a residential development project may comply with the requirements to provide affordable rental units by either donation of land to the City or constructing affordable units off site.

Donation of Land.

The applicant may donate land for construction of inclusionary units and the decision-making authority may approve the proposal if it makes all of the following findings:

1. City agrees to accept the land donation, or assign it to a developer who will construct the inclusionary units on the property.



2. Donation of the land and all necessary discretionary entitlements for the affordable units will be obtained before issuance of the first building permit for the market rate housing development;
3. Donated land shall accommodate a number of units equal to at least twenty percent (20%) of the number of units in the market rate development project
4. All units developed on the donated land shall be inclusionary units;
5. Financing or a viable financing plan, which may include public funding, is in place for the inclusionary units on the donated land;
6. Financing for the construction of the inclusionary units will be committed prior to the issuance of the first building permit for the market rate housing development; and
7. The site is properly zoned to accommodate the proposed units, has adequate utilities, and the location and site characteristics of the donated land are suitable for the proposed affordable housing. The site must be otherwise consistent with these Affordable Housing Program Regulations and the Housing Element, will not tend to cause residential segregation, and will comply with the City's responsibilities to affirmatively further fair housing.

Off-Site Construction of Affordable Units.

The applicant, or an entity controlled by the applicant, or another entity that has entered into an agreement with the applicant to provide affordable housing, may submit an affordable housing plan that proposes to construct the required inclusionary units on another site. Two or more applicants may also jointly propose off-site construction of affordable units on a single site. The decision-making body may approve off-site construction if it makes all of the following findings:

1. The off-site location includes units to be rented to very low and low income households at affordable rents equal to at least twenty percent of the market-rate units in the residential development project;
2. Financing or a viable financing plan, which may include public funding, is in place for the off-site affordable units;

3. Financing for the off-site inclusionary units will be committed before issuance of the first building permit for the market-rate residential development project;
4. The site is properly zoned to accommodate the proposed units, has adequate utilities, and the location and site characteristics of the off-site location are suitable for the proposed inclusionary units. The site must be otherwise consistent with these Affordable Housing Program Regulations and the Housing Element, will not tend to cause residential segregation, and will comply with the City's responsibilities to affirmatively further fair housing.
5. Construction of the off-site inclusionary units has not commenced before the first approval of the residential project, and construction of the off-site units will occur concurrently with construction of the market-rate units in the residential project; and
6. All agreements between parties regarding off-site construction of affordable housing will be made a part of the affordable housing agreement required for the site(s).

- F. Change in Tenure from Affordable Rental Units to Ownership. In the event the owner of any development that contains inclusionary rental units chooses to offer those units for sale after the initial occupancy of the inclusionary units as rentals, a new affordable housing agreement shall be executed and recorded. The agreement shall describe the number, location and sales prices of the inclusionary units offered for sale. The affordable ownership units shall be affordable to moderate income households in accordance with provisions of the Affordable Housing Program Regulations in place, unless the project utilized the State Density Bonus, in which case the sales prices shall be affordable to the household income levels identified in the original affordable housing agreement at the sales prices for those household income levels.

If the change in tenure is part of a condominium conversion, all provisions of Chapter 10.25 of the Municipal Code shall be followed.

If the change in tenure is not associated with a condominium conversion, the inclusionary unit tenants must be adequately noticed and offered relocation assistance as follows:

1. Each of the inclusionary unit tenants shall receive written notification by registered mail from the property owner of the intention to sell the inclusionary unit at least one hundred and eighty (180) days prior to termination of tenancy. This notification shall include the information

- regarding relocation, right to purchase, and lease benefits available.
2. Each of the inclusionary unit tenants shall be given notice by the property owner of an exclusive right to contract for the purchase of his or her respective unit upon terms and conditions of the Affordable Housing Program Regulations as it pertains to ownership units. This right shall run for a period of not less than ninety (90) days from the date of the initial notification of termination of tenancy.
  3. Relocation assistance shall be given to all inclusionary unit tenants who do not exercise their right to purchase as follows:
    - a) Actual moving expenses
    - b) A relocation allowance equal to the greater of the difference between the tenant's current monthly rental payments and those of a comparable unit, for a period of 12 months or six month's rent at the tenant's rate in effect at the time the notice of termination of tenancy is filed shall be paid to the eligible tenant within twenty (20) days after the tenant notifies the owner of his intention to vacate the unit or the owner notifies the tenant to vacate the unit.
    - c) The applicant shall provide a list of active comparable rental units in San Mateo County at least once each month beginning from the initial notification of termination of tenancy.
    - d) In projects that consist of ten (10) or more inclusionary units, the applicant shall provide a relocation specialist to assist displaced tenants in finding new housing.

#### **V. Affordable Housing Unit Size, Type, and Design Standards**

All inclusionary units shall comply with these standards:

- A. Have exterior design and appearance compatible with and substantially the same as market rate units within the project, including landscaping, windows, and exterior finishes;
- B. Be distributed throughout the development project in an equitable manner (that means dispersed equally in each building (if multiple buildings) and all floors). The exact location is subject to final review and approval by the Community Development Director;
- C. Have similar access to the unit from the exterior as market rate units;
- D. Contain proportionately the same number of bedrooms as market rate units,
- E. Generally be of comparable size to similar market rate units, or

They may be up to 10% smaller than market units if they meet the following minimum sizes:



<u>Unit Type</u>	<u>Regular Units</u>
studio units	450 square feet
one bedroom units	600 square feet
two bedroom units	900 square feet
three bedroom units	1100 square feet

- F. Have equal unrestricted access to all on-site amenities; and
- G. In phased development projects, be constructed proportionately in each phase.
- H. Interior unit amenities such as floor covering, appliance, and other fixtures, shall be specified in the affordable housing agreement executed prior to issuance of building permit and may differ from market rate units, but must at a minimum be equivalent to the base level of furnishings for the units.

#### **VI. Eligibility Requirements and Priorities**

- A. Only households qualifying as very low, lower or moderate income households shall be eligible to occupy inclusionary units. To the extent allowed by law, preference shall be given to persons residing or working within the City of Millbrae.

#### **VII. Administration**

- A. Fees. The City Council, by resolution, may establish fees for the ongoing administration and monitoring of the inclusionary units, which fees may be updated periodically, as required.
- B. Affordable Housing Plan. At the time of filing of the first planning entitlement application for a residential development project subject to the Affordable Housing Program Regulations, the applicant shall submit a preliminary affordable housing plan, which shall include the proposed number of inclusionary units, including the following information:
  - 1. The total number of inclusionary units and their location depicted on building floor plans or a site plan if there are no multi-story buildings;
  - 2. The unit sizes and the number of bedrooms for each inclusionary unit;
  - 3. The affordability level and initial rent or sales price for each inclusionary unit;
  - 4. The interior unit amenities which would differ from market-rate units, including, but not limited to, floor coverings, countertops, appliances, and plumbing and electrical fixtures; and
  - 5. The schedule for production of inclusionary units in phased developments.
- C. Affordable Housing Agreement. Prior to the issuance of a building permit the applicant shall enter into an affordable housing agreement with the City which

will be recorded against the property and shall include a final affordable housing plan with the information listed in B above, and including but not limited to provisions for income certification, screening of potential purchasers or renters of units, and procedures for initial sale and rental of the inclusionary units.

- D. Single Residential Development Project. In the event a residential development project is approved with nine (9) or fewer units and additional unit(s) are approved on the residential development project site within five (5) years of the initial approval, that are not an accessory dwelling unit or junior accessory dwelling unit, the City and developer shall enter into an agreement determining the appropriate number of inclusionary units required and affordable housing in lieu fees.
- E. Affordable Housing Fund. Affordable housing in lieu fees and affordable housing commercial linkage impact fees shall be deposited in the City's Affordable Housing Fund. Such fund shall be used to increase and improve the supply of housing affordable to extremely low income, very low income, low income, and moderate income households in the City, along with related housing or homeless programs. Such purpose may include the purchase of affordability covenants or similar initiatives whose purpose is to preserve existing affordable housing that may otherwise be lost due to market conditions. The fund may also be used to cover directly associated administrative or related expenses. Expenditures shall be consistent with the goals and policies contained in the City's Housing Element, or subsequent annual budgets or affordable housing fund implementation plans adopted by the City Council. Permissible uses of the fund include, but are not limited to, land acquisition, debt service, parcel assemblage, gap financing, housing rehabilitation, grants, unit acquisition, new construction, and other pursuits associated with providing affordable housing. The fund may be used for the benefit of both rental and owner-occupied housing.