

## REPORT TO CITY COUNCIL

**DATE: JULY 9, 2008**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: GREG RAMIREZ, CITY MANAGER**

**BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT**

**SUBJECT: ADOPTION OF ORDINANCE NO. 08-353 REGARDING INCLUSIONARY HOUSING (ZONING ORDINANCE AMENDMENT CASE NO. 08-ZOA-002)**

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At the June 25, 2008 City Council meeting, the Council introduced, read by title only, and waived further reading of Ordinance No. 08-353 to update the City's Inclusionary Housing Program. The purpose of the Inclusionary Housing Program is to provide affordable housing opportunities as part of each residential development project of at least 10 units that is constructed in the City. Currently in the Municipal Code, Section 9133 details the Inclusionary Housing Program. The Ordinance would replace that section in its entirety. The Ordinance updates the existing Zoning Code in two main ways: (1) offers the option of providing a land donation instead of constructing the affordable units; and (2) updates the in lieu fee amount. The Ordinance also provides more clarification regarding program procedures and affordable housing standards.

The City Council unanimously approved the Zoning Ordinance Amendment.

### RECOMMENDATION

Staff recommends the City Council adopt Zoning Ordinance Amendment No. 08-353, regarding the Inclusionary Housing Program.

Attachment: Ordinance No. 08-353

**ORDINANCE NO. 08-353**

**AN ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA, REVISING REGULATIONS APPLICABLE TO THE PROVISION OF INCLUSIONARY HOUSING, AND AMENDING SECTION 9133 OF PART 4 OF CHAPTER 1 OF TITLE IX OF THE CITY OF AGOURA HILLS MUNICIPAL CODE**

**A. Recitals.**

- (i) The purpose of this Ordinance is to amend the City's Municipal Code to update the regulations pertaining to the provision of inclusionary housing units in the City.
- (ii) On June 25, 2008, the City Council of the City of Agoura Hills conducted and concluded a duly noticed public hearing concerning the zoning code amendments contained herein as required by law.
- (iii) At the public hearing on June 25, 2008, the City Council received testimony from City staff and all interested parties regarding the proposed amendments.
- (iv) All legal prerequisites to the adoption of the Ordinance have occurred.

**B. Ordinance.**

NOW, THEREFORE, the City Council of the City of Agoura Hills hereby ordains as follows:

**Section 1.** The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

**Section 2.** The provisions of this Ordinance and the Municipal Code amendments contained herein have been reviewed and considered by the City Council in accordance with the provisions of the California Environmental Quality Act (CEQA), as amended, and the CEQA Guidelines promulgated thereunder. The City Council held a public hearing on June 25, 2008 to consider the Negative Declaration. Evidence, both written and oral, was duly presented to and considered by the City Council at this said hearing. The City Council finds that the Negative Declaration has been completed in accordance with the CEQA Guidelines, and there was adequate review given of the Draft Negative Declaration. The Negative Declaration adequately discusses all significant environmental issues, and reflects the independent judgment and analysis of the City. The City Council has considered the contents of the Negative Declaration in its decision-making processes of the Zoning Ordinance Amendment, and hereby adopts the Negative Declaration.

**Section 3.** Section 9133 of Part 4 of Chapter 1 of Title IX of the Agoura Hills Municipal Code is hereby repealed in its entirety.

**Section 4.** New Section 9133. Inclusionary Housing is hereby added to Part 4 of Chapter 1 of Title IX of the Agoura Hills Municipal Code.

**“Section 9133  
INCLUSIONARY HOUSING**

**Subsections:**

- 9133.1 Purpose**
- 9133.2 Definitions**
- 9133.3 Applicability**
- 9133.4 Exemptions**
- 9133.5 Inclusionary Unit Requirements**
- 9133.6 Alternatives**
- 9133.7 Procedures**
- 9133.8 Standards**
- 9133.9 Enforcement**
- 9133.10 Regulations**
- 9133.11 Inclusionary Housing Trust Fund**
- 9133.12 Administrative Fees**
- 9133.13 Appeal**
- 9133.14 Taking Determination**

**9133.1 Purpose**

The provisions of this section establish standards and procedures that encourage the development of housing affordable to a range of households with varying income levels. The purpose of this section is to encourage the development and availability of such housing by ensuring that the addition of affordable housing units to the City’s housing stock is in proportion with the overall increase in new housing units and to provide standards and procedures to that effect.

**9133.2 Definitions**

As used in this section, the following terms shall have the following meanings:

“Adjusted for Household Size Appropriate for the Unit” means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

“Affordable Housing Cost” means the total housing costs paid by a qualifying household, which shall not exceed a specified fraction of its gross income, adjusted for household size appropriate for the unit, as follows:

- A. Very Low-Income Households, rental or for-sale units: thirty (30) percent of fifty (50) percent of the Los Angeles County median income.

- B. Low Income-Households, rental units: thirty (30) percent of sixty (60) percent of the Los Angeles County median income.
- C. Low Income-Households, for-sale units: thirty (30) percent of seventy (70) percent of the Los Angeles County median income.
- D. Moderate-Income Households, rental units: thirty (30) percent of one hundred and ten (110) percent of the Los Angeles County median income
- E. Moderate-Income Households, for sale units: thirty-five (35) percent of one hundred and ten (110) percent of the Los Angeles County median income.

“Developer” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a residential development.

“Development Agreement” means an agreement entered into between the City and a developer pursuant to Section 65864 of the California Government Code and Sections 9681 and 9682 of Division 1, Part 4 of Title IX of the City of Agoura Hills Municipal Code.

“Director” means the City’s Director of Planning and Community Development.

“Discretionary Approval” means any entitlement or approval pursuant to Section 9133 of the Municipal Code, including but not limited to a use permit, variance, design approval, and subdivision map.

“Dwelling Unit” One (1) or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with full cooking, sleeping, and bathroom facilities for the exclusive use of a single household.

“HCD” The California Department of Housing and Community Development.

“HUD” The United States Department of Housing and Urban Development.

“Inclusionary Housing Agreement” means a legally binding agreement between a developer and the City, in form and substance satisfactory to the Director and City Attorney, setting forth those provisions necessary to ensure that the requirements of this section, whether through the provision of inclusionary units or through an alternative method, are satisfied.

“Inclusionary Housing Plan” means the plan referenced in paragraph “A” of Subsection 9133.8 and further described in the regulations, which sets forth the manner in which the requirements of this section will be implemented for a particular residential development.

“Inclusionary Housing Trust Fund” shall have the meaning set forth in subsection 9133.12.

“Inclusionary Unit” means a dwelling unit that will be offered for rent or sale to and for occupancy by very low, low and moderate-income households, at an affordable housing cost, pursuant to this section.

“In-Lieu Fee” A fee paid to the City by a developer instead of providing the required inclusionary units.

“Low-Income Households” means households whose gross income is greater than 50% and does not exceed eighty (80%) percent of the median income for Los Angeles County as determined annually by HCD based on household income data promulgated by HUD.

“Low-Income Units”; “Moderate-Income Units”; and “Very Low-Income Units” mean inclusionary units restricted for sale or rent to and for occupancy by low, moderate, or very low-income households, respectively, at an affordable housing cost.

“Market Rate Units” means those dwelling units in a residential development that are not inclusionary units.

“Moderate Income Households” means households whose gross income is greater than 80% and does not exceed one hundred and twenty (120%) percent of the median income for Los Angeles County as determined annually by HCD based on household income data promulgated by HUD.

“Off Site Construction” Erection of affordable housing units on land other than that on which the developer intends to place a project within the City.

“Redevelopment Agreement” means an Owner Participation Agreement, Disposition and Development Agreement, Affordable Housing Agreement, Regulatory Agreement or similar agreement entered into between the City of Agoura Hills Redevelopment Agency and a developer.

“Regulations” means the regulations adopted by the Agoura Hills City Council pursuant to Subsection 9133.11 for the implementation and enforcement of the provisions of this section.

“Residential Development” means the construction of projects consisting of ten (10) or more dwelling units.

“Substantial Rehabilitation” or “Substantially Rehabilitated” means the rehabilitation of a dwelling unit(s) for very low and low income households, which has substantial building and other code violations, and has been vacant for at least six (6) months, such that the unit is returned to the City’s housing supply as decent, safe, and sanitary housing, and the cost of such work exceeds Forty Thousand Dollars (\$40,000) per unit, as that amount may be adjusted for inflation pursuant to the Regulations.

“Total Housing Costs” means the total monthly or annual recurring expenses required of a household to obtain shelter. For a rental unit, total housing costs include the monthly rent payment and a reasonable allowance for utilities. For an ownership unit, total housing costs include the mortgage payment (principal and interest), mortgage insurance, property taxes, property insurance, utilities, homeowner’s association dues, and any other related fees and assessments.

“Very Low Income Households” means households whose gross income is equal to fifty (50%) percent or less of the median income for Los Angeles County as determined annually by HCD based on household income data promulgated by HUD.

### **9133.3 Applicability**

This subsection shall apply to all residential developments, except those that are exempt pursuant to Section 9133.4, and excluding here from residential developments located in the Agoura Hills Redevelopment Project Area, which are separately subject to inclusionary housing requirements under the California Health and Safety Code Section 33000 et seq., and related regulations and policies of the Agoura Hills Redevelopment Agency.

### **9133.4 Exemptions**

The following residential developments are exempt from the requirements of this Section:

A. Residential developments that obtain a variance, conditional use permit, or design review approval (pursuant to Sections 9676, 9673, and 9677 of Division 6 of Part 3 of Title IX of the Municipal Code, respectively) from the City prior to the effective date of this section, which obtain a building permit pursuant to that discretionary approval within one year of the effective date of this section, and which obtain a certificate of occupancy pursuant to that same discretionary approval.

B. Residential developments that are exempt from this section pursuant to state law, including, but not limited to, those for which the City enters into a development agreement.

C. Residential developments for which the Redevelopment Agency enters into a Redevelopment Agreement, so long as the Redevelopment Agreement is in full force and effect at the time the residential development would otherwise be required to comply with the requirements of this Section, and there is no uncured breach of the Redevelopment Agreement prior to the earlier of a) issuance of Certificate of Completion for the Redevelopment Agreement, or b) issuance of the first certificate of occupancy for the residential development.

### **9133.5 Inclusionary Unit Requirements**

A. Affordable inclusionary units shall be reserved for very low, low and moderate income households. Such units shall be provided at affordable housing cost, as defined by California Health and Safety Code Section 50052.5 for owner-occupied units and Section 50053(b) for rental units, which calculates affordable housing rates for each applicable income category. At least fifteen percent (15%) of all newly constructed dwelling units in residential developments shall be developed, sold to or rented to, and occupied by very low, low and moderate-income households, at an affordable housing cost. A minimum of six percent (6%) of all the units shall be sold to or rented to very

low income households; the remaining nine percent (9%) shall be sold to or rented to low or moderate income households.

B. The City shall on an annual basis set the maximum allowable rents and sale prices for inclusionary units, adjusted for family size.

C. The inclusionary unit requirement set forth in Paragraph A of this subsection may be reduced as follows:

1. If very low-income units are provided in lieu of required low income units, a credit of 1.5 units shall be granted for every 1 unit actually provided.

2. If very-low income units are provided in lieu of required moderate income units, a credit of 2 units shall be granted for every 1 unit actually provided.

3. If low-income units are provided in lieu of required moderate income units, a credit of 1.5 units shall be granted for every 1 unit actually provided.

D. In calculating the required number of inclusionary units, fractional units of 0.50 or above will be rounded-up to a whole unit if the residential development consists of ten (10) or more units.

E. In setting priorities among eligible households, first priority shall be given to public safety employees and primary and secondary school teachers. Second priority shall be given to Agoura Hills' residents. Third priority shall be given to persons employed within Agoura Hills. Fourth priority shall be given to all other persons.

### **9133.6 Alternatives**

As an alternative to developing the inclusionary units in the residential development pursuant to Subsection 9133.5, the requirements of this section may be satisfied at the Planning Commission's discretion by off-site development of required units, donation of off-site land, or an in-lieu fee payment. Where provision of affordable units onsite is determined to be economically infeasible, off-site units are preferred, followed by donation of off-site land, to payment of an in-lieu fee. If neither on site or off-site mitigation is feasible, an in lieu housing fee will be collected in accordance with procedures and standards set forth in the regulations.

A. Off-site units. Upon application by the developer and at the discretion of the Planning Commission, the developer may satisfy the requirement of providing inclusionary units as part of the residential development, in whole or in part, by constructing or substantially rehabilitating the required inclusionary units at a site different than the site of the residential development.

B. Land Donation. Upon application by the developer and at the discretion of the Planning Commission, the developer may satisfy the requirement of providing inclusionary units as part of the residential development, in whole or in part, by conveying land to the City for the construction of the required inclusionary units. The

donated land must at least be equal in value to the in lieu amount that would be applied to the project, vacant and suitable for development for affordable housing units, and fully served by utilities and related infrastructure improvements.

C. In-Lieu Fee. At the discretion of the Planning Commission, the developer may satisfy the requirement for providing inclusionary units as part of the residential development, in whole or in part, by paying a fee in lieu for all or some of the inclusionary units as follows:

1. The amount of the fee shall be calculated using the fee schedule established by resolution of the City Council.
2. One-half of the in-lieu fee required by this subsection shall be paid (or an irrevocable letter of credit posted) prior to issuance of a building permit for all or any part of the residential development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the residential development.
3. The fees collected shall be deposited in the Inclusionary Housing Trust Fund for use exclusively for the development of housing units affordable to very low, low or moderate income households.

### **9133.7 Procedures**

A. At the times and in accordance with the standards and procedures set forth in the regulations, developers shall:

1. Submit an inclusionary housing plan for approval by the Director, setting forth in detail the manner in which the provisions of this section will be implemented for the proposed residential development.
2. Execute and cause to be recorded an inclusionary housing agreement unless developer is complying with this section pursuant to paragraphs “B” (land donation) or “C” (in lieu fee) of Subsection 9133.6.

B. No discretionary approval shall be issued for all or any portion of a residential development subject to this section until the developer has submitted an inclusionary housing plan.

C. No building permit shall be issued for all or any portion of a residential development subject to this section unless the Director has approved the inclusionary housing plan, and the inclusionary housing agreement, if required, recorded.

D. No certificate of occupancy shall be issued for all or any portion of a residential development subject to this section unless the approved inclusionary housing plan has been fully implemented.

### **9133.8 Standards**

A. All inclusionary units shall be:

1. Reasonably dispersed throughout the residential development.



2. Proportional, in number, bedroom size and location, to the market rate units.
3. Comparable with the market rate units in terms of the base design, appearance, materials and finished quality.

B. All inclusionary units in a residential development shall be constructed concurrently with or prior to the construction of the market rate units. In the event the City approves a phased project, the inclusionary units required by this section shall be provided within each phase of the residential development.

C. Inclusionary units shall be reserved for very low, low and moderate income households at the ratios established pursuant to California Health and Safety Code Section 33413(b)(2) and shall be provided at the applicable affordable housing cost.

1. An inclusionary unit that is for rent shall remain restricted for occupancy by the target income category at the applicable affordable housing cost for a period of not less than fifty-five (55) years.
2. An inclusionary unit that is for sale shall remain restricted for owner-occupancy the target income category at the applicable affordable housing cost for a period of not less than forty-five (45) years.

The occupancy and rents of the inclusionary units shall be governed by the terms of a deed restriction recorded with the property.

D. Notwithstanding paragraph C (2) of this Subsection 9133.8, if an inclusionary unit for-sale is sold to an above moderate income purchaser, the sale shall result in a recapture by the City or its designee of a financial interest in the unit equal to (1) the difference between the initial affordable sales price and the appraised “fair market” value of the unit at the time of the initial sale, and (2) a proportionate share of any appreciation, provided that there are no more restrictive agreements executed by and between the home owner and the City or Redevelopment Agency, in which case the more restrictive requirement will apply.

E. Where the developer contends that onsite provision of inclusionary units is economically infeasible, the developer may request that the Planning Commission review the proposed residential development for a determination of economic infeasibility. The developer is required to submit to the City all necessary documentation demonstrating economic infeasibility. Upon a determination of economic infeasibility by the Planning Commission, the units may then be provided at another location in the City’s jurisdiction at the Planning Commission’s discretion. Any such off-site inclusionary units shall be completed prior to the issuance of a certificate of occupancy for the market rate housing development. The occupancy and rents of any such off-site units shall be governed by the terms of a deed restriction similar to that used for onsite inclusionary units, as referenced in Paragraph C of Subsection 9133.8.

### **9133.9 Enforcement**

A. Any violation of this section constitutes a misdemeanor.

B. The provisions of this Section shall apply to all Developers and their agents, successors and assigns proposing a Residential Development. All Inclusionary Units shall be rented or sold in accordance with this Section and any regulations adopted pursuant to this section.

C. Any individual who sells or rents an Inclusionary Unit in violation of the provisions of this Section shall be required to forfeit all monetary amounts so obtained. Recovered funds shall be deposited into the Inclusionary Housing Trust Fund.

D. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Section, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; and (2) actions for injunctive relief or damages.

E. In any action to enforce this Section or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.

### **9133.10 Regulations**

The City Council may by resolution establish additional regulations for the implementation of this section.

### **9133.11 Inclusionary Housing Trust Fund**

There is an established separate fund of the City, known as the Inclusionary Housing Trust Fund. All monies collected pursuant to Paragraph "C" of Subsection 9133.6 shall be deposited in the Inclusionary Housing Trust Fund.

### **9133.12 Administrative Fees**

The City Council may by resolution establish reasonable fees and deposits for the administration of this Chapter.

### **9133.13 Appeal**

Within fifteen (15) calendar days after the date of the Director's decision, an appeal may be filed pursuant to Section 9804 of Division 4 of Part 1 of Chapter 8 of Title IX of the Municipal Code in which appeal procedures are set forth.

### **9133.14 Taking Determination**

A. Commencing upon the approval or disapproval of the inclusionary housing plan by the Planning Commission pursuant to the regulations, and within fifteen (15) days

thereafter, a developer may request a determination that the requirements of this section, taken together with the inclusionary incentives, as applied to the residential development, would legally constitute a taking of property of the residential development without just compensation under the California or Federal Constitutions.

B. The developer has the burden of providing economic information and other evidence necessary to establish that application of the provisions of this section to the residential development would constitute a taking of the property of the proposed residential development without just compensation. The Director shall make the determination, which may be appealed in the manner and within the time set forth in Subsection 9133.13, except that the City Council shall serve as the review body.

C. In making the taking recommendation or determination, the decision maker shall assume each of the following:

1. Application of the inclusionary housing requirement to the residential development;
2. Application of the inclusionary incentives;
3. Utilization of the most cost-efficient product type for the inclusionary units; and
4. External funding where reasonably likely to occur.

D. If it is determined that the application of the provisions of this section would be a taking, the inclusionary housing plan shall be modified to reduce the obligations in the inclusionary housing component to the extent and only to the extent necessary to avoid a taking. If it is determined no taking would occur though application of this section to the residential development, the requirements of this section remain applicable.”

**Section 5.** On or before the date that is forty-two (42) months after the effective date of this Ordinance, the Director shall prepare and present to the City Council an evaluation of the effectiveness of Section 9133 during the first three (3) years of its implementation, and recommendations for changes (if any), to be followed thereafter with an annual summary report.

**Section 6.** If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

**Section 7.** The City Clerk shall certify the adoption of this Ordinance and cause its publication in accordance with applicable law.

PASSED, APPROVED AND ADOPTED this 9<sup>th</sup> day of July 2008, by the following vote to wit:

AYES: ( )  
NOES: ( )  
ABSENT: ( )  
ABSTAIN: ( )

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John M. Edelston, Mayor

ATTEST:

\_\_\_\_\_  
Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Craig A. Steele, City Attorney