

Housing Commission Agenda Report

June 17, 2021
Item 04

SUBJECT **Review and Recommendation to City Council an Affordable Housing Agreement with AVS Ranch, LLC for the Spotorno Ranch Project (“Spotorno”), a residential development proposed on Lot 98 of the Happy Valley Specific Plan (PUD-138)**

RECOMMENDATION

Review the Affordable Housing Agreement for Sportorno Ranch Project and recommend approval by City Council as part of the PUD approval process.

ATTACHMENTS

1. Draft Affordable Housing Agreement (AHA)
2. Inclusionary Zoning Ordinance (PMC Ch. 17.44)

BACKGROUND

The Spotorno Family, also referred as AVS Ranch, LLC, (the “Applicant”) has submitted an application to develop 22 single-family homes on the approximately 112-acre site, identified as Lot No. 98 by the Happy Valley Specific Plan (HVSP). The proposed project, referred to as “The Spotorno Ranch Project (PUD-138)” (the “Development”), would occur on an approximately 31-acre portion of the site located in the western portion of Lot 98, referred as the Spotorno Flat Area by the HVSP. The proposed development includes: 1) 22 one- and two-story single-family residential homes, and 2) on- and off-site improvements, such as streets, trails, and stormwater detention areas. The remaining approximately 81-acre portion of Lot 98 would be dedicated as an open space/agricultural easement.

As proposed, the lot size would range from 43,632 square feet to 51,601 square feet with an average lot size of 47,660 square feet. Similar to the homes at Mariposa Ranch, i.e., the custom-built homes at the Callippe Preserve Golf Course, homes at Spotorno Ranch would be constructed by lot owners following a set of design guidelines. The design guidelines, as part of the proposed project and when approved by the City Council, would provide design requirements for lot owners to follow. The design of each home would be subject to the City’s design review process per §18.20 of the Pleasanton Municipal Code.

The project’s proposal to develop 22 single-family residential homes is subject to review by the Planning Commission and approval of the City Council.

Project Location

The project site is surrounded by Alisal Street (west), single-family residential uses located in unincorporated Alameda County (north, south, and west), and Westbridge Lane and Faith

Chapel of God (south) (see Figure 1). The western portion of the site is relatively flat while the eastern portion of the site contains hills.

Figure 1: Aerial of the Project Site and its Surrounding



The project, as proposed, conforms to the 2005-2025 Pleasanton General Plan for land use and density. It conforms to the 1998 City Council adopted Happy Valley Specific Plan for land use and density as well. Additionally, the proposed trails, both within and outside the development area, are consistent with the 2019 Pleasanton Trails Master Plan. The proposed development will be reviewed by the Planning Commission in late July for a recommendation to City Council at a date yet to be determined. Concurrent with that process, the Housing Commission is tasked with providing a recommendation on the Affordable Housing Agreement prior to the Planning Commission meeting. Both recommendations will be forwarded for a final decision by the City Council.

Affordable Housing Requirements

Because it exceeds the fifteen (15) unit threshold, the proposed development is subject to the City's 20 percent affordability requirement for very low, low, and/or moderate income households (i.e., provide 4.4 affordably priced units in the development), or to satisfy the requirement through an alternative means. Alternatives described in the ordinance include options such as off-site development, land dedication, and payment of the Lower Income Housing Fee. Historically, the City has taken a flexible approach to negotiating how low density single family detached

residential projects may meet their affordable housing requirement. In addition to affordable units being provided on-site (such as in the higher density “Vines” and “Andares” developments), affordable housing fee payments and land dedication have also been accepted. A copy of the Inclusionary Zoning Ordinance is included for reference as Attachment 2.

DISCUSSION

Below Market Rate (BMR) and Fees

Most Below Market Rate (BMR) ownership homes have been duets, townhomes, multi-family or smaller, detached single-family units of approximately 1,200 sf. There are no larger single-family BMR homes in the City’s inventory and staff and the City Council have traditionally not pursued that type due to the significant gap between the market sales price of the homes and sales prices which are affordable for low and moderate income households. For example, using the current median list price per square foot for homes in Pleasanton of \$561, a 2,500 sf single family home would be priced at approximately \$1.4 million. The mortgage that a low income household of four could afford (at 80 percent of Area Median Income) would be approximately \$270,000. The significant subsidy gap creates a “windfall” perception for individual homeowners, does not maximize affordable housing goals which may serve more residents through other housing development opportunities and programs, and is economically infeasible. Historically, developments with larger single family units such as the Lund Ranch and the Village at Valley Trails projects, have provided fee payments in lieu of providing units on site. These fee payments have been an important funding source for affordable housing goals at other sites, including Kottinger Gardens Phases 1 & 2 and Sunflower Hill, and in funding programs which support the variety of Housing Element goals.

Proposals at the Project Site

Prior Affordable Housing Agreement (AHA): At its January 17, 2019 meeting, the Housing Commission approved the AHA with TL Partners IV, LP, for development at this site. TL Partners IV, LP had a contract with the Spotorno Family for a 39-lot single-family residential development. TL Partner IV’s proposal included the constructions of all 39 homes and at a minimum, 20 percent of the total lots would have an ADU. The approved TL Partner IV’s AHA stipulated that the developer paying the Lower Income Housing Fee (LIHF) and affordable housing contribution as well as the construction of Accessory Dwelling Units (ADU) on at least twenty percent of the units in lieu of providing price restricted affordable housing on or off of the property or any other affordable housing program in order to fully meet the developer’s affordable housing obligation for this project.

In April 2020, TL Partners IV, LP, withdrew its application for the Spotorno site. The Spotorno Family decided to take over the project.

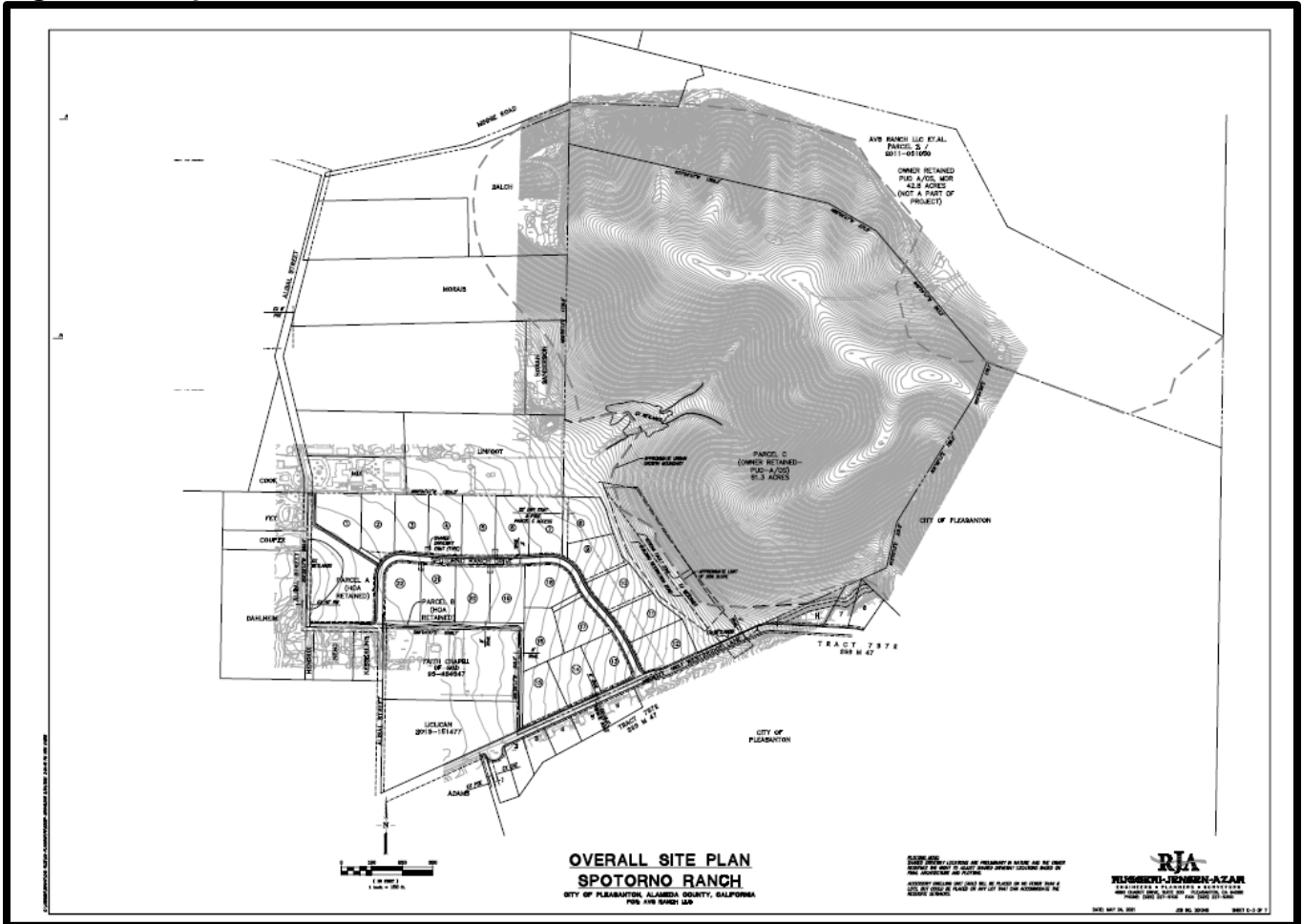
Current Proposal

The current proposal differs from the previous TL Partner IV’s proposal in the following key areas:

- There will be a 22-lot residential development as opposed to the originally proposed 39-lot development (see Figure 2).
- There will be custom homes with a set of design criteria as supposed to the originally proposed production homes using five different floor plans.

- An Accessory Dwelling Unit (ADU) will be constructed on each of the 22 lots as opposed to only on the originally proposal of at least twenty percent of the proposed number of residential lots.

Figure 2: Proposed Site Plan



Staff Recommendation

Similar to staff previously meeting with TL Partners IV, LP, staff also met with AVS Ranch, LLC, to discuss how the Development, with the changes from the original TL Partner IV’s proposal, would also comply with the requirements of the Inclusionary Zoning Ordinance (“IZO”).

Consistent with this previous approach, Staff is recommending the attached Affordable Housing Agreement that includes the following main provisions:

- The owner will pay, at the time of the issuance of a building permit for the 22 residential units in the Project, the applicable Affordable Housing Fee. The Affordable Housing Agreement illustrates a sample payment of \$46,076 per unit totaling \$1,013,672 for the Affordable Housing Fees in effect January 1, 2021 through December 31, 2021.
- The owner of each lot shall construct an Accessory Dwelling Unit on their residential lot.

It is important to note that while the LIHF is required by City ordinance to be placed in the City's Lower Income Housing Fund and used in accordance with the terms of that fund, this requirement is not applicable to the Affordable Housing Fee. City Council may appropriate these funds to a use that it deems best meets the City's needs; however, Staff will recommend that the City Council appropriate this Affordable Housing Fee to the Lower Income Housing Fund.

As stated earlier, staff is recommending the Housing Commission approve the revised and updated Spotorno Ranch Project Affordable Housing Agreement. In accordance with the IZO, the Commission may accept, reject or modify the recommended agreement. Following the Commission's action, staff will forward its recommendation to the City Council concurrent with and as part of its review of the proposed Planned Unit Development.

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AFFORDABLE HOUSING AGREEMENT

This **AFFORDABLE HOUSING AGREEMENT** ("Agreement") is made this ___ day of _____, 202__, by the **CITY OF PLEASANTON**, a Municipal Corporation ("City"), and **AVS Ranch, LLC**, a California Limited Liability Company (hereinafter called "**Owner**").

Recitals

- A. Owner currently owns a legal or equitable interest in land consisting of approximately One Hundred Eleven (111) acres in Pleasanton, California, more particularly described in Attachment 1 attached hereto and incorporated herein by reference (the "Property").
- B. For the Property, Owner has obtained City approval (PUD-___) to develop a 2 2 - unit single- family residential project (collectively the "Project"). The Project includes the potential for Accessory Dwelling Units, which provides additional affordable housing options for Pleasanton residents.
- C. Execution of this Agreement memorializes the requirements of the City's Inclusionary Zoning Ordinance (see Pleasanton Municipal Code Chapter 17.44) for the Project.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, City and Owner agree as follows:

- 1. Owner shall pay the applicable Affordable Housing Fee in effect at the time the Owner pulls the building permit for each single family home in the Project. The amounts outlined in **Table 1**, below, are a sample of the Affordable Housing Fees in effect January 1, 2021 through December 31, 2021.

Table 1 – Affordable Housing Fee

# OF UNITS	CURRENT AFFORDABLE HOUSING FEE FOR RESIDENTIAL/SINGLE-FAMILY DETACHED (over 1,500 sq ft) (EFFECTIVE 01.01.2021)	TOTAL FEE
22	\$46,076	\$1,013,672

2. Owner shall construct an Accessory Dwelling Unit on each of the lots in the Project.
3. In accordance with Pleasanton Municipal Code Section 17.40.100, Owner shall pay the Affordable Housing Fee at the time of the issuance of a building permit for each of the residential units in the Project.
4. The payment of the Affordable Housing Fee and provision for Accessory Dwelling Units shall be in lieu of providing price restricted affordable housing units on or off of the Property or any other affordable housing programs or units which would otherwise be required as part of the Project and shall fully meet any and all of the requirements of the City's Inclusionary Zoning Ordinance as it may be amended in the future.
5. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators and assigns. However, in no event shall this Agreement be binding or impose any obligations (including but not limited any indemnity or duty to defend obligations) on an owner of a single-family home located on the Property.
6. Owner shall have the right to transfer and assign all of its rights, duties and obligations under this Agreement to any person or entity acquiring fee simple title to any portion of the Property. Owner shall be immediately released from its obligations under this Agreement upon such assignment so long as: (i) Owner was not in default of this Agreement at the time of conveyance, (ii) Owner provided to City prior written notice of such transfer, and (iii) the transferee executes and delivers to City a written assumption agreement in which: (1) the name and address of the transferee is set forth, and (2) the transferee expressly assumes the obligations of Owner under this Agreement. Failure to deliver a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement. Nothing herein contained shall be deemed to grant to City discretion to approve or deny any such transfer.
7. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate either of the parties hereto to, any person or entity not a party to this Agreement.

THIS AGREEMENT is executed the date and year first above written.

CITY:

CITY OF PLEASANTON, a Municipal Corporation

By:

Nelson Fialho, City Manager

ATTEST:

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Daniel Sodergren, City Attorney

Owner:

AVS Ranch, LLC, a California Limited Liability Company

By:

By: _____
Title: its _____

By: _____
Title: its _____

Attachments:

1. Legal Description

Chapter 17.44 INCLUSIONARY ZONING

Article I. General Provisions

17.44.010 Title:

This chapter shall be called the *INCLUSIONARY ZONING ORDINANCE OF THE CITY OF PLEASANTON*. (Ord. 1818 § 1, 2000)

17.44.020 Purpose:

The purpose of this chapter is to enhance the public welfare and assure that further housing development attains the city's affordable housing goals by increasing the production of residential units affordable to households of very low, low, and moderate income, and by providing funds for the development of very low, low, and moderate income ownership and/or rental housing. In order to assure that the remaining developable land is utilized in a manner consistent with the city's housing policies and needs, fifteen percent (15%) of the total number of units of all new multiple-family residential projects containing fifteen (15) or more units, constructed within the city as it now exists and as may be altered by annexation, shall be affordable to very low and low income households. For all new single-family residential projects of fifteen (15) units or more, at least twenty percent (20%) of the project's dwelling units shall be affordable to very low, low, and/or moderate income households. These requirements shall apply to both ownership and rental projects. (Ord. 1818 § 1, 2000)

17.44.030 Definitions:

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

"Affordable housing proposal": A proposal submitted by the project owner as part of the city development application (e.g., design review, planned unit development, etc.) stating the method by which the requirements of this chapter are proposed to be met.

"Affordable rent": A monthly rent (including utilities as determined by a schedule prepared by the city) which does not exceed one-twelfth (1/12) of thirty percent (30%) of the maximum annual income for a household of the applicable income level.

"Affordable sales price": A sales price which results in a monthly mortgage payment (including principal and interest) which does not exceed one-twelfth (1/12) of thirty five percent (35%) of the maximum annual income for a household of the applicable income level.

"Amenities": Interior features which are not essential to the health and safety of the resident, but provide visual or aesthetic appeal, or are provided as conveniences rather than as necessities. Interior amenities may include, but are not limited to, fireplaces, garbage disposals, dishwashers, cabinet and storage space and bathrooms in excess of one. Amenities shall in no way include items required by city building codes or other ordinances that are necessary to ensure the safety of the building and its residents.

"Applicant": Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city permits and approvals for a project.

"City": The city of Pleasanton or its designee or any entity with which the city contracts to administer this chapter.

"Commercial, office, and industrial project": For the purposes of this chapter, any new nonresidential (commercial, office, or industrial) development or redevelopment greater than ten (10) gross acres or two hundred fifty thousand (250,000) square feet of gross building area, whichever is less.

"Dwelling unit": A dwelling designed for occupancy by one household.

"HUD": The United States department of housing and urban development or its successor.

"Household": One person living alone; or two (2) or more persons sharing residency whose income is considered for housing payments.

"Household, low income": A household whose annual income is more than fifty percent (50%) but does not exceed eighty percent (80%) of the annual median income for Alameda County, based upon the annual income figures provided by the U.S. department of housing and urban development (HUD), as adjusted for household size.

"Household, moderate income": A household whose annual income is more than eighty percent (80%) but does not exceed one hundred twenty percent (120%) of the annual median income for Alameda County, based upon the annual income figures provided by HUD, as adjusted for household size.

"Household, very low income": A household whose annual income does not exceed fifty percent (50%) of the annual median income for Alameda County, based upon the annual income figures provided by HUD, as adjusted for household size.

"Inclusionary unit": A dwelling unit as required by this chapter which is rented or sold at affordable rents and/or affordable sales prices (as defined by this chapter) to very low, low, or moderate income households.

"Inclusionary unit credits": Credits approved by the city council in the event a project exceeds the total number of inclusionary units required in this chapter. Inclusionary unit credits may be used by the project owner to meet the affordable housing requirements of another project subject to approval by the city council.

"Income": The gross annual household income as defined by HUD.

"Life of the inclusionary unit": The term during which the affordability provisions for inclusionary units shall remain applicable. The affordability provisions for inclusionary units shall apply in perpetuity from the date of occupancy, which shall be the date the city of Pleasanton performs final inspection for the building permit.

"Lower income housing fee": A fee paid to the city by an applicant for a project in the city, in lieu of providing the inclusionary units required by this chapter.

"Median income for Alameda County": The median gross annual income in Alameda County as determined by HUD, adjusted for household size.

"Off-site inclusionary units": Inclusionary units constructed within the city of Pleasanton on a site other than the site where the applicant intends to construct market rate units.

"Ownership units": Inclusionary units developed as part of a residential development which the applicant intends will be sold, or which are customarily offered for individual sale.

"Project": A residential housing development at one location or site including all dwelling units for which permits have been applied for or approved.

"Project owner": Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the project is located.

"Property owner": The owner of an inclusionary unit, excepting a "Project Owner".

"Recapture mechanisms": Legal programs and restrictions by which subsidies provided to inclusionary units will be controlled and repaid to the city and/or other entity upon resale, to ensure the ongoing preservation of affordability of inclusionary units or to ensure funds for inclusionary units remain within the city's affordable housing program.

"Rental units": Inclusionary units which the applicant intends will be rented or leased, or which are customarily offered for lease or rent.

"Resale restrictions": Legal restrictions which restrict the price of inclusionary units to ensure that they remain affordable to very low, low, and moderate income households on resale.

"Residential project, multiple-family": A residential project consisting of condominiums, apartments, and similar dwellings attached in groups of four (4) or more units per structure and including multiple units located on a single parcel of land under common ownership.

"Residential project, single-family": A residential project consisting of detached and attached single-family homes, including paired single-family, duets, duplexes, townhomes, and similar unit types where each unit is located on a separate parcel of land.

"Unit type": Various dwelling units within a project which are distinguished by number of bedrooms and/or the type of construction (e.g., detached single-family, duets, townhomes, condominiums). (Ord. 1818 § 1, 2000)

Article II. Zoning Requirements

17.44.040 General Requirements/Applicability:

- A. Residential Development: For all new multiple-family residential projects of fifteen (15) units or more, at least fifteen percent (15%) of the project's dwelling units shall be affordable to very low, and/or low income households. For all new single-family residential projects of fifteen (15) units or more, at least twenty percent (20%) of the project's dwelling units shall be affordable to very low, low, and/or moderate income households. These dwelling units shall be referred to as "Inclusionary Units". Special consideration will be given to projects in which a significant percentage of the inclusionary units are for very low and low income households. The specific mix of units within the three (3) affordability categories shall be subject to approval by the city.

The inclusionary units shall be reserved for rent or purchase by eligible very low, low, and moderate income households, as applicable. Projects subject to these requirements include, but are not limited to, single-family detached dwellings, townhomes, apartments, condominiums, or cooperatives provided through new construction projects, and/or through conversion of rentals to ownership units. The percentage of inclusionary units required for a particular project shall be determined only once on a given project, at the time of tentative map approval, or, for projects not processing a map, prior to issuance of building permit. If the subdivision design changes, which results in a change in the number of unit types required, the number of inclusionary units required shall be recalculated to coincide with the final approved project. In applying and calculating the fifteen percent (15%) requirement, any decimal fraction less than or equal to 0.50 may be disregarded, and any decimal fraction greater than 0.50 shall be construed as one unit.

- B. Commercial, Office, And Industrial (COI) Development: In lieu of paying the lower income fee as set forth in city ordinance 1488, COI development may provide affordable housing consistent with this chapter. As a result, new COI developments are strongly encouraged to submit an affordable housing proposal as set forth in section 17.44.090 of this chapter. Upon submittal of the affordable housing proposal, city staff will meet with the developer to discuss the potential for providing incentives to encourage on-site construction of affordable housing units and alternatives to constructing affordable units as set forth in this chapter. In the event a developer requests incentives or alternatives as a means of providing affordable housing in connection with a COI development, the affordable housing proposal will be reviewed as set forth in section 17.44.090 of this chapter. COI development not pursuing the inclusion of affordable housing shall be subject to the lower income fees as set forth in city ordinance 1488. (Ord. 1818 § 1, 2000)

17.44.050 Inclusionary Unit Provisions And Specifications:

- A. Inclusionary units shall be dispersed throughout the project unless otherwise approved by the city.
- B. Inclusionary units shall be constructed with identical exterior materials and an

exterior architectural design that is consistent with the market rate units in the project.

- C. Inclusionary units may be of smaller size than the market units in the project. In addition, inclusionary units may have fewer interior amenities than the market rate units in the project. However, the city may require that the inclusionary units meet certain minimum standards. These standards shall be set forth in the affordable housing agreement for the project.
- D. Inclusionary units shall remain affordable in perpetuity through recordation of an affordable housing agreement as described in section 17.44.060 of this chapter.
- E. All inclusionary units in a project shall be constructed concurrently within or prior to the construction of the project's market rate units.
- F. For purposes of calculating the affordable rent or affordable sales price of an inclusionary unit, the following household size assumptions shall be used for each applicable dwelling unit type:

HUD Income Category

<u>Unit Size</u>	<u>By Household Size</u>
Studio unit	1 person
1 bedroom unit	2 persons
2 bedroom unit	3 persons
3 bedroom unit	4 persons
4 or more bedroom unit	5 or more persons

- G. The city's adopted preference and priority system shall be used for determining eligibility among prospective beneficiaries for affordable housing units created through this inclusionary zoning ordinance. (Ord. 1818 § 1, 2000)

17.44.060 Affordable Housing Agreement:

An affordable housing agreement shall be entered into by the city and the project owner. The agreement shall record the method and terms by which a project owner shall comply with the requirements of this chapter. The approval and/or recordation of this agreement shall take place prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for such lots or units.

The affordable housing agreement shall state the methodology for determining a unit's initial and ongoing rent or sales and resale price(s), any resale restrictions, occupancy requirements, eligibility requirements, city incentives including second mortgages, recapture mechanisms, the administrative process for monitoring unit management to assure ongoing affordability and other matters related to the development and retention of the inclusionary units.

In addition to the above, the affordable housing agreement shall set forth any waiver of the lower income housing fee. For projects which meet the affordability threshold with

very low and/or low income units, all units in the project shall be eligible for a waiver of the lower income housing fee. For single-family residential projects which meet the affordability threshold with moderate income units, or multiple-family residential projects which do not meet the affordability threshold, only the inclusionary units shall be eligible for a waiver of the lower income housing fee except as otherwise approved by the city council.

To assure affordability over the life of the unit, the affordable housing agreement shall be recorded with the property deed or other method approved by the city attorney. In the event an inclusionary unit is affordable by design the affordable housing agreement shall stipulate the method for assuring that the units retain their affordability as the housing market changes.

The director of planning and community development may waive the requirement for an affordable housing agreement for projects approved prior to the effective hereof and/or for projects that have their affordable housing requirements included in a development agreement or other city document. (Ord. 1818 § 1, 2000)

17.44.070 Incentives To Encourage On-Site Construction Of Inclusionary Units:

The city shall consider making available to the applicant incentives to increase the feasibility of residential projects to provide inclusionary units. Incentives or financial assistance will be offered only to the extent resources for this purpose are available and approved for such use by the city council or city manager, as defined below, and to the extent that the project, with the use of incentives or financial assistance, assists in achieving the city's housing goals. However, nothing in this chapter establishes, directly or through implication, a right of an applicant to receive any assistance or incentive from the city.

Any incentives provided by the city shall be set out in the affordable housing agreement pursuant to section 17.44.060 of this chapter. The granting of the additional incentives shall require demonstration of exceptional circumstances that necessitate assistance from the city, as well as documentation of how such incentives increase the feasibility of providing affordable housing.

The following incentives may be approved for applicants who construct inclusionary units on-site:

- A. **Fee Waiver Or Deferral:** The city council, by resolution, may waive or defer payment of city development impact fees and/or building permit fees applicable to the inclusionary units or the project of which they are a part. Fee waivers shall meet the criteria included in the city's adopted policy for evaluating waivers of city fees for affordable housing projects. The affordable housing agreement shall include the terms of the fee waiver.
- B. **Design Modifications:** The granting of design modifications relative to the inclusionary requirement shall require the approval of the city council and shall meet all applicable zoning requirements of the city of Pleasanton. Modifications to typical

design standards may include the following:

Reduced setbacks

Reduction in infrastructure requirements

Reduced open space requirements

Reduced landscaping requirements

Reduced interior or exterior amenities

Reduction in parking requirements

Height restriction waivers

- C. **Second Mortgages:** The city may utilize available lower income housing funds for the purpose of providing second mortgages to prospective unit owners or to subsidize the cost of a unit to establish an affordable rent or an affordable sales price. Terms of the second mortgage or subsidy shall be stated in the affordable housing agreement. The utilization of these incentives shall not be the sole source of providing the inclusionary units and they are intended to augment the developer's proposal.
- D. **Priority Processing:** After receiving its discretionary approvals, a project that provides inclusionary units may be entitled to priority processing of building and engineering approvals subject to the approval of the city manager. A project eligible for priority processing shall be assigned to city engineering and/or building staff and processed in advance of all nonpriority items. (Ord. 1818 § 1, 2000)

17.44.080 Alternatives To Constructing Inclusionary Units On-Site:

The primary emphasis of this inclusionary zoning ordinance is to achieve the inclusion of affordable housing units to be constructed in conjunction with market rate units within the same project in all new residential projects. However, the city acknowledges that it may not always be practical to require that every project satisfy its affordable housing requirement through the construction of affordable units within the project itself. Therefore, the requirements of this chapter may be satisfied by various methods other than the construction of inclusionary units on the project site. Some examples of alternate methods of compliance appear below. As housing market conditions change, the city may need to allow alternatives to provide options to applicants to further the intent of providing affordable housing with new development projects.

- A. **Off-Site Projects:** Inclusionary units required pursuant to this chapter may be permitted to be constructed at a location within the city other than the project site. Any off-site inclusionary units must meet the following criteria:
1. The off-site inclusionary units must be determined to be consistent with the city's goal of creating, preserving, maintaining, and protecting housing for very low, low, and moderate income households.
 2. The off-site inclusionary units must not result in a significant concentration of inclusionary units in any one particular neighborhood.
 3. The off-site inclusionary units shall conform to the requirements of all applicable

city ordinances and the provisions of this chapter.

4. The occupancy and rents of the off- site inclusionary units shall be governed by the terms of a deed restriction, and if applicable, a declaration of covenants, conditions and restrictions similar to that used for the on-site inclusionary units. The affordable housing agreement shall stipulate the terms of the off-site inclusionary units. If the construction does not take place at the same time as project development, the agreement shall require the units to be produced within a specified time frame, but in no event longer than five (5) years. A cash deposit or bond may be required by the city, refundable upon construction, as assurance that the units will be built.

- B. Land Dedication: An applicant may dedicate land to the city or a local nonprofit housing developer in place of actual construction of inclusionary units upon approval of the city council. The intent of allowing a land dedication option is to provide the city or a local nonprofit housing developer the free land needed to make an inclusionary unit development feasible, thus furthering the intent of this chapter. The dedicated land must be appropriately zoned, buildable, free of toxic substances and contaminated soils, and large enough to accommodate the number of inclusionary units required for the project. The city's acceptance of land dedication shall require that the lots be fully improved, with infrastructure, adjacent utilities, grading, and fees paid.
- C. Credit Transfers: In the event a project exceeds the total number of inclusionary units required in this chapter, the project owner may request inclusionary unit credits which may be used to meet the affordable housing requirements of another project. Inclusionary unit credits are issued to and become the possession of the project owner and may not be transferred to another project owner without approval by the city council. The number of inclusionary unit credits awarded for any project is subject to approval by the city council.
- D. Alternate Methods Of Compliance: Applicants may propose creative concepts for meeting the requirements of this chapter, in order to bring down the cost of providing inclusionary units, whether on- or off-site. The city council may approve alternate methods of compliance with this chapter if the applicant demonstrates that such alternate method meets the purpose of this chapter (as set forth in section 17.44.020 of this chapter).
- E. Lower Income Housing Fee Option: In lieu of providing inclusionary units in a project, an applicant may pay the city's lower income housing fee as set forth in chapter 17.40 of this title. (Ord. 1818 § 1, 2000)

Article III. Miscellaneous

17.44.090 Administration:

An applicant of a project subject to this chapter shall submit an affordable housing proposal stating the method by which it will meet the requirements of this chapter. The affordable housing proposal shall be submitted as part of the applicant's city development application (e.g., design review, planned unit development, etc.) to the planning

department in a form approved by the city manager. The director of planning and community development may waive the requirement for submittal of an affordable housing proposal for projects approved prior to the effective date hereof and/or for projects that have undergone considerable public review during which affordable housing issues were addressed.

The affordable housing proposal shall be reviewed by the city's housing commission at a properly noticed meeting open to the public. The housing commission shall make recommendations to the city council either accepting, rejecting or modifying the developer's proposal and the utilization of any incentives as outlined in this chapter. The housing commission may also make recommendations to the planning commission regarding the project as necessary to assure conformance with this chapter.

Acceptance of the applicant's affordable housing proposal is subject to approval by the city council, which may direct the city manager to execute an affordable housing agreement in a form approved by the city attorney. The city manager or his/her designee shall be responsible for monitoring the sale, occupancy and resale of inclusionary units. (Ord. 1818 § 1, 2000)

17.44.100 Conflict Of Interest:

The following individuals are ineligible to purchase or rent an inclusionary unit: a) city employees and officials (and their immediate family members) who have policymaking authority or influence regarding city housing programs; b) the project applicant and its officers and employees (and their immediate family members); and c) the project owner and its officers and employees (and their immediate family members). (Ord. 1818 § 1, 2000)

17.44.110 Enforcement:

The city manager is designated as the enforcing authority. The city manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. The provisions of this chapter shall apply to all agents, successors and assigns of an applicant. No building permit or final inspection shall be issued, nor any development approval be granted which does not meet the requirements of this chapter. In the event that it is determined that rents in excess of those allowed by operation of this chapter have been charged to a tenant residing in an inclusionary unit, the city may take appropriate legal action to recover, and the project owner shall be obligated to pay to the tenant, or to the city in the event the tenant cannot be located, any excess rents charged. (Ord. 1818 § 1, 2000)

17.44.120 Appeals:

Any person aggrieved by any action or determination of the city manager under this chapter, may appeal such action or determination to the city council in the manner provided in chapter 18.144 of this code. (Ord. 1818 § 1, 2000)