

## CHAPTER FIVE: PLANNING, ZONING, USE, AND DEVELOPMENT OF LAND AND IMPROVEMENTS

### Subchapter 5.12. Inclusionary Housing

#### 5.12.010 Purpose

The purposes of this Subchapter are to:

- (1) Encourage the development and availability of housing affordable to a broad range of Households with varying income levels within the City as mandated by State Law, California Government Code Sections 65580.
- (2) Promote the City's goal to add affordable housing units to the City's housing stock
- (3) Provide housing to all income categories through the encouragement of higher densities near major regional transportation facilities;
- (4) Offset the demand on housing that is created by new development and mitigate environmental and other impacts that accompany new residential and Commercial Development by protecting the economic diversity of the City's housing stock, reducing traffic, transit and related air quality impacts, promoting jobs/housing balance and reducing the demands placed on transportation infrastructure in the region;
- (5) Provide housing accessible to persons with special needs and the elderly; and
- (6) Assist citizens in locating and retaining affordable housing and promote equal housing opportunity and Fair Housing.

[*History:* ORD. 639, 1/11/06]

#### 5.12.020 Findings

- (a) Both California and the City face a serious housing problem that threatens their economic security. Lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of the City. The City will not be able to contribute to the attainment of State housing goals or to retain a healthy environment without additional affordable housing. The housing problem has an impact upon a broad range of income groups including many who are not impoverished by standards other than those applicable to California's and the City's housing markets, and no single housing program will be sufficient to meet the housing need.
- (b) The 2000 Census has determined that 87 percent off all households in Colma are within the Very Low, Low or Moderate Income categories. Of all households in Colma, 26

percent earn less than 60 percent of the San Mateo County median income (\$56,550 per year for a family of four) and 40 percent earn less than 95 percent of the median county income (\$90,500 per year for a family of four). Among these households are families desiring to purchase their first home. These families have especially significant housing needs that can be served by this ordinance.

- (c) There is a “affordability gap” between the median price of housing in San Mateo County and the price of housing that a lower income household can afford to purchase or rent. To rent housing, the affordability gap ranges from \$1,474 to \$2,850 per month; to purchase housing, the affordability gap ranges from \$530,500 to \$717,243 for a dwelling unit. This affordability gap can be bridged, in part, by adoption of this ordinance.
- (d) A lack of new Inclusionary Units will have a substantial negative impact on the environment and economic climate because (i) housing will have to be built elsewhere, far from employment centers and therefore commutes will increase, causing increased traffic and transit demand and consequent noise and air pollution; and (ii) City businesses will find it more difficult to attract and retain the workers they need. Inclusionary housing policies contribute to a healthy job and housing balance by providing more affordable housing close to employment centers.
- (e) Development of market-rate housing encourages new residents to move to the City. These new residents will place demands on services provided by both the public and private sectors. Some of the public and private sector employees needed to meet the needs of the new residents earn incomes only adequate to pay for affordable housing. Because affordable housing is in short supply within the City, these employees may be forced to live in less than adequate housing within the City, pay a disproportionate share of their incomes to live in adequate housing within the City, or commute ever-increasing distances to their jobs from housing located outside the City. These circumstances harm the City’s ability to attain goals articulated in the City’s General Plan and strain the City’s ability to accept and service new market-rate housing development.
- (f) The California Legislature has required each local government agency to develop a comprehensive, long-term general plan establishing policies for future development. As specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must: (i) “encourage the development of a variety of types of housing for all income levels, including multifamily rental housing;” (ii) “[a]ssist in the development of adequate housing to meet the needs of low- and moderate-income households;” and (iii) “conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.”
- (g) This ordinance is consistent with the Town’s General Plan. Section 5.01.205 of the Colma General Plan provides that it is the policy of the Town to maintain the availability of affordable housing units, both rental and for sale, for all income groups. This ordinance will create affordable housing for lower income groups with provisions to maintain those units as affordable for 45 years or longer.

- (h) The citizens of the Town seek a well-planned, aesthetically pleasing and balanced community, with housing affordable to Very Low-, Low- and Moderate-Income Households. Affordable housing should be available throughout the Town, and not restricted to a few neighborhoods and areas. However, there may also be trade-offs where constructing affordable units at a different site than the site of the principal project may produce a greater number of affordable units without additional costs to the project applicant. Thus, the Town finds that in certain limited circumstances, the purposes of this Subchapter may be better served by allowing the Developer to comply with the inclusionary requirement through alternative means, such as the payment of in-lieu fees, development of offsite housing or dedication of land. For example, if a project applicant can produce a significantly greater number of affordable units off-site, then it may (but not always) be in the best interest of the Town to permit the development of affordable units at a different location than that of the principal project.
- (i) Federal and state funds for the construction of new affordable housing are insufficient to fully address the problem of affordable housing within the Town. Nor has the private housing market provided adequate housing opportunities affordable to Moderate-, Low- and Very Low-Income Households.
- (j) The Town is aware that there may be times when the inclusionary housing requirements make market-rate housing more expensive. In weighing all the factors, including the significant need for affordable housing, the Town has made the decision that the community's interests are best served by the adoption of the inclusionary housing ordinance.

[History: Ord. 639, 1/11/06]

**5.12.030 Definitions**

For the purposes of this Subchapter, the following terms shall have the meanings set forth herein. Words not defined shall be given their common and ordinary meaning.

- (1) "Affordable rent" means: (1) monthly rent that does not exceed thirty percent (30%) of the qualifying limits for lower income households applicable to San Mateo County, adjusted for family size and other factors by the United States Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) and (2) monthly rent that does not exceed thirty percent (30%) of the qualifying limits for very-low income households applicable to San Mateo County, adjusted for family size and other factors by the United States Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision). Affordable rent shall be based on presumed occupancy levels of one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter.

- (2) "Affordable sales price" means the maximum purchase price that will be affordable to the specified target income household. A maximum purchase price shall be considered affordable only if the owner-occupied monthly housing payment is equal to or less than one-twelfth of 30% of income for the specified target income household. Affordable sales price shall be based upon presumed occupancy levels of one person in a studio unit, two persons in a one-bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom thereafter.
- (3) "Annual household income" means the combined gross income for all adult persons living in a dwelling unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.
- (4) "Building permit" means a permit issued pursuant to Subchapter Four of Chapter Five of the Colma Municipal Code.
- (5) "Building Official" means the chief building official of the Town of Colma, or the designee of such individual.
- (6) "Concession" or "incentive" shall have the same meaning and applicability as set forth in Government Code Section 65915.
- (7) "Construction cost index" means the San Francisco Building Cost Index published by Engineering News-Record.
- (8) "Developer" means every person, firm, or corporation constructing, placing, or creating residential development directly or through the services of any employee, agent, independent contractor or otherwise.
- (9) "Dwelling unit" shall have the meaning set forth in section 5.01.080 of the Town of Colma Municipal Code.
- (10) "Housing Fund" means the Town of Colma Affordable Housing Trust Fund established pursuant to Section 5.12.150.
- (11) "Housing In-lieu Fee" means the fee established pursuant to Section 5.12.070 for residential development projects.
- (12) "Inclusionary Housing Plan" means a plan for a residential or commercial development submitted by a developer as provided by Section 5.12.110(b).
- (13) "Inclusionary Housing Agreement" means a written agreement between developer and the Town as provided by Section 5.12.110(c).

- (14) "Inclusionary Unit" means a dwelling unit that must be offered at an affordable rent or housing sales price to Moderate-, Low- and Very Low-Income Households.
- (15) "Low-income household" means a household with an income of up to the qualifying limit for low-income households applicable to San Mateo County, adjusted for family size and other factors by the United States Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).
- (16) "Market rate unit" means a dwelling unit in a residential development that is not an Inclusionary Unit.
- (17) "Median income" means the median income applicable to San Mateo County, adjusted for family size and other factors by the United States Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).
- (18) "Moderate income household" means a household with an incomes of up to 120% of median income applicable to San Mateo County, adjusted for family size and other factors by the United States Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).
- (19) "Owner-occupied monthly housing payment" means the sum equal to the principal, interest, property taxes, homeowner's insurance and homeowner's association dues paid on an annual basis divided by 12.
- (20) "Residential development project" means the construction of any residential dwelling units where the tentative map, parcel map or, for project not processing a map, the building permit was received after February 11, 2006.
- (21) "Very low-income household" means a household with incomes of up to 50% of median income applicable to San Mateo County, adjusted for family size and other factors by the United States Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).

[History: Ord. 639, 1/11/06]

#### **5.12.040 Residential Development**

(a) *Inclusionary Units Requirement.* For all Residential Developments of five or more units, at least twenty percent of the total units must be Inclusionary Units restricted for occupancy by Moderate-, Low- or Very Low-Income Households. For residential developments of fewer than twelve units, the developer may elect, as an option, to satisfy the requirements of this section

by paying the in-lieu fee described in section 5.12.070 or performing an Alternative Equivalent Action pursuant to section 5.12.080 of this ordinance.

(b) *Time of Determination.* The number of Inclusionary Units required for a particular project will be determined only once, at the time of tentative or parcel map approval, or, for developments not processing a map, prior to issuance of a Conditional Use Permit. If a Conditional Use Permit is not required, the number of units required shall be determined at the time of building permit application. If a change in the subdivision design results in a change in the total number of units, the number of Inclusionary Units required will be recalculated to coincide with the final approved project.

(c) *Calculation.* For purposes of calculating the number of inclusionary units required by this Section, any additional units authorized as a density bonus under Section 5.12.100 of this ordinance and California Government Code Section 65915(b)(1) or (b)(2) will not be counted in determining the required number of Inclusionary Units. In determining the number of whole Inclusionary Units required, any decimal fraction shall be subject to In-Lieu Housing Fees as described in Section 5.12.070.

(d) *Type of Inclusionary Units.* At least forty percent (40%) of the Inclusionary Units (or 5 percent of the total development) must be restricted to occupancy by Very Low-Income Households. An additional twenty percent (20%) of the Inclusionary Units (or 5 percent of the total development) must be restricted to occupancy by Low-Income Households.

(e) *Timing of Occupancy.* All Inclusionary Units must be constructed and occupied concurrently with or prior to the construction and occupancy of market-rate units or development. In phased developments, Inclusionary Units may be constructed and occupied in proportion to the number of units in each phase of the residential development.

### **5.12.050 Exemptions**

The requirements of section 5.12.040 do not apply to:

- (1) A residential development project to the extent it has received a vested right to proceed without payment of housing impact fees pursuant to state law.
- (2) Building permits for residential development projects if compliance with this section for such project has already been satisfied including, but not limited to, building permits on newly created lots where the subdivider has built affordable units or otherwise satisfied this section.
- (3) Any dwelling unit or residential development project which is damaged or destroyed by fire or natural catastrophes so long as the use of the reconstructed building and number of dwelling units remains the same, and the square footage of the reconstructed building is not increased or reduced by more than 10% .

[*History:* Ord. 639, 1/11/06]

### **5.12.060 Basic Requirements for Inclusionary Units**

- (a) *Applicable Standards.* All Inclusionary Units build under this subchapter shall conform to the standards set forth in this section.
- (b) *Exterior Design.* Inclusionary units shall be comparable in number of bedrooms, exterior appearance, infrastructure (including sewer, water and other utilities) and overall quality of construction to market rate units in the same residential project. With the approval of the City Manager, inclusionary units may be smaller in aggregate size and need not contain more than four bedrooms.
- (c) *Interior Design.* Subject to the approval of the City Manager, interior finishes in inclusionary units may not be the same as or equivalent to those in market rate units in the same residential project, so long as they are durable, of good quality and are consistent with contemporary standards for new housing.
- (d) *Disbursal.* Affordable units shall be dispersed throughout the residential project, or, subject to the approval of the City Manager, may be clustered within the residential project when this furthers affordable housing opportunities.
- (e) *Agreement Required.* Prior to the issuance of certificates of occupancy or approval of the final inspection for affordable units, regulatory agreements and, if the affordable units are owner-occupied, resale restrictions, deed restrictions, deeds of trust and/or other documents, all of which must be acceptable to the City Manager and consistent with the requirements of this Subchapter, shall be recorded against parcels having such affordable units and shall be effective for a minimum of 55 years for rental units and 45 years for owner-occupied units.

[History: Ord. 639, 1/11/06]

### **5.12.070 In-Lieu Fees**

- (a) *Applicability.* For Residential Developments of fewer than twelve units, including Inclusionary Units, the requirements of this Subchapter may be satisfied by paying an in-lieu fee to the Affordable Housing Trust Fund as provided in this section.
- (b) *Calculation of Housing In-lieu Fee.* The fee will be sufficient to make up the gap between (i) the amount of development capital typically expected to be available based on the amount to be received by a Developer or owner from Affordable Sales Price or Affordable Rent and (ii) the anticipated cost of constructing the Inclusionary Units. The City Manager shall annually determine the in-lieu fee for each size of unit. Construction costs of market rate dwelling units are determined by using the Construction Cost Index, as defined in Section 5.12.030. If the Construction Cost Index is not available, then the City Manager shall use the in-lieu fee by determining the difference between the median price of a home in San Mateo County and the amount of development capital typically expected to be available from Affordable Sales Price or Affordable Rental unit. For attached single-family residential and rental residential development projects, construction costs shall be separately calculated for each

dwelling unit and the appropriate fee paid for each unit within the residential project. The housing in-lieu fee required by this section may be satisfied either by cash payment to the Housing Trust Fund or, upon the recommendation of the City Manager and approval of the City Council, by an alternative equivalent action which will provide Town with a value equal to or greater than the amount of the required in-lieu fee.

(c) *Timing of Payment.* The fee must be paid within ten calendar days of issuance of a building permit for the Development or the permit will be null and void. For phased developments, payments may be made for each portion of the Development within ten calendar days of a Building Permit for that phase. When payment is delayed, in the event of default, or for any other reason, the amount of the in-lieu fee payable under this Section will be based upon the fee schedule in effect at the time the fee is paid.

(d) *Effect of No Payment.* No final inspection for occupancy will be completed for any corresponding Market-rate Unit in a Residential Development unless fees required under this Section have been paid in full to the City.

[History: Ord. 639, 1/11/06]

#### **5.12.080 Alternative Equivalent Actions**

(a) A developer of a residential development project of fewer than twelve units that is not, and has not been, part of a larger residential development project, may propose to meet the requirements of section 5.12.040 hereof by an alternative equivalent action, subject to the review and approval by the City Council. The developer may propose an alternative equivalent action by submitting at the time of application for a discretionary or building permit, whichever comes first, a description of the proposed alternative equivalent action along with a report identifying:

- (1) How the alternative will further affordable housing opportunities in the Town to an equal or greater extent than compliance with the express requirements of subsection A, and that an over concentration of affordable housing in one area will not occur;
- (2) All overriding conditions impacting the project that prevent developer from meeting the requirement to construct the affordable units;
- (3) Sufficient independent data, including appropriate financial information, that supports the developer's claim that it is not feasible to construct the required affordable units; and,
- (4) A detailed analysis of why the concessions and incentives identified in section 5.12.090 and the density bonuses identified in section 5.12.100 will not mitigate the identified overriding conditions that are preventing the construction of the affordable units.

- (b) An alternative equivalent action may include, but is not limited to:
- (1) *Land Donation.* An applicant may donate land to the Town or to a non-profit housing developer in place of actual construction of required affordable units. The dedicated land must be appropriately zoned, buildable, free of toxic substances and contaminated soils. The fair market value of the donated land shall be equivalent to the value of the construction and land costs of the required affordable units. The land that is donated shall include lots that are fully improved with infrastructure, adjacent utilities, and grading, and fees paid. Land donated for the purpose of constructing units affordable to very-low income households may be eligible for a density bonus, as specified in Government Code Section 69515.
  - (2) *Off-site Construction.* Inclusionary Units may be constructed off-site if the Inclusionary Units will be located will be located an area where, based on the availability of affordable housing, the City Council finds that the need for such units is greater than the need in the area of the proposed development.
  - (3) *Combination.* The City Council may accept any combination of on-site construction, off-site construction, in-lieu fees and land dedication that at least equal the cost of providing Inclusionary Units on-site as would otherwise be required by this chapter.

[History: Ord. 639, 1/11/06]

#### **5.12.090 Concessions and Incentives**

(a) *Eligibility.* For residential development projects that meet the requirements of sections 5.12.040 through the construction of inclusionary units, the Town shall follow the procedures below to provide the concessions or incentives described in this section.

(b) *Application.* If requested by the applicant, within ninety (90) days of submittal by the developer of a written preliminary conceptual development proposal describing and specifying the number, type, location and size of the housing development, and identifying any requests for incentives, concessions, or waivers or modification of development or zoning standards, necessary to make construction feasible for the proposed development, prior to the submittal of any formal application for a discretionary approval (e.g., general plan amendment, rezoning, use permit, tentative subdivision or parcel map or other permit or entitlement), the City Council shall review the preliminary development proposal at a public hearing noticed in accordance with Colma Municipal Code Section 1.02.120 and indicate conceptual approval or disapproval of the proposed development and any requests for additional affordable housing incentives, concessions, or waivers or modification of development or zoning standards. Such preliminary approval or disapproval shall not bind the City Council but rather shall be subject to the discretion of the City Council to modify its preliminary recommendations based upon a full review of all pertinent project information, including any environmental impact report,

presented at the public hearing on the application. An application for such a request shall be submitted to the City Manager.

(c) *Findings.* The City Council shall grant the concessions or incentives requested by the applicant unless the Council makes a written finding, based upon substantial evidence, of either of the following:

- (1) The concession or incentive is not required in order to provide for affordable housing costs; or
- (2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Government Code Section 65589.5, upon public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(d) *Concessions or Incentives Granted.* The City Council may provide one or more of the following concessions or incentives to a developer who elects to construct inclusionary housing units in accordance with this subchapter by constructing or producing rental units or owner-occupied units on the site of a Residential Development.

- (1) A full or prorated reduction in the number or type (covered or uncovered, tandem, etc) of off-street parking spaces required per dwelling unit;
- (2) Expedited Processing by all Town departments before other residential land use applications regardless of the original submittal date;
- (3) Deferred payment of all city-required fees on a residential development project until issuance of a certificate of occupancy;
- (4) Approval of mixed use zoning;
- (5) Financial assistance; or
- (6) Any other concession or incentive authorized by state law.

[*History:* Ord. 639, 1/11/06]

### **5.12.100 Density Bonuses**

(a) *Residential Development Project.* A residential development project shall be eligible for a density bonus, as specified by Government Code Section 69515, if the project includes at least any one of the following, in addition to the inclusionary units required by this ordinance:

- (1) Ten percent of the total units are affordable to low income households.
- (2) Five percent of the total units are affordable to very-low income households.
- (3) Ten percent of the total units in a for-sale project are affordable to moderate income households.
- (4) Senior citizen housing, as defined in Sections 51.3 and 51.12 of the Civil Code.
- (5) A child-care facility, subject to the criteria identified in Government Code Section 69515.

(b) *Land Donation.* An applicant for a tentative subdivision map, a parcel map, or other residential development approval shall be eligible for a density bonus, as specified by Government Code Section 69515, if the applicant donates land to the Town for the development of units affordable to very-low income households, in addition to land donated in accordance with the provisions of this ordinance.

[History: Ord. 639, 1/11/06]

#### **5.12.110 Compliance Procedures**

(a) *General.* Approval of an Inclusionary Housing Plan and implementation of an approved Inclusionary Housing Agreement is a condition of any tentative map, parcel map or building permit for any Development for which this Chapter applies. This Section does not apply to exempt projects or to projects where the requirements of the Chapter are satisfied by payment of a fee under section 5.12.070. Every discretionary permit for a residential development project of five or more units approved after the effective date of this Subchapter shall contain a condition detailing the method of compliance with this subchapter. Every final and parcel map shall bear a note indicating whether compliance with the requirements of this section must be met prior to issuance of a building permit for each lot created by such map.

(b) *Inclusionary Housing Plan.* The City Council must approve, conditionally approve or reject the Inclusionary Housing Plan within 60 days of the date of a complete application for that approval. If the Inclusionary Housing Plan is incomplete, the Inclusionary Housing Plan will be returned to the Developer along with a list of the deficiencies or the information required. No application for a tentative map, parcel map or building permit to which this Chapter applies may be deemed complete until an Inclusionary Housing Plan is submitted to the Town. At any time during the review process, the Town may require from the Developer additional information reasonably necessary to clarify and supplement the application or determine the consistency of the proposed Inclusionary Housing Plan with the requirements of this Chapter. The Inclusionary Housing Plan must include:

- (1) The location, structure (attached, semi-attached, or detached), proposed tenure (for sale or rental), and size of the proposed market-rate, commercial space

and/or Inclusionary Units and the basis for calculating the number of Inclusionary Units;

- (2) A floor or site plan depicting the location of the Inclusionary Units;
- (3) The income levels to which each Inclusionary Unit will be made affordable;
- (4) The mechanisms that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and rights of first refusal and other documents;
- (5) For phased Development, a phasing plan that provides for the timely development of the number of Inclusionary Units proportionate to each proposed phase of development.
- (6) A description of any incentives that are requested of City;
- (7) Any alternative equivalent actions proposed for the Development along with information necessary to support the findings required by this Subchapter for approval of such alternatives;
- (8) The sequence in which the different levels of Inclusionary Units shall be built and occupied, for example, the first Inclusionary Unit may only be occupied by a Very-Low Income Household, the second Inclusionary Unit by a Low-Income Household, etc.
- (9) Any other information reasonably requested by the City Council to assist with evaluation of the Plan under the standards of this Chapter.

(c) *Inclusionary Housing Agreement.* The forms of the Inclusionary Housing Agreement, resale and rental restrictions, deeds of trust, rights of first refusal and other documents authorized by this subsection, and any change in the form of any such document which materially alters any policy in the document, must be approved by the City Manager or his or her designee prior to being executed with respect to any Residential Development or Affordable Housing Proposals. The form of the Inclusionary Housing Agreement will vary, depending on the manner in which the provisions of this Chapter are satisfied for a particular development. All Inclusionary Housing Agreements must include, at minimum, the following:

- (1) Description of the development, including whether the Inclusionary Units will be rented or owner-occupied;
- (2) The number, size and location of Very Low-, Low- or Moderate-Income Units;
- (3) Inclusionary incentives by the City (if any), including the nature and amount of any local public funding;

- (4) Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
- (5) Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident Households for income eligibility; and Any additional obligations relevant to the compliance with this Chapter.

(d) *Recording of Agreement.* Inclusionary Housing Agreements that are acceptable to the City Manager must be recorded against owner-occupied Inclusionary Units and residential projects containing rental Inclusionary Units. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents acceptable to the City Manager must also be recorded against owner-occupied Inclusionary Units. In cases where the requirements of this Chapter are satisfied through the development of Off-Site Units, the Inclusionary Housing Agreement must simultaneously be recorded against the property where the Off-Site Units are to be developed.

(e) *Annual Monitoring and Transfer Fees.*

- (1) For each rental inclusionary unit provided hereunder, the then current owner may be required to pay an annual monitoring fee for the term of required affordability. Such fee shall be specified in the regulatory agreement(s) required hereunder.
- (2) For each owner-occupied inclusionary unit provided under this section, the then current owner may be required to pay a transfer fee for any change of ownership during the term of required affordability. Such fee shall be specified in the Inclusionary Housing Agreement required hereunder.

(f) *Requirements for Certificate of Occupancy/Final Inspection.*

- (1) No temporary or permanent certificate of occupancy shall be issued, final inspection approved or release of utilities authorized for any new dwelling unit in a residential development project until the developer has satisfactorily completed the requirements hereunder, i.e., on-site construction of affordable units, alternative equivalent action(s) or payment of the housing in-lieu fee.
- (2) No temporary or permanent certificate of occupancy shall be issued, final inspection approved or release of utilities authorized for a dwelling unit described as exempt from the requirements of this Subchapter in section 5.12.040 above until the developer has made a showing acceptable to the City Manager that such an exemption is appropriate.

[History: Ord. 639, 1/11/06]

### **5.12.120 Eligibility for Inclusionary Units**

(a) *General Eligibility.* No Household may occupy an Inclusionary Unit unless the City Manager has approved the Household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by an Inclusionary Housing Agreement or resale restriction. If the City or its designee maintains a list or identifies eligible Households, initial and subsequent occupants will be selected first from the list of identified Households, to the maximum extent possible, in accordance with any rules approved by the City Manager. If the City has failed to identify a Household as an eligible buyer for the initial sale of an Inclusionary Unit that is intended for owner-occupancy 90 days after the unit receives a completed final inspection for occupancy, upon 90 additional days' notice to the City and on satisfaction of such further conditions as may be included in City-approved restrictions (which may include a further opportunity to identify an eligible buyer), the owner may sell the unit at a market price, and the unit will not be subject to any requirement of this Subchapter thereafter.

(b) *Conflict of Interest.* The following individuals are ineligible to purchase or rent an Inclusionary Unit: (i) City employees and officials (and their immediate family members) who have policy-making authority or influence regarding City housing programs and do not qualify as having a remote interest as provided by California Government Code Section 1091; (ii) the Project Applicant and its officers and employees (and their immediate family members); and (iii) the Project Owner and its officers and employees (and their immediate family members).

(c) *Occupancy.* Any Household who occupies a rental Inclusionary Unit or purchases an Inclusionary Unit must occupy that unit as a principal residence.

[History: Ord. 639, 1/11/06]

### **5.12.130 Owner-Occupied Units**

(a) *Initial Sales Price.* The initial sales price of the Inclusionary Unit must be set so that the eligible Household will pay an Affordable Sales Price.

(b) *Transfer.* Renewed restrictions will be entered into on each change of ownership, with a 45-year renewal term, upon transfer of an owner-occupied Inclusionary Unit prior to the expiration of the 45-year affordability period.

(c) *Resale.* The maximum sales price permitted on resale of an Inclusionary Unit designated for owner-occupancy shall be the lower of: (1) fair market value or (2) the seller's lawful purchase price, increased by the lesser of (i) the rate of increase of Area Median Income during the seller's ownership or (ii) the rate at which the consumer price index increased during the seller's ownership. To the extent authorized in any resale restrictions or operative Inclusionary Housing Agreement, sellers may recover at time of sale the market value of capital improvements made by the seller and the seller's necessary and usual costs of sale, and may authorize an increase in the maximum allowable sales price to achieve such recovery.

(d) *Changes in Title.* Title in the Inclusionary Unit may change due to changes in circumstance, including death, marriage and divorce. Except as otherwise provided by this Subsection, if a change in title is occasioned by events that changes the financial situation of the Household so that it is no longer income-eligible, then the property must be sold to an income-eligible Household within 180 days. Upon the death of one of the owners, title in the property may transfer to the surviving joint tenant without respect to the income-eligibility of the Household. Upon the death of a sole owner or all owners and inheritance of the Inclusionary Unit by a non-income-eligible child or stepchild of one or more owners, there will be a one year compassion period between the time when the estate is settled and the time when the property must be sold to an income-eligible Household. Inheritance of an Inclusionary Unit by any other person whose Household is not income-eligible shall require resale of the unit to an income-eligible Household as soon as is feasible but not more than 180 days.

[History: Ord. 639, 1/11/06]

#### **5.12.140 Rental Units**

(a) *Rental Requirement.* Rental units will be offered to eligible Households at an Affordable Rent. The owner of rental Inclusionary Units shall certify each tenant Household's income to the City or City's designee at the time of initial rental and annually thereafter. The owner must obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns or W-2s for the previous calendar year, and submit such information on a form approved by the City.

(b) *Selection of Tenants.* The owners of rental Inclusionary Units may fill vacant units by selecting income-eligible Households from the Section 8 Housing Choice Voucher Waiting List maintained by the City or City's designee. Alternatively, owners may fill vacant units through their own selection process, provided that they publish notices of the availability of Inclusionary Units according to guidelines established by the City Manager.

(c) *Annual Report.* The owner shall submit an annual report summarizing the occupancy of each Inclusionary Unit for the year, demonstrating the continuing income-eligibility of the tenant. The City Manager may require additional information if he or she deems it necessary.

(d) *Subsequent Rental to Income-Eligible Tenant.* The owner shall apply the same rental terms and conditions to tenants of Inclusionary Units as are applied to all other tenants, except as required to comply with this Subchapter (for example, rent levels, occupancy restrictions and income requirements) or with other applicable government subsidy programs. Discrimination against persons receiving housing assistance is prohibited.

(e) *Changes in Tenant Income.* If, after moving into an Inclusionary Unit, a tenant's Household income exceeds the limit for that unit, the tenant Household may remain in the unit as long as his or her Household income does not exceed 140 percent of the income limit. Once the tenant's income exceeds 140 percent of the income limit, the following shall apply:

- (1) If the tenant's income does not exceed the income limits of other Inclusionary Units in the Residential Development, the owner may, at the owner's option, allow the tenant to remain in the original unit and re-designate the unit as affordable to Households of a higher income level, as long as the next vacant unit is re-designated for the income category previously applicable to the tenant's Household. Otherwise, the tenant shall be given one year's notice to vacate the unit. If during the year, an Inclusionary Unit becomes available and the tenant meets the income eligibility for that unit, the owner shall allow the tenant to apply for that unit.
- (2) If there are no units designated for a higher income category within the Development that may be substituted for the original unit, the tenant shall be given one year's notice to vacate the unit. If within that year, another unit in the Residential Development is vacated, the owner may, at the owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market-rate and designate the newly vacated unit as an Inclusionary Unit affordable at the income-level previously applicable to the unit converted to market rate. The newly vacated unit must be comparable in size (for example, number of bedrooms, bathrooms, square footage, etc.) as the original unit.

[History: Ord. 639, 1/11/06]

#### **5.12.150 Housing Trust Fund**

(a) *Establishment.* The Town of Colma Affordable Housing Trust Fund (the "Housing Fund") shall be and is hereby established. Separate accounts within such Housing Fund may be created from time to time to avoid commingling as required by law or as deemed appropriate to further the purposes of the Fund.

(b) *Administration.* The Housing Fund shall be administered by the City Manager, who shall have the authority to govern the Housing Fund consistent with this Subchapter, and to prescribe procedures for said purpose, subject to approval by the Council.

(c) *Trust Fund Board.* The City Council shall serve as the Housing Trust Fund Board. As the Board, the City Council shall biannually develop a Housing Assistance Plan Program and Financing Strategy to further define and prioritize the uses of the monies in the Housing Fund. The Plan shall be consistent with the Town's Housing Element.

[History: Ord. 639, 1/11/06]

#### **5.12.160 Purposes and Use of Trust Funds**

(a) Monies deposited in the Housing Fund along with any interest earnings on such monies shall be used solely to increase and improve the supply of housing affordable to households of moderate-, low- and very low-income households; including, but not limited to:

- (1) Acquisition of property and property rights;
- (2) Cost of construction including costs associated with planning, administration, and design, as well as actual building or installation, as well as any other costs associated with the construction or financing of affordable housing;
- (3) Reimbursement to the Town for such costs if funds were advanced by the Town from other sources; and,
- (4) Reimbursement of developers or property owners who have been required or permitted to install facilities which are beyond that which can be attributed to a specific development.

(b) Monies may also be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the establishment and/or administration of the Housing Fund and reasonable expenses for administering the process of calculating, collecting, and accounting for inclusionary fees and any deferred Town fees authorized by this section. No portion of the Housing Fund may be diverted to other purposes by way of loan or otherwise.

(c) Monies in the Housing Fund shall be used in accordance with the priorities identified by the Housing Assistance Plan Program and Financing Strategy to construct, acquire, rehabilitate or subsidize very low-, low- and moderate- income housing and/or to assist other governmental entities, private organizations or individuals in the construction and rehabilitation of very low-low-, and moderate-income housing. To the extent possible as determined by the Council, monies shall be targeted to benefit households at or below 80% of Median Income in Colma. Monies in the Housing Fund may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the City Council determines is appropriate to accomplish the purposes of the Housing Fund. These uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases, or other public/private partnership arrangements. The Housing Fund monies may be extended for the benefit of rental or owner occupied housing or housing services.

(d) Expenditures by the City Manager from the Housing Fund shall be by contract and controlled, authorized and paid in accordance with general Town budgetary policies.

[*History*: Ord. 639, 1/11/06]

### **5.12.170 Delegation of Authority**

The City Manager shall be and hereby is authorized to delegate his or her authority under this ordinance.

[*History*: Ord. 639, 1/11/06]

### **5.12.180 Minimum Requirements**

The requirements of this Chapter are minimum and maximum requirements, although nothing in this Section limits the ability of a private person to waive his or her rights or voluntarily undertake greater obligations than those imposed by this Chapter.

*[History: Ord. 639, 1/11/06]*

### **5.12.190 Adjustments, Waivers**

(a) A developer of any project subject to the requirements of this Chapter may appeal to the City Council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirement.

(b) A developer subject to the requirements of this Chapter who has received an approved tentative subdivision or parcel map, use permit or similar discretionary approval and who submits a new or revised tentative subdivision or parcel map, use permit or similar discretionary approval for the same property may appeal for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously approved.

(c) Any such appeal shall be made in writing and filed with the City Clerk not later than ten (10) calendar days before the first public hearing on any discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, the appeal shall be filed within ten (10) calendar days after payment of the fees objected to.

(d) The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The City Council shall consider the appeal at the public hearing on the permit application or at a separate hearing within sixty (60) calendar days after the filing of the appeal, whichever is later. The appellant shall bear the burden of presenting substantial evidence to support the appeal including comparable technical information to support appellant's position.

(e) No waiver shall be approved by the City Council for a new tentative subdivision or parcel map, use permit or similar discretionary approval on property with an approved tentative subdivision or parcel map, use permit or similar discretionary permit unless the Council finds that the new tentative subdivision or parcel map, use permit or similar discretionary approval is superior to the approved project both in its design and its mitigation of environmental impacts. The decision of the Council shall be final. If a reduction, adjustment, or waiver is granted, any change in the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement.

*[History: Ord. 639, 1/11/06]*

### 5.12.200 Enforcement Provisions

(a) *Penalty for Violation.* It shall be a misdemeanor to violate any provision of this Chapter. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an inclusionary unit under this Chapter at a price or rent exceeding the maximum allowed under this Chapter or to sell or rent an inclusionary unit to a Household not qualified under this Chapter. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which he or she is not eligible.

(b) *Legal Action.* The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including: (i) actions to revoke, deny or suspend any permit, including a Building Permit, certificate of occupancy, or discretionary approval; (ii) actions to recover from any violator of this Chapter civil fines, restitution to prevent unjust enrichment from a violation of this Chapter, and/or enforcement costs, including attorneys fees; (iii) eviction or foreclosure; and (iv) any other appropriate action for injunctive relief or damages. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any person, owner, Household or other party from the requirements of this Chapter.

[*History:* Ord. 639, 1/11/06]