

CITY OF BENICIA

ORDINANCE NO. 23-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 17.12 (DEFINITIONS) AND REPEALING AND REPLACING SECTION 17.70.320 (INCLUSIONARY HOUSING ORDINANCE) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

WHEREAS, Benicia is experiencing a housing shortage for low- and moderate-income households. A goal of the city is to ensure development of an adequate supply and mix of new housing to meet future housing needs as defined by the Association of Bay Area Governments Regional Housing Needs Allocation (RHNA). Policies within the Housing Element of the Benicia General Plan support and facilitate the production of housing, including affordable housing; and

WHEREAS, the high cost of newly constructed market rate housing does not provide housing affordable to low- and moderate-income households, and continued new development which does not include nor contribute toward lower cost housing will serve to further aggravate the current housing affordability constraints; and

WHEREAS, the housing shortage for persons of low- and moderate-incomes is detrimental to the public welfare, and further that it is a public purpose of the city, and public policy of the State of California as mandated by the requirement for a housing element of the city's General Plan, to make available an adequate supply of housing for persons of all economic segments of the community; and

WHEREAS, it is the priority and preference of the City of Benicia that affordable dwelling units be constructed on-site or provided concurrent with new residential development; and

WHEREAS, notice of the proposed Municipal Code amendment has been published in the Benicia Herald and posted at Benicia City Hall; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on **DATE**, 2023, and recommended approval of an ordinance amending Benicia Municipal Code Chapter 17.12 (Definitions) and section 17.70.320 (Inclusionary Housing Ordinance) of Title 17 (Zoning); and

WHEREAS, the City Council of the City of Benicia held a duly noticed public hearing on the proposed amendments and introduced Ordinance No. 23- __ at its meeting of **DATE**, 2023; and

WHEREAS, the proposed action is categorically exempt from CEQA, because it is not deemed to be a "project" pursuant to State CEQA Guidelines Section 15060(c)(2) and (3), as "project" is defined in CEQA Guidelines Section 15378(b)(5). Further, approval of the proposed

amendment does not have the potential to result in either a direct physical change to the environment nor a reasonably foreseeable indirect physical change to the environment, and there is no possibility for causing a significant effect on the environment (Section 15061(b)(3)).

WHEREAS, the City Council of the City of Benicia does hereby find that the proposed text amendments are consistent with the purposes of Titles 17 and with the following General Plan goals, policies and objectives:

- Goal X.X:
- Goal X.X:
- Goal X.X:

THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 17.12. (Definitions) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to insert the following definitions in alphabetical order:

“Affordable” shall mean that the sales price or rent for a dwelling unit does not exceed the percent of gross household income specified in California Health and Safety Code sections 50052.5 and 50053 and as set forth in the Official State Income Limits Table.

“Affordable restriction agreement” means legal restrictions by which the sales price or rents for affordable or inclusionary housing units will be controlled to ensure that the sales prices or rents remain affordable to qualified households for a period of not less than 55 years, or for developments utilizing federal or state affordable housing financing, the minimum number of years required by the financing terms.

“Area median income” means the most recent area median income adjusted by household size based on figures produced by the California Department of Housing and Community Development for Solano County.

“Developer” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city permits and approvals for development.

“Developer” also includes developers’ successors in interest to the real property.

“Discretionary permit” means any permit or license issued by the City of Benicia for a project that requires the exercise of judgment or deliberation wherein the city decides to either approve or disapprove a particular activity in accordance with applicable laws and policies including but not limited to a development agreement, amended development agreement, tentative map, use permit, or design review, and excluding minor changes to previously granted approvals.

“For-sale unit development” means a development project where housing units are sold to a buyer who takes title to the unit via a deed of sale, deed of trust, or mortgage instrument.

“Inclusionary unit” means a dwelling unit as required pursuant to section 17.70.320, which is affordable to qualified households.

“Income eligibility” shall mean the countable annual household income and resources of low- and moderate-income households, as defined by the California Department of Housing and Community Development in the California Code of Regulations Sections 6914 (Gross Income) and 6916 (Net Income), or such other eligibility factors as may be imposed by a state or federal funding source applicable to the dwelling unit or development.

“Market rate unit” means a dwelling unit which is not restricted to those prices or rents affordable to qualified households.

“Official State Income Limits Table” means the income limits for affordable housing costs in Solano County, as contained in the table published annually by the California Department of Housing and Community Development pursuant to Health and Safety Code section 50053.

“Qualified household” means a household, adjusted by household size, that meets the income limits for lower-income households (including Very Low, Low or Moderate Income) as defined in Health and Safety Code Section 50052.5 and reflected in the California Department of Housing and Community Development annual table of Official State Income Limits that is published pursuant to Health and Safety Code section 50053; as such statutes may be amended.

“Resale control agreement” means an agreement executed by the City and a Developer containing the legal restrictions by which affordable housing units will be controlled to ensure that such units remain affordable to qualified households for a period of not less than 55 years.

“Residential development” means any development with dwelling units or lots at one location intended and designed for permanent occupancy including, but not limited to, single-family dwellings, accessory dwelling units, apartments, multiple dwelling units, group of dwellings, condominium developments, townhouse developments, cooperatives, or land subdivisions; conversions from nonresidential use to residential use; or conversions from rental units to for-sale units. “Residential development” includes any development with dwelling units or lots for which discretionary approvals or building permits have been applied for or granted within any 12-month period, which development shall be considered to be a single project for CEQA purposes. “Residential development” does not include remodeling, rehabilitation or maintenance of existing dwelling units.

Section 2. Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (General Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is repealed in its entirety and replaced with the following:

A. Purpose

The purpose of this section is to enhance the public welfare and assure that new housing development contributes to the attainment of the city’s housing goals by promoting and increasing, through actual construction and/or alternative equivalent actions as provided for in

this section, the production of rental and ownership units available and affordable to qualified households.

It is City's intent that the requirements for inclusionary units affordable to qualified households shall not be contingent on the availability of government programs, subsidies, or regulatory assistance. This is not to preclude the use of such programs, subsidies, or regulatory assistance. To the extent a government subsidy, affordable housing program, or regulatory assistance has requirements that conflict with this section, the community development director may modify or waive such conflicting requirement(s) of this section in order to facilitate the development of inclusionary units. This section is also not intended to be an undue burden on the developers of residential projects.

B. Applicability

1. Any residential development of 10 or more units shall include 10 percent of the total number of market-rate dwelling units within the development as units affordable to, and occupied by, qualified households, for a minimum of 55 years from the recordation of each resale control agreement or affordable restriction agreement, as the case may be, for the units.
2. In applying the percent or percentages referred to in this section, any decimal fraction less than 0.50 may be disregarded and any decimal fraction greater than or equal to 0.50 shall be rounded up to the next whole number.
3. Inclusionary units shall be constructed on-site unless otherwise approved pursuant to subsection F, Alternative Means of Compliance.

C. General Requirements

1. **Affordability.** One-half of the total number of inclusionary units within the residential development shall be designated as units affordable to, and occupied by, low-income households. One-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by moderate-income households.
 - a. Any inclusionary unit may be offered at a level affordable to, and occupied by, acutely low-income, extremely low-income, very low-income or low-income households subject to compliance with all other requirements of this section. The provision of such units at alternate affordability levels shall not modify the total number of required inclusionary units.
 - b. When the number of required inclusionary units is an odd number (e.g., 10 percent of 10 units is one), the odd-numbered unit shall be provided at a level affordable to a low-income household.
2. **Affordable Restriction Agreement.** An affordable restriction agreement shall be required for any residential development subject to this section. The affordable restriction

agreement shall be fully executed by the city and developer prior to issuance of any building permit for the residential development. The affordable restriction agreement, inclusive of resale control agreement(s) or affordable rental agreement(s) as applicable, shall be recorded as a deed restriction upon the property prior to issuance of a certificate of temporary or permanent occupancy for any market rate unit within the residential development. The agreement shall ensure compliance with the requirements of this section, including the following:

- a. The timing of the construction of the inclusionary units and/or the provision of an alternative means of compliance as set forth in F, Alternative Means of Compliance;
 - b. The number of inclusionary units at appropriate sales price or rent levels equivalent to or more affordable than 50% low-income units and 50% moderate income units;
 - c. The term of affordable restriction agreement;
 - d. The location of inclusionary units, identified by assessors parcel number and address or unit number, and depicted on the approved site plan;
 - e. Provision(s) regarding income certification and screening of prospective buyers and/or renters of inclusionary units;
 - f. A standard resale control agreement for all for-sale units and/or affordable rental restriction agreement for all rental units, as applicable; and
 - g. The method of cost recovery for initial and ongoing income certification for inclusionary units.
3. Rents and Sales Prices. Affordable rent and sales prices shall be determined at a rent or price that is affordable for a qualified household according to the Official State Income Limits Table.
4. Concurrent Construction.
- a. All inclusionary units in a residential development and/or phases of a development shall be constructed concurrently with or prior to the construction of market rate units.
 - b. Except as provided in subsection C.4.c., below, each phase of a residential development shall include the same or greater proportion of inclusionary units as are required for the total development, which shall be verified and approved in the construction phasing plan at the time of building permit application.
 - c. For discretionary permits, the review authority may authorize an alternative phasing schedule to facilitate affordable housing development and if the affordable restriction agreement sets forth terms for timely satisfaction of the inclusionary housing

requirements.

5. Design and Amenity Standards. Inclusionary units shall meet the following standards. Documentation of compliance with the design and amenity standards shall be submitted at the time of the development application (e.g., parcel map, tentative map or design review).
 - a. Distribution. Inclusionary units shall be interspersed among market-rate units within the same residential development as demonstrated on a site plan and/or floor plan that clearly indicates the location of such units.
 - i. No more than 50% of the proposed affordable housing units are consolidated into one structure in developments with more than one multi-unit structure, and
 - ii. No more than 20% of affordable housing units in a single multi-unit structure may be located adjacent to each other or stacked on consecutive floors unless it is unavoidable due to the required unit mix and distribution, and
 - iii. No more than 20% of the affordable housing units may be located adjacent to each other within single-family residential subdivisions.
 - iv. The distribution requirements of this subsection shall not be applicable if the affordable units are financed with low-income tax credits or consist of affordable senior housing.
 - b. Comparable Units. Inclusionary units must be comparable to market-rate units. “Comparable” means that the inclusionary units shall be offered in a bedroom and bathroom mix that is proportionate to that of market rate units; that units shall measure no less than 90 percent of the average square footage of market-rate units with the same number of bedrooms; and that the units are offered with the same standard mechanical systems as market rate units.
 - c. Comparable Design. Inclusionary units shall be designed in a manner that is consistent with the exterior design of market-rate units in the same development. “Consistent” means that inclusionary units are offered the same standard building elevations, standard exterior materials (i.e., walls, roofing, windows, and trim), and standard landscaping as market rate units. “Standard” refers to components of the dwelling unit that are offered in the base purchase price or rent.
 - d. Comparable Amenities. Residents of inclusionary units shall have access to and enjoyment of all on-site amenities that are available to market rate units. Owners or occupants of inclusionary units shall not be charged any fee or rent for access to amenities such as recreational facilities, parking, cable TV, vehicle charging and interior appliances such as dishwashers and microwave ovens, unless such fee or rent is charged to market rate tenants. Optional services for all residents must be the same. Tenants of inclusionary units cannot be required to purchase additional services.

- e. Common Access. Residential buildings that have a common, shared entrance or entrances shall not have separate entrances for market rate and inclusionary units.
- f. For discretionary permits, the review authority shall have the authority to approve or more deviations from these standards when the review authority determines that such deviation is necessary due to factors such as site or design constraints, public funding source restrictions pertinent to lower income units, or to comply with all applicable city ordinances. In making its decision, the review authority shall find that the project will fulfill the purposes of this section and the affordable housing needs and policies of the city as reflected in the Housing Element.

D. Requirements for Rental Units

1. Tenant Screening.

- a. All prospective tenants for inclusionary rental units shall be screened and certified for their income eligibility prior to execution of a lease agreement, according to the procedure and terms of the affordable restriction agreement and affordable rental agreement, as applicable.
- b. The same rental terms and conditions shall be applied to tenants of inclusionary units as are applied to market rate units, except as to rent levels, income requirements, or other requirements of State or federal subsidy programs.
- c. Notwithstanding any other provision of this subsection, in the screening and selection process for the inclusionary rental units, the city, developer, and/or their designee(s) shall comply with all applicable state and federal fair housing laws. Discrimination based on any subsidies (e.g., housing choice vouchers) received by the prospective tenant is expressly prohibited.

2. Annual Compliance Reporting.

- a. Commencing with issuance of each certificate of occupancy and continuing until expiration of the affordable restriction agreement, the developer or its designee(s) shall provide an annual report to the city by January 31 of each year that includes the following information:
 - i. The address, including apartment or unit number, each inclusionary unit;
 - ii. The number of bedrooms in the inclusionary unit;
 - iii. The initial and current rent level of the household;
 - iv. The current income level of the household and the number of persons in the household;

- v. The term of the affordability restrictions pursuant to this section or the requirements of any funding source, whichever is more restrictive; and
 - vi. The name and address of the owner and manager (if applicable).
- b. The city or its designee(s) shall monitor compliance with the rent level requirements of this section.
3. Substitution of Unit. A market rate unit may be substituted for an inclusionary unit according to the procedures and requirements of this section.
- a. If the tenant of an inclusionary unit experiences an increase in household income that exceeds the income limits for a qualified household according to the Official State Income Limits Table and the affordable restriction agreement, the owner or their designee may adjust the rent of such unit to market rate and allow continued occupancy of the unit, provided that the next available equivalent market rate unit shall be leased to a qualified household that meets the income limits set forth in the affordable restriction agreement (“substitution of unit”).
 - b. It is the city’s intent that substitution of unit occurs simultaneously, to the extent feasible. If substitution of unit is not completed within three (3) months of notification that a tenant has exceeded the income limit for their inclusionary unit, then the owner or their designee shall either 1) offer a vacant market rate unit within the residential development to the tenant for immediate occupancy (within 30 days); or 2) issue a notice to vacate within 30 days.
 - c. The substitution of the units shall be documented in the annual compliance report to demonstrate that the appropriate number and affordability levels of inclusionary units are being maintained pursuant to the affordable restriction agreement.
4. Transfers and Sales of Inclusionary Units. The owner of any inclusionary rental unit shall attach and legally reference in the grant deed conveying title of any such inclusionary unit a declaration of restrictions stating the restrictions imposed pursuant to subsection C.2 (Affordable Restriction Agreement). The city may provide a form declaration of restrictions, but failure to provide the form does not abrogate the owner’s obligation to record the declaration. The declaration of restrictions shall include all applicable occupancy restrictions, prohibitions, and terms of the affordable rental restriction agreement as required by this section.

E. Requirements for For-Sale Units

- 1. Marketing and Buyer Selection Plan. As part of the application for for-sale unit development, the developer shall submit a marketing and buyer selection plan for city approval prior to execution of the affordable restriction agreement.

- a. The marketing section will set forth available financing and/or lending resources for lower income households and the methods of identifying and conducting outreach to potential buyers.
 - b. The buyer selection portion of the plan will specify the income eligibility standards and necessary documentation to comply with the process and requirements of this subsection.
 - c. The plan shall state that no inclusionary unit may be sold to an immediate family member nor employee of the developer(s) or owner(s).
2. Notice of Availability. The developer or their designee(s) shall notify the city of the availability of for-sale inclusionary units when the units are initially offered for sale.
- a. Notice of availability shall be made in writing and provided in accordance with the terms of the affordable restriction agreement. Notice may precede the listing of units by up to thirty (30) days but shall be received no later than one (1) day after the units are listed or advertised for sale.
 - b. The developer or their designee(s) shall be responsible for the marketing of inclusionary units. The City or its designee(s) may, in their discretion, also advertise the availability of the inclusionary units to the general public and eligible parties known to the City of Benicia and County of Solano.
 - c. Discrimination based on any protected characteristic, including discrimination based on any subsidies received by a qualified household, is expressly prohibited.
3. Buyer Screening.
- a. For-sale inclusionary units shall only be offered to, sold to, and sold at prices affordable to qualified households who meet the income limits at the time of sale.
 - b. Maximum sales price for inclusionary units shall be determined at price that is affordable for a qualified household according to the income limits of the Official State Income Limits Table and set forth in the affordable restriction agreement for the development.
 - c. Every purchaser of an inclusionary unit shall certify that the unit is being purchased for the purchaser's primary place of residence.
4. Escrow Reporting.
- a. At least ten (10) business days prior to close of escrow for each inclusionary unit, the developer or their designee(s) shall submit a pre-closing report to the city which includes the following information:

- i. The address of the unit and lot number (as applicable);
 - ii. The affordability designation of the unit pursuant to the affordable restriction agreement;
 - iii. The sales price;
 - iv. The household income of the prospective purchaser, including associated documentation as detailed in the affordable restriction agreement;
 - v. The number of persons in the prospective purchaser's household; and
 - vi. The term of the affordability restrictions pursuant to this section or the requirements of any intended funding source, whichever is more restrictive.
 - b. The City shall review the pre-closing report and either 1) notify the developer or their designee(s) of any deficiencies in the completeness of the report; or 2) issue a certification that the prospective purchaser's household income complies with the income limit for the designated inclusionary unit pursuant to the requirements of this section; or c) decline to certify that the prospective purchaser meets the income requirements pursuant to the affordable restriction agreement and this section.
 - c. No inclusionary unit may close escrow unless the income certification has been issued to the developer or their designee(s).
 - d. Within 10 business days after close of escrow for each inclusionary unit, the developer or their designee(s) shall provide a post-closing report to the City or its designee which includes the following information:
 - i. A copy of the recorded affordable restriction agreement and resale control agreement for the unit;
 - ii. The name of the owner(s) of the inclusionary unit; and
 - iii. The date of actual or expected occupancy.
 - e. Escrow reporting shall be provided for each inclusionary unit until all units have been sold.
 - f. The city or its designee(s) shall at least annually monitor purchase prices, number of units at the required affordability levels, owner-occupancy, and the expiration of the terms of affordability.
5. Homeowners' Dues and Assessments. Owners of for-sale inclusionary units may be obligated to pay homeowners dues and/or assessments, provided that the assessment charged to any low-income inclusionary unit shall not exceed 75% of the dues and/or

assessments owed by market rate unit owners.

6. Control of Resale. In order to maintain the availability of the for-sale inclusionary units pursuant to the requirements of this section, the city shall impose resale conditions for a period of 55 years from recordation of each resale control agreement, which 55-year period shall start over with each resale.
 - a. Resale Control Agreement. As set forth in subsection C.2 (Affordable Restriction Agreement) and further described herein, a resale control agreement setting forth the applicable terms of this section shall be recorded with the Solano County recorder's office for each for-sale inclusionary unit.
 - b. Resale Price. The price received by the seller of an inclusionary unit shall not exceed the affordable cost, as determined by the income limits set forth in the Official State Income Limits Table for the affordability category assigned to the unit at time of development approval.
 - c. Fees. The seller shall not levy or charge any additional fees nor shall any "finder's fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.
 - d. Notice of Availability. When an inclusionary unit is listed for resale, notice of availability shall be made in writing and provided to the city in accordance with the terms of the resale control agreement. Notice may precede the listing of the unit by up to thirty (30) days but shall be received no later than one (1) day after the unit is listed for sale.
 - i. Within 10 days of receiving notice of availability, the city may provide the owner or their designee a list of any qualified and eligible potential purchasers known to the city.
 - ii. The owner or their agent must make a good faith effort to notify each listed person or their designee of unit availability within seven (7) days of receipt of the list.
 - e. Qualified Buyer. The owner or their designee will be responsible for the marketing of the unit to qualified buyers and certification of the buyer's income. Buyer screening shall be conducted in accordance with the requirements of subsection E.3 (Buyer Screening). An inclusionary unit may be resold only to a qualified household.
 - i. Escrow Reporting. Prior to closing escrow, the owner or their designee shall comply with the reporting requirements of section E.4 (Escrow Reporting).
 - f. City Option to Purchase. If the owner or their designee is unable to find a qualified buyer after 120 days of marketing the unit, the city may exercise its option to purchase the property at a price that is affordable to qualified households on the basis

of the Official State Income Limits Table or appraised fair market value, whichever is less.

- i. The city shall initiate its option to purchase the inclusionary unit by notifying the owner or their designee in writing that the option is under consideration. The city may not issue this notification until the unit has been marketed for at least 120 days.
 - ii. Unless extended through a written agreement by the city and the owner, the city shall issue a decision on its option to purchase within 90 days.
 - iii. Nothing in this subsection shall preclude the owner from selling the property to a qualified household during the period in which the city is considering its option to purchase.
- g. Rental of For-Sale Inclusionary Unit. If a for-sale inclusionary unit is no longer owner-occupied, the unit shall be occupied by and provided at a rent that is affordable to a qualified household in the income category for which the unit was designated in accordance with subsection D (Requirements for Rental Units), inclusive of an annual compliance report.
- h. Resale in Violation of Income Limits. Resale of an inclusionary unit to a household that is not qualified under the provisions of this section shall result in enforcement actions as provided in subsection H (Enforcement). In addition, the city may opt to pursue necessary legal action demanding performance under the terms of this section and the affordable restriction agreement.
- i. Transfers of Title.
- i. The following transfers of title are exempt from the provisions concerning control of resale and do not reset the 55-year term of affordability:
 - a) Transfer by devise or inheritance to the owner's spouse, child or other family member;
 - b) Transfer of title by an owner's death to a surviving joint tenant, tenant in common, or a surviving spouse of community property (that is, another owner already on title);
 - c) Transfer of title to a spouse as part of divorce or dissolution proceedings; or
 - d) Transfer of title or an interest in the property to the spouse in conjunction with marriage.
 - ii. Upon transfer, the owner may occupy the inclusionary unit if they comply with the income limits and buyer screening provisions of this section and the

applicable affordable restriction agreement. If the owner does not qualify, the inclusionary unit may be sold or rented to a qualified household in accordance with the provisions of subsection.

F. Alternative Means of Compliance.

- a. The preferred and most efficient method of compliance with this section is the creation of inclusionary units within the same market rate development (“on-site”). Alternative methods of compliance will be approved if the developer submits an analysis, prepared by a qualified professional land economist, demonstrating that the development of on-site inclusionary units is not feasible and further ensuring that the alternative means of compliance will satisfy the inclusionary requirements of this section in an economically feasible manner consistent with the purposes of this section and the policies of the Housing Element. For the purposes of this analysis, feasibility for rental development is defined as 5% yield-on-cost and feasibility for for-sale units is defined as 15% margin on costs.
- b. The developer shall satisfy all alternative means of compliance concurrent with or prior to occupancy of the market rate development.
- c. Except where specifically provided herein, alternative means of compliance shall require approval by the review authority and shall be provided in accordance with all applicable requirements of this section.
- d. The alternative means of compliance include and are limited to those listed in this subsection.
- e. Land Dedication. The developer may make an irrevocable offer of land dedication to satisfy the inclusionary housing requirement section. Such site shall be within the city limits of the City of Benicia and shall be of sufficient size, general plan land use designation, and zoning to accommodate the required inclusionary units equivalent to the number, affordability and type that would otherwise be required by this section.
 - i. The developer must identify the land to be dedicated no later than the application for tentative map approval, or if not applying for a tentative map, at the time of the development application. In order to facilitate an evaluation of the land dedication offer, the following information shall be submitted for the land dedication site:
 - a) Title report;
 - b) Parcel map, if site would be divided from larger area of land;
 - c) Soil Report/Geotechnical Report;
 - d) Phase I Environmental Site Assessment;

- e) Arborist Report, if the site contains protected trees or heritage trees as defined pursuant to Chapter 12.24 (Trees and Street Trees);
 - f) Grading Plan;
 - g) Utilities Plan;
 - h) Cultural Resources Report; and
 - i) Stormwater Control Plan.
- ii. The city may approve, conditionally approve or reject such offer of land dedication. If the city rejects the offer of dedication, the developer shall be required to meet the affordable housing obligation by other means set forth in this section. If the city accepts the offer of dedication, the developer shall enter into a cost recovery agreement with the City of Benicia and deposit adequate funds to ensure the recovery of direct costs, as well as city time and materials, required for to disposition of the land for housing development.
- iii. Prior to issuance of certificates of occupancy for the market rate units, the following obligations for improvement of the dedicated land site shall be fulfilled:
- a) Construction and acceptance of infrastructure improvement including frontage improvements (curb, gutter, lighting hydrants, and walk), paved roadways, utility (water, sewer, gas, and electric) service connections stubbed at property line(s), and such other improvements as may be necessary for development of the required inclusionary units or required by the city pursuant to its adopted objective standards; and
 - b) Completion and final inspection of site grading, erosion and sediment control measures, and site bioretention or other facilities required pursuant to a stormwater control plan. The site shall be graded to a two-percent back-to-front slope or improved with retaining walls or other improvements to provide an adequate developable area for inclusionary units; and
- iv. After acceptance, the City will offer the property dedicated to meet the inclusionary requirement for sale or long-term ground lease to third party affordable housing developers in accordance with the State Surplus Land Act (SLA) disposition process as set forth in Sections 54220 – 54233 of the Government Code.
- f. Off-site Construction. The developer may propose to fulfill the requirements of this section by the construction off-site inclusionary units, i.e. the construction of inclusionary units that would be required as part of the residential development at another location in the city at an equivalent number, affordability level, and with comparable unit and design as required per subsection C.5.b (Comparable Units) and C.5.c (Comparable Design). Off-site inclusionary units must be constructed and approved through final inspection

prior to issuance of a certificate of occupancy for any units in the market-rate development project.

- g. **Rental Units Within For-Sale Unit Developments.** The developer may propose to offer inclusionary units as rental units within a for-sale development. Such inclusionary rental units shall be subject to subsection D (Requirements for rental units).
- h. **Extension of Existing Affordable Rent Restrictions in Off-site Properties.**
 - i. The developer may propose to partner with an existing affordable housing provider that manages residential housing within the city limits of the City of Benicia to rehabilitate and extend the affordability of existing off-site housing units at an economic value equal to or greater than the subsidy cost for the required on-site inclusionary housing units, as demonstrated by the analysis of a qualified land economist and providing the following:
 - a) Rehabilitation of existing affordable housing units and/or facilities in a manner that will extend the life of such structure(s) and grounds; and
 - b) Secure at least 55 years additional of restricted affordability for housing unit(s). The inclusionary units to be extended must be affordable to low and moderate-income residents (or lower levels of affordability) as set forth in the Affordable Restriction Agreement, and the terms of affordability must meet the General Requirements section regarding term, levels of affordability and reporting requirements.
 - ii. A proposal for rehabilitation and extension of existing affordable rent restrictions in off-site properties shall be presented at the time of development application submittal and shall be accompanied by a memorandum of understanding or partnership agreement with the affordable housing provider; a schedule of units and/or facilities to be rehabilitated with construction cost estimates; a draft instrument extending the duration of affordability; and financing documentation as necessary to demonstrate feasibility.
- i. **Rehabilitation of Existing Units.** The developer may propose to satisfy the inclusionary housing requirement by purchasing and rehabilitating off-site units in an equivalent quantity and affordability to what would be required for on-site inclusionary units, and to a level that complies with the comparable unit and design standards of subsection C.5.b (Comparable Units) and C.5.c (Comparable Design). A proposal for acquisition of existing units, inclusive of unit location, size and type, shall be provided at the same time as the development application and shall be accompanied by evidence of ownership or contingent ownership for each unit proposed as an alternative means of compliance. Existing units that are rehabilitated as an alternative means of satisfying the inclusionary requirements shall require execution of an affordable restriction agreement and shall be acquired, deed restricted, rehabilitated and approved through final inspection prior to

issuance of an occupancy permit for the market rate development. The units purchased must be within the city limits of the City of Benicia.

G. Use of Development Incentives

1. Density Bonus. To avoid an undue economic burden or cost to the developer providing inclusionary units or alternatives required by the provisions of this section, the city shall favorably consider the applicability of a density bonus for a proposed residential project or land subdivision, as provided by state and local law; provided, that a density bonus does not conflict with the goals of the city's general plan or result in significant environmental impacts. Granting of a density bonus shall be considered on a project-by-project basis. Developments seeking a density bonus must comply with the Municipal Code Section 17.70.270 (Density Bonus), and the State Density Bonus Law. The Affordable Housing Density Bonus Agreement (AHDBA) required by Section 17.70.270.B.3 of the Municipal Code shall serve as the affordable restriction agreement required for inclusionary units. Concerning for-sale units, the AHDBA will set forth the restricted resale price that is affordable for a qualified household pursuant to income limits of the Official State Income Limits Table, and the equity sharing provisions of Government Code Section 65915, as a disclosure in the marketing of the affordable for-sale units to initial buyers and subsequent buyers on resale.

H. Enforcement

1. The provisions of this section shall apply to all agents, successors and assignees of a developer for development of the site. No discretionary permit or building permit shall be issued after the effective date of the ordinance codified in this section for any project which does not meet the requirements of this section.
2. In addition to, or in lieu of, the provisions of subsection G.1 of this section, the city council may institute appropriate legal actions or proceedings including, but not limited to, equitable relief for the enforcement of this section. Nothing in this section shall be construed to restrict the rights of the third-party beneficiaries of this section to enforce its provisions.
3. Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by a fine of not more than \$5,000.00, or by imprisonment in the county jail for a term not exceeding six months, or by both fine and imprisonment. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this section is commenced, continued, or permitted by such person, firm, or corporation, and shall be punishable as provided herein.

- I. Performance. Failure of any city official or agency to fulfill the requirements of this section shall not excuse any developer from the requirements and obligations of this section and any

associated affordable restriction agreement.

Section 3.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the _____ day of _____ 2023, and adopted at a regular meeting of the Council held on the _____ day of _____ 2023, by the following vote:

Ayes:

Noes:

Absent:

Steve Young, Mayor

Attest:

Lisa Wolfe, City Clerk

Date