

ORDINANCE NO. 14-009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE AMENDING ARTICLE 4 OF CHAPTER 5 OF TITLE 9 OF THE CITY OF EMERYVILLE PLANNING REGULATIONS TITLED "AFFORDABLE HOUSING SET ASIDE PROGRAM" AND RETITLING AS "AFFORDABLE HOUSING PROGRAM"

WHEREAS, after an extensive community engagement process involving residents, business owners, and development representatives, the Emeryville City Council adopted a new General Plan on October 13, 2009 to guide the growth and development of the City of Emeryville; and

WHEREAS, as part of the General Plan the City also enacted the 2009-2014 Housing Element which contained policies to continue implementation of the Affordable Housing Set-Aside Ordinance, set forth in Article 4 of Chapter 5 of Title 9 of the Planning Regulations ("Ordinance"), to ensure inclusion of below market rate units in residential projects of 30 or more units (Policy II-A-4), and where feasible, to consider a reduction in the moderate income inclusionary percentage requirement set forth in the Ordinance in exchange for extremely low, very low and/or low income units (Policy II-B-3); and

WHEREAS, as required by State law, the City has prepared its 2015-2023 Housing Element which contains policies to continue implementation of the Affordable Housing Set-Aside Ordinance to ensure inclusion of below market rate units in residential projects of 30 or more units, but to consider reducing the unit threshold to make the Ordinance applicable to smaller projects (Program H-2-1-2); to establish a housing impact fee for the creation of affordable housing (Program H-2-2-1); and where feasible, to consider a reduction in the moderate income inclusionary percentage requirement set forth in the Ordinance in exchange for extremely low, very low and/or low income units (Program H-2-2-3); and

WHEREAS, in order to implement these policy directives the City Council must provide a statutory framework to lower the unit threshold to which the Ordinance applies, and to establish, impose, and collect impact fees for the creation of affordable housing; now, therefore, be it resolved that

THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT. The purpose and intent of this ordinance is to amend the existing Affordable Housing Set Aside Program contained in Article 4 of Chapter 5 of Title 9 of the Planning Regulations as follows: (i) to amend the title of Article 4 of Chapter 5 of Title 9 of the Planning Regulations to Affordable Housing Program; (ii) to lower the unit threshold to which the requirement to provide affordable

housing units applies to ownership residential projects from 30 units or more to 10 units or more; and (iii) to provide authority and a process for the city to establish and collect fees which will be imposed upon rental residential and non-residential development projects for the purpose of mitigating the impacts that these development projects have upon the city's ability to provide affordable housing, creating an affordable housing fund into which these fees will be deposited, and providing authority to expend these fees for the provision of affordable housing.

SECTION TWO. FINDINGS. In accordance with Section 9-7.1305 of Article 13 of Chapter 7 of Title 9 of the City of Emeryville Planning Regulations, the City Council hereby finds that this ordinance is consistent with the City of Emeryville General Plan, and the Housing Element, will be of benefit to the public, and as provided by Section Four herein, this ordinance is exempt from the requirements of the California Environmental Quality Act.

SECTION THREE. Amending Article 4 of Chapter 5 of Title 9 of the City of Emeryville Planning Regulations titled "Affordable Housing Set-Aside Program" and retitled as "Affordable Housing Program". Article 4 of Chapter 5 of Title 9 of the City of Emeryville Planning Regulations titled "Affordable Housing Set-Aside Program" is hereby retitled as "Affordable Housing Program" and amended in its entirety to read as follows:

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| Article 4. | Affordable Housing Program |
| 9-5.401 | Created. |
| 9-5.402 | General Requirements for New Ownership Residential Projects of Ten or More Dwelling Units. |
| 9-5.403 | Affordable Unit Requirements for Ownership Residential Projects. |
| 9-5.404 | Household Eligibility Requirements for Affordable Units. |
| 9-5.405 | Control of Resale of Ownership Affordable Units. |
| 9-5.406 | New Rental Residential Projects – Affordable Housing Impact Fees. |
| 9-5.407 | Rental Affordable Units Permitted If Consistent with Costa-Hawkins Act. |
| 9-5.408 | Requirements for Rental Affordable Units. |
| 9-5.409 | New Nonresidential Projects – Affordable Housing Impact Fees. |
| 9-5.410 | Housing Fund. |
| 9-5.411 | Availability of Government Subsidies. |
| 9-5.412 | Density Bonus. |
| 9-5.413 | Reduction of Amenity and Square Footage. |
| 9-5.414 | Fees. |

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| 9-5.415 | Technical Assistance. |
| 9-5.416 | Enforcement. |
| 9-5.417 | Waiver. |
| 9-5.418 | Annual Report. |
| 9-5.419 | Definitions. |

9-5.401 Created.

To lessen the shortage of housing affordable to moderate, median, low, and very low income households in the City of Emeryville as partial compliance with California Government Code Section 65583(c), there is hereby created an affordable housing program.

9-5.402 General Requirements for New Ownership Residential Projects of Ten or More Dwelling Units.

(a) Developers of new ownership residential projects (both new construction and conversion of nonresidential space to a residential use) of 10 or more dwelling units or lots, including but not limited to, single-family dwellings, or condominium developments, either partially or completely in Emeryville, shall be conditioned to provide a designated percentage of the dwelling units in the project as units affordable to moderate income households for a minimum period of 45 years from date of availability as more fully described below, unless the developer, in agreement with the City Council, elects to commit to a fixed percentage of the affordable units as being affordable to median income households in return for a reduction of the affordability percentage.

(b) Any development permit for new ownership residential projects (both new construction and conversion) of 10 or more dwelling units or parcels that provide affordable units pursuant to (a) above shall have conditions attached which will assure compliance with the provisions of this Article. The conditions shall require a written agreement to indicate the number, type, location, approximate size, and construction scheduling of all dwelling units, the appropriate price levels, provision for income certification and screening of potential occupants of affordable units, a resale control mechanism, a density bonus, if applicable, and such reasonable information as shall be required by the City for the purpose of determining the applicant's compliance with this Article.

(c) All affordable units in a project and phases of a project should be constructed concurrently with or prior to the construction of non-affordable units, unless the City determines that extenuating circumstances exist.

(d) All affordable units shall be occupied by moderate or median income households as certified by the City or its operating agent.

(e) Unless the City finds compelling reasons to the contrary, the affordable units shall be dispersed throughout the development, the mix and type of

affordable units shall be proportionate to those of the project as a whole, and the affordable units shall be comparable with the design of the base level market rate units prior to purchaser-funded upgrades in terms of appearance, materials, and quality of finishes. Parking designated for the affordable units shall be provided in an equitable manner as that provided for the market rate units. The written agreement referred to in subsection (b) above shall include a breakdown of the types of units provided as affordable, which shall be directly proportionate to the types of units in the project as a whole under the provisions of this subsection (e).

(f) The applicant shall have the option, with the approval of the City, to transfer credit for affordable units constructed at one location within the City to satisfy the requirements of this Article. The affordability requirement may be satisfied with construction of dwelling units up to 12 months prior to the approval of the project.

(g) Upon a finding by the City that the construction of the required affordable units is not feasible or appropriate as part of a larger development project, the applicant shall have the option to construct the affordable units on a site or sites not contiguous with the development, but within the Emeryville City limits.

(h) The applicant shall have the option, with the concurrence of the City, in a home ownership project, of constructing rental affordable units in a number sufficient to meet the requirements of this Article if the provision of the affordable units is consistent with Section 9-5.407.

(i) Where the applicant elects to initially rent all of the units in an ownership residential project, the applicant shall have the option of providing rental affordable units if the provision of the units is consistent with Section 9-5.407.

(j) Where units at a separate location are used to meet the affordability requirements under subsections (f), (g), and (h) of this Section, the affordability percentage shall be applied to the number of units at the two or more locations combined.

(k) Where the applicant is willing to commit to making a portion of the affordable units affordable to median income households for 45 years:

(1) The applicant can seek approval by the City under Section 9-5.402(a) above to reduce the number of units required; and

(2) The City may subsidize the cost of traffic impact fees, if any, building permit fees, and other fees and exactions that may be required of some or all of the project units.

(l) Prior to City approval of a lesser percentage of affordable units in return for targeting to median income under subsections (a) and (k) above, the City must find that the request provides at least an equivalent contribution toward City goals.



(m) Notwithstanding the other provisions of this Section, the owner of any rental residential project or the owner of any ownership residential project that is initially rented, whether constructed prior to or after the original adoption of Article 7 of Chapter 6 of these Planning Regulations, and that contains 10 or more dwelling units or lots, shall be required to notify City at least 120 days prior to a proposed change to the tenure of the residential project from rental units to for-sale, ownership units, as well as at least 120 days prior to any proposed transfer or assignment of project, such that the requirements of this Chapter that are effective as of the date of said notification to the City will be imposed on the ownership residential project through execution of a written agreement as referred to in Section 9-5.402(b) and any other agreements as required by the City (such as an Assignment and Assumption Agreement).

9-5.403 Affordable Unit Requirements for Ownership Residential Projects.

(a) In new ownership residential projects, 20 percent of the dwelling units shall be affordable to moderate income households as provided above. The housing unit sales prices corresponding to these income ranges shall be established by the City or its designee. In ownership residential projects located partially in Emeryville, 20 percent of the units in Emeryville shall be affordable units or 10 percent of all of the units in the project shall be affordable units with all of the affordable units located in Emeryville, whichever is greater. In applying these percentages, any decimal fraction less than or equal to 0.50 may be disregarded and any decimal fraction greater than 0.50 shall be construed as requiring one dwelling unit.

(b) The developer shall offer to sell the affordable units required by this Article to eligible purchasers for a period of not less than 120 days from the date of the City's issuance of the certificate of occupancy for each particular affordable unit, with the sale being completed within 90 days thereafter. At the end of the 120-day marketing period, the City, in its sole discretion, may require developer to extend its sales efforts for an additional 60-day period. Developer shall actively market the units during this period and implement any suggestions provided by the City. Furthermore, in negotiating the agreement with the developer, City may require that the marketing periods be extended depending on the number of units to be constructed and marketed at that same time.

(c) If the developer is unable to sell some or all of the affordable units at the end of the marketing period described in subsection (b) above, the City shall be offered the opportunity to sell the units for a period of no less than 60 days, with sale being completed within 90 days thereafter. During this period, City or its designee may purchase the units.

(d) If the developer, City, or the City's operating agent are unable to sell some or all of the affordable units at the end of the marketing periods described in subsections (b) and (c) above, and the City or its designee does not purchase the units, then the developer may sell the affordable units at an unrestricted price to a bona fide purchaser for value and pay the City an amount equal to the difference between the sales price and the affordable cost established by the City. After payment of the

required amount to the City, all sale and resale restrictions shall be removed from the affordable unit.

(e) The developer shall advertise the initial availability of all affordable units in a project to the Emeryville general public through a marketing program approved by the City. The developer shall seek qualified purchasers through a process involving community outreach and broad marketing efforts, informational workshops, an application, a lottery, and application review and processing. The City or its operating agent shall review the assets and income of prospective purchasers of the ownership affordable units on a project-by-project basis and shall make the final decision about income eligibility. Unless otherwise prohibited by law, preference will be given first to residents of Emeryville and second to people employed in Emeryville, or to other preferences as adopted by the City for a particular ownership residential project subject to this Article. As part of its review of the eligibility of prospective purchasers, the City or its operating agent shall advise all prospective purchasers of the resale restrictions applicable to ownership affordable units as specified in this Article and shall require all purchasers to participate in City-approved homebuyer education prior to the close of escrow of the purchaser's affordable unit.

(f) The City shall enter into recorded agreements with developers, and take other appropriate steps necessary to assure that the required moderate and median income ownership units are provided and that the units remain affordable to moderate or median income households for a period of at least 45 years from the recordation of the purchase agreement.

9-5.404 Household Eligibility Requirements for Affordable Units.

(a) In establishing moderate, median, low or very low household income, the City or its designee shall consider, among other things, the median household income data provided periodically by the California Department of Housing and Community Development, household size and number of dependents, and all sources of household income and assets.

(b) Every purchaser of an affordable unit shall certify by a form acceptable to the City that the dwelling unit is being purchased for the purchaser's primary place of residence. The City or its operating agent shall verify this certification. Failure, by the purchaser, to maintain eligibility for homeowners' property tax exemption shall be construed to mean that the affordable unit is not the primary place of residence of the purchaser. Should the purchaser fail to make the unit his/her principal place of residence within six months following notice by the City of the failure to comply with this provision, such failure shall authorize the City to send a subsequent notice that it treats the failure as a sale which triggers a preemptive option for the City to purchase such unit consistent with the procedures set out in Section 9-5.405(b) below; provided that no sale is deemed to occur, no option periods are triggered, and no rights of the City are extinguished if it does not send the second written notice deeming the failure of the owner to comply as a sale.

(c) The policies governing the selection of home buyers for certification by the City or its operating agent under the provisions of this Article shall be established by the City. These shall include, but not be limited to, maximum income and asset limits, order of preference, and policy on first-time home buyers. The most recently established criteria shall be used by the City or its operating agent in selecting home buyers and in structuring any lottery.

9-5.405 Control of Resale of Ownership Affordable Units.

(a) In order to maintain the availability of the affordable units as may be constructed pursuant to the requirements of this Article, the City shall impose the following resale conditions for a minimum period of 45 years from the recordation of each grant deed, which 45 year period shall start over with each resale. The price received by the seller of an affordable unit shall be limited to the lesser of a bona fide offer to purchase or the price affordable to a moderate income household. If the affordable unit has been established for a median income household through an agreement with the developer as provided in Section 9-5.402(k), then the price of the unit shall be the lesser of the bona fide offer to purchase or the price affordable to a median income household, as applicable.

(b) Home ownership affordable units shall be sold and resold from the date of the original sale only to moderate and median income households as determined to be eligible for affordable units by the City or its operating agent according to the requirements of this Article. When an owner of an affordable unit desires to sell the unit, the owner shall notify the City. The owner shall market the unit to eligible purchasers for a period of not less than 90 days from the date of notification to the City of the desire to sell and of initiation of marketing (unit is available for viewing and designated contact person available to respond to inquiries), with the sale being completed within 90 days thereafter. If the owner is unable to sell the unit to an eligible purchaser, then the City shall be offered the opportunity to sell the unit for a period of no less than 60 days, with sale being completed within 90 days thereafter. During this period, City or its designee may purchase the units. 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.

(c) If the owner, City, or the City's operating agent are unable to sell the unit at the end of the marketing periods described in subsection (b) above, and the City or its designee does not purchase the units, then the owner may sell the affordable unit at an unrestricted price to a bona fide purchaser for value and pay the City an amount equal to the difference between the sales price and the affordable cost established by the City. After payment of the required amount to the City, all sale and resale restrictions shall be removed from the affordable unit.

(d) The owners of any affordable unit shall attach and legally reference in the grant deed conveying title of any such affordable ownership unit a declaration of restriction provided by the City or its operating agent stating the restrictions imposed pursuant to this Article. The grant deed shall afford the grantor and the City the right to

enforce the attached declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions as required by this Article. Should the City provide subsidies or financing for any affordable unit, including down payment assistance loans, it will require the filing of a deferred payment subordinate deed of trust in favor of the City, having such terms as the City shall from time to time require, and that subordinate deed of trust shall incorporate and make further enforceable the declaration of restrictions referred to in this subsection.

(e) The City or its operating agent shall be given the responsibility of monitoring the resale of ownership affordable units. Any violation of the resale provisions shall be referred to the City for appropriate action.

9-5.406 New Rental Residential Projects – Affordable Housing Impact Fees.

(a) Rental residential projects shall pay affordable housing impact fees as prescribed by this Section to mitigate the project's impact on the need for affordable housing in the City, unless the applicant elects to provide on-site rental affordable units consistent with Section 9-5.407.

(b) Affordable housing impact fees for rental residential projects shall be established by resolution of the City Council and may be amended from time to time as required. Such fees shall not exceed the cost of mitigating the impact of market rate residential projects on the need for affordable housing in the City.

(c) The affordable housing impact fee shall be paid upon issuance of a building permit for each dwelling unit in the rental residential project. The amount of any affordable housing impact fee payable under this Section shall be based upon the fee schedule in effect at the time of issuance of the building permit for the dwelling unit to which the fee relates.

9-5.407 Rental Affordable Units Permitted If Consistent with Costa-Hawkins Act.

(a) As an alternative to paying the affordable housing impact fees as required by Section 9-5.406, or where an applicant elects to initially rent all of the units in an ownership residential project, an applicant may propose to provide 6.9 percent of the dwelling units in the residential project as rental units affordable to low income households. In calculating the number of required rental affordable units, any decimal fraction less than or equal to 0.50 may be disregarded and any decimal fraction greater than 0.50 shall be construed as requiring one dwelling unit.

(b) To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may only approve a proposal to provide rental affordable units if the applicant agrees in a recorded agreement with the City to limit rents in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(c) Any development permit for a new residential project (both new construction and conversion) that provides rental affordable units pursuant to (a) above shall have conditions attached which will assure compliance with the provisions of this Article. The conditions shall require an agreement to be recorded prior to occupancy that indicates the number, type, location, approximate size, and construction scheduling of all dwelling units, the appropriate rent levels, provision for income certification and screening of potential occupants of affordable units, a density bonus, if applicable, compliance with the Costa Hawkins Act, and such reasonable information as shall be required by the City for the purpose of determining the applicant's compliance with this Article. The agreement shall require that the rental affordable units be rented to low income households for a period of at least 55 years from the date of recordation of the agreement, unless all of the units in the residential project are offered to the public for purchase. In that event, the applicant shall provide 20 percent of the dwelling units as ownership affordable units complying with Sections 9-5.402 through 9-5.405. The recorded agreement shall provide relocation benefits for tenants of the rental affordable units in the event of sale.

9-5.408 Requirements for Rental Affordable Units.

(a) All rental affordable units in a project and phases of a project should be constructed concurrently with or prior to the construction of non-affordable units, unless the City determines that extenuating circumstances exist.

(b) All rental affordable units shall be occupied by low or very low income households.

(c) Unless the City finds compelling reasons to the contrary, the rental affordable units shall be dispersed throughout the development, the mix and type of rental affordable units shall be proportionate to those of the project as a whole, and shall be comparable with the design of the base level market rate units prior to purchaser-funded upgrades in terms of appearance, materials, and quality of finishes. Parking designated for the rental affordable units shall be provided in an equitable manner as that provided for the market rate units. The written agreement referred to in Section 9-5.407(c) above shall include a breakdown of the rental affordable units, which shall be directly proportionate to the types of units in the project as a whole under the provisions of this subsection (c).

(d) The developer shall market the rental affordable units as required by this Article to eligible renters throughout the duration of the written agreement referred to in Section 9-5.407(c) above. No less than 120 days prior to the initial lease up of the affordable units, developer shall provide City for its review and approval a marketing program for the affordable units, which program shall be in conformance with City's affordable unit marketing program procedures promulgated by the City, as may be amended from time to time. During the initial lease up of the affordable units, Developer shall market the affordable units commencing upon approval of the marketing program by the City for a period of time no less than 120 days after the date of the City's issuance of the certificate of occupancy for the project. At the end of the

120-day marketing period, the City, in its sole discretion, may require developer to extend its marketing efforts for an additional 60 day period increments. Developer shall actively market the units during this period and implement any suggestions provided by the City. Furthermore, in negotiating the written agreement with the developer, City may require that the marketing periods be extended depending on the number of units to be constructed and marketed at that same time. On an annual basis, in coordination with its obligations to income certify occupants of affordable units, Developer shall review and revise, as necessary and as approved by the City, its marketing program in order to maintain conformance with the City's procedures or otherwise respond to market conditions.

(e) The developer shall advertise the initial availability of affordable units to the Emeryville general public through a marketing program approved by the City. Upon notification of the availability of rental dwelling units by the developer, the developer shall seek qualified renters through a process involving community outreach and broad marketing efforts, informational workshops, an application submittal, a lottery, and application review and processing.

(f) Unless otherwise prohibited by law, preference will be given first to residents of Emeryville and second to people employed in Emeryville, or to other preferences as adopted by the City for a particular rental residential project subject to this Article.

(g) The City or its operating agent shall monitor the affordable rental units. The developer or owner shall retain final discretion in the selection of the eligible households; provided that the same rental terms and conditions (except rent levels and income) are applied to tenants of affordable units as are applied to all other tenants, except as required to comply with government subsidy programs.

9-5.409 New Nonresidential Projects – Affordable Housing Impact Fees.

(a) Nonresidential projects shall pay affordable housing impact fees to mitigate the project's impact on the need for affordable housing in the City.

(b) Affordable housing impact fees for nonresidential projects shall be established by resolution of the City Council and may be amended from time to time as required. Such fees shall not exceed the cost of mitigating the impact of nonresidential projects on the need for affordable housing in the City. The City Council may from time to time adopt housing impact fees for different categories of nonresidential projects, specify the specific uses within each nonresidential land use category, and establish a list of nonresidential uses exempt from the payment of affordable housing impact fees.

(c) The affordable housing impact fee shall be paid upon issuance of a building permit for any nonresidential project for which the fee is due. The amount of any affordable housing impact fee payable under this Section shall be based upon the fee schedule in effect at the time of issuance of the building permit for the nonresidential project to which the fee relates.

(d) As an alternative to payment of the affordable housing impact fee set forth in this Section, an applicant for a nonresidential project may submit a request to mitigate the affordable housing impacts of such development through the construction of affordable units, either on-site or off-site, through the dedication of land, or through other means. The City Council may approve or conditionally approve such an alternative if the City Council determines, based on substantial evidence, that such alternative compliance will provide as much or more affordable housing at the same or lower income levels as will payment of the affordable housing impact fee, is consistent with the General Plan and Housing Element, and will otherwise provide as great a public benefit as would payment of the affordable housing impact fee. Any affordable units constructed on-site or off-site shall comply with the provisions contained in Sections 9-5.402 through 9-5.408, as applicable.

9-5.410 Housing Fund.

(a) There is established in the City an affordable housing fund for the purpose of receiving and disbursing certain monies to address the housing needs of extremely low, very low, low, median and moderate income households. Separate accounts within such housing fund may be created from time to time to avoid commingling if required by law or as deemed appropriate to further the purposes of the housing fund.

(b) All affordable housing impact fees shall be deposited into the affordable housing fund.

(c) The fees collected under this Article and all earnings from investment of the fees shall be expended exclusively to provide or assure continued provision of affordable housing in the City to meet the housing needs of the City's workforce through acquisition, construction, development assistance, substantial rehabilitation, financing, rent or other subsidies, or other methods, and for costs of administering programs which serve those ends. The housing shall be of a type, or made affordable at a cost or rent, for which there is a need in the City and which is not adequately supplied in the City by private housing development in the absence of public assistance and to the extent feasible shall be utilized to provide for moderate, median, low, very low, and extremely low income housing.

9-5.411 Availability of Government Subsidies.

It is the intent of this Article that the requirements for units affordable by moderate, median, low, and/or very low income families shall not be determined by the availability of government subsidies. This is not to preclude the use of such programs or subsidies. This Article is also not intended to be an undue burden on the developers of residential projects. Therefore, as detailed in succeeding sections of this Article, incentives are given to provide affordable units.

9-5.412 Density Bonus.

To avoid any undue economic burden or cost to the applicant providing affordable units required by the provisions of this Article, developers of affordable housing may apply for a density bonus and other incentives, if eligible, pursuant to Article 5 of this Chapter. Any such density bonus shall be in addition to any development bonuses granted pursuant to Section 9-4.204.

9-5.413 Reduction of Amenity and Square Footage.

Upon a showing of economic hardship and necessity by the applicant:

(a) With City approval, the applicant may reduce the interior amenity level of the affordable units below that of the market-rate units, provided such dwelling units conform to the requirements of applicable building and housing codes; and

(b) With City approval, the applicant may reduce the square footage of the affordable units below that of the market-rate units, provided all dwelling units conform to the requirements of applicable building and housing codes.

9-5.414 Fees.

In the attempt to avoid any undue burden on developers who are required to provide affordable units under the provisions of this Article, the City may subsidize the cost of traffic impact fees, if any, building fees and other City fees applicable to the affordable units of a proposed housing development.

9-5.415 Technical Assistance.

In order to emphasize the importance of securing moderate, median, low and very low income housing as a part of this program, the City and/or designated consultants shall provide assistance on financial subsidy programs to applicants. During individual project review, consideration shall be given to an economic analysis which will indicate the most suitable methods for the terms of this Article to be implemented. This is to be done for the purpose of increasing the feasibility and lowering the cost of dwelling units affordable to moderate, median, low and very low income households.

9-5.416 Enforcement.

(a) The provisions of this Article shall apply to all agents, successors, and assignees of an applicant for development of the site. No building permit or occupancy permit shall be issued, nor any development approval granted, which does not meet the requirements of this Article.

(b) In addition to, or in lieu of, the provisions of subsection (a) of this Section, the City shall institute injunction, mandamus, or any other appropriate legal actions or proceedings for the enforcement of this Article.

(c) Any person, firm, or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this

Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by a fine of not more than \$500.00, 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 Article is commenced, continued, or permitted by such person, firm, or corporation, and shall be punishable as provided herein.

9-5.417 Waiver.

(a) As part of an application for the first approval of a residential project or nonresidential project, an applicant may apply for a reduction, adjustment, or waiver of the requirements of this Article based upon a showing that applying the requirements of this Article would result in an unconstitutional taking of property or would result in any other unconstitutional result. The applicant shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation, and shall bear the burden of presenting the requisite evidence to demonstrate the alleged unconstitutional result. The City may assume each of the following when applicable:

(1) The applicant will benefit from the incentives set forth in the City Code; and

(2) The applicant will provide the most economical affordable units feasible in terms of financing, construction, design, location and tenure.

(b) The City Council, based upon legal advice provided by or at the behest of the City Attorney, may approve a reduction, adjustment, or waiver if the approval authority determines that applying the requirements of this article would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property. The reduction, adjustment, or waiver shall be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, and based on legal analysis and the evidence. If a reduction, adjustment, or waiver is granted, any change in the residential or nonresidential project shall invalidate the reduction, adjustment, or waiver, and a new application shall be required for a reduction, adjustment, or waiver pursuant to this section.

9-5.418 Annual Report.

The City shall prepare, or cause to be prepared, an annual report to the City Council on the status of the affordable units constructed under the provisions of this Article. The report shall include the number, size, type, tenure, and general location of the affordable units as well as the number of resales and rental vacancy rate. This report shall provide a basis for an evaluation of the overall effectiveness of this Article.

9-5.419 Definitions.

As used in this Article:

(a) "Affordable" shall be defined in accordance with California Health and Safety Code Section 50052.5 and in accordance with the following table, for moderate income, median income, low income, and very low income households in accordance with the following table, and in accordance with the project's being owner-occupied or renter-occupied:

| Income Level | Owner-Occupied Project | Renter-Occupied Project |
|-----------------|--|---------------------------------------|
| Moderate income | 35% of 110% of the Area Median Income. | 30% of 110% of the Area Median Income |
| Median income | 30% of 90% of the Area Median Income | 30% of 80% of the Area Median Income |
| Low income | 30% of 70% of the Area Median Income | 30% of 60% of the Area Median Income |
| Very Low income | 30% of 50% of the Area Median Income | 30% of 50% of the Area Median Income |

The City shall publish the annual home-sale price and rents allowable under this program on an annual basis.

(a) "Affordable unit" shall mean an ownership or rental housing unit, as required by this Article, which is affordable to a household with moderate, median, low or very low income.

(b) "Applicant" shall mean any person, firm partnership, association, joint venture, corporation, or any entity or combination of entities which seeks City permits and approvals.

(c) "Area Median Income" or "median income" shall mean the area median income published annually by the California Department of Housing and Community Development for the County of Alameda.

(d) "At one location" shall mean all adjacent land owned or controlled by the applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road or other public or private right-of-way, or separated only by other land of the applicant.

(e) "Bedroom(s)" shall mean the number of rooms available predominantly as sleeping quarters. The City has a history of providing live/work space and other unusually structured living arrangements. For that reason, the City retains

discretion in determining how many bedrooms a particular dwelling unit will contain so as to determine what price or rent will be required for eligibility as an affordable unit.

(f) "Dwelling unit" shall mean a dwelling designed for occupancy by one household.

(g) "Housing costs" shall be defined in accordance with California Health and Safety Code Section 50052.5 and implementing regulations and shall generally mean the monthly mortgage principal and interest, property taxes and assessments, homeowners insurance, homeowner association fees where applicable, an allowance for utilities and property maintenance and repairs, for ownership dwelling units; and the monthly rent, and allowance for utilities, fees or service charges charged to all tenants, for rental dwelling units.

(h) "Income eligibility" shall mean the gross annual household income, considering the household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income. For self-employed households, net annual household income shall be used in determining income eligibility.

(i) "Market-rate unit" shall mean an ownership or rental housing dwelling unit which is not an affordable unit.

(j) "Moderate, median, low and very low income households" means those households whose maximum income does not exceed levels published annually by the California Department of Housing and Community Development for the County of Alameda. Generally, "moderate income" is defined as 101% to 120% of median income, "median income" is defined as 81% to 100% of median income, "low income" is defined as 51% to 80% of median income and "very low income" is defined as up to 50% of median income.

(k) "Nonresidential project" means any development of nonresidential uses in the City for which a discretionary permit or building permit is required, including an addition to an existing use, the new construction of gross square feet of nonresidential space, the conversion of residential use to a nonresidential use, or the conversion of one nonresidential use to another nonresidential use for which an affordable housing impact fee or larger affordable housing impact fee is required.

(l) "Operating agent of the City" shall mean a nonprofit organization, for-profit corporation, county or City agency chosen by the City to carry out some or all of the administrative provisions of this Article.

(m) "Ownership residential project" means any residential project that includes the creation of one or more residential dwelling units that may be sold individually. A residential ownership project includes the conversion of apartments to condominiums and residential rental projects having a recorded condominium plan.

(n) "Project" shall mean a housing development at one location including all dwelling units for which permits have been applied for or approved within a 12 month period.

(o) "Resale controls" shall mean legal restrictions by which the price of affordable units will be controlled to insure that the dwelling unit is affordable to moderate, low, and/or very low income households over time.

(p) "Rental residential project" means any residential project that creates residential dwelling units that cannot be sold individually.

(q) "Residential project" means any development for which a discretionary permit or building permit is required and that includes the creation of one or more additional dwelling units, conversion of nonresidential uses to dwelling units, or a condominium conversion.

(r) "Substantial rehabilitation" means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

SECTION FOUR. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, section 15061(b)(3) and section 15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in section 15378(b)(3) in that it concerns general policy and procedure making.

SECTION FIVE. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.


SECTION SIX. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION SEVEN. CODIFICATION

Section Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Four, Five, Six and Seven shall not be so codified.

This Ordinance was **INTRODUCED AND FIRST READ** by the City Council of the City of Emeryville at a regular meeting held on Tuesday, July 1, 2014, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, July 15, 2014.



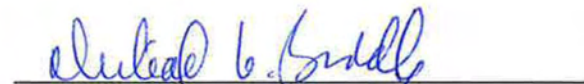
MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY