

Select the documents you wish to print.
Your current document has been pre-selected for you.

 Print

- Chapter 17.31 - INCLUSIONARY HOUSING AND DENSITY BONUSES
 - 17.31.010 - Basis and purposes.
 - 17.31.020 - Definitions.
 - 17.31.030 - Basic inclusionary requirement.
 - 17.31.040 - Inclusionary housing incentives.
 - 17.31.050 - Density bonuses—Calculation of bonus.
 - 17.31.060 - Development standards modified as density bonus incentive or concession.
 - 17.31.070 - Density bonus for land donation.
 - 17.31.080 - Density bonus for child care facilities.
 - 17.31.090 - Density bonus in condominium conversions.
 - 17.31.100 - Summary tables.
 - 17.31.110 - Time performance required for inclusionary and density bonus compliance.
 - 17.31.120 - Affordable housing plan submittal.
 - 17.31.130 - City review of affordable housing plan.
 - 17.31.140 - Developer affordable housing agreement.
 - 17.31.150 - Continued affordability and initial occupancy.
 - 17.31.160 - Implementation and enforcement.
 - 17.31.170 - Waivers of Inclusionary housing requirement.

Note: You must remove pop-up blocking to view Printer Friendly version

I.1.13

17.31.010 - Basis and purposes.

- A. Rental and owner-occupied housing in the city has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the city, who have grown up or have family ties in the city, who already live in the city but must move, or who wish to live in the city for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the city which does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the affordable units required by this chapter will help to ensure that part of the city's remaining developable land is used to provide affordable housing.
- E. The city wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The city's general plan implements the established policy of the state of California that each community should foster an adequate supply of housing for persons at all economic levels.
- F. An economically balanced community is only possible if part of the new housing built in the city is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without affordable units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the city should be consistent with the community's goal to foster an adequate supply of housing for persons at all economic levels.
- G. In enacting this chapter it is also the intent of the city of Brisbane to implement the goals, objectives, and policies of the city's general plan housing element, which includes a goal to encourage the provision of housing affordable to a variety of household income levels (Policy H1); the elderly and persons with disabilities (Policy H2); and identifies a density bonus policy and an inclusionary housing policy as methods to encourage the development of affordable housing (Goals H2f, H6a, H7a, and H11j).
- H. This chapter is also intended to implement Sections 65915, 65915.5, and 65917 of the California Government Code, governing density bonuses, by providing incentives required therein for the production of housing for very low, lower income, and senior households and for the production of housing for moderate income households residing in common interest developments.

(Ord. No. 537, § 1. 2-17-09)

17.31.020 - Definitions.

- A. **Affordable Ownership Cost.** Average monthly housing costs, during the first calendar year of a household's occupancy, including mortgage payments, property taxes, homeowners insurance, homeowners association dues, if any, and reasonable allowances for utilities and for maintenance and repair costs, which do not exceed the following:
 - 1.

I.1.2B

- For moderate income households: One hundred ten percent (110%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty-five percent (35%), and divided by twelve (12);
2. For lower income households: Seventy percent (70%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%) and divided by twelve (12);
 3. For very low income households: Fifty percent (50%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%) and divided by twelve (12).
- B. Affordable Rent. Monthly rent, including utilities and all fees for housing services, including parking, which does not exceed the following:
1. For lower income households: Sixty percent (60%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%), and divided by twelve (12);
 2. For very low income households: Fifty percent (50%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%), and divided by twelve (12).
- C. Affordable Units. Inclusionary units or target units.
- D. Area Median Income. Area median income for San Mateo County as published by the state of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.
- E. Assumed Household Size Based on Unit Size. A household of one person in a studio apartment, two (2) persons in a one bedroom unit, three (3) persons in a two bedroom unit and one additional person for each additional bedroom thereafter.
- F. Child Care Center. Child care center has the same meaning as day care center, defined in Section 17.02.190, as an establishment licensed by the state providing group day care services for seven (7) or more children other than those resident on the site. The term includes nurseries, nursery schools, preschools, play groups, and after school group care, but does not include large family day care homes operated in the provider's own home.
- G. Common Interest Development. Any of the following, as defined in Civil Code section 1351(c): a community apartment project; a condominium project; a planned development; or a stock cooperative.
- H. Density Bonus. A density increase over the otherwise allowable maximum residential density, as described in Section 17.31.050 of this chapter.
- I. Density Bonus Units. Those residential units granted pursuant to the provisions of this chapter which exceed the otherwise allowable maximum residential density for the development site.
- J. Developer Affordable Housing Agreement. A recorded agreement between a developer and the city as described in Section 17.31.140 of this chapter to ensure that the inclusionary housing and density bonus requirements of this chapter are satisfied.
- K. Development Standard. Any site or construction condition that applies to a residential project pursuant to any ordinance, general plan, specific plan, or other local condition, law, policy, resolution, or regulation. As used in this paragraph, the term "site and construction conditions" means standards that specify the physical development of a site and buildings on the site in a residential project, but do not include any of the following:
1. The permitted uses of a site;
 2. Any city fees, including dedication fees;
 3. Affordable housing requirements;
 - 4.

7.1.3B

- Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or
5. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this code.
- L. Dwelling Unit. Shall have the meaning set forth in Section 17.02.235
- M. Eligible Household. A household whose household income does not exceed the maximum specified in Section 17.31.140 for a given affordable unit.
- N. First Approval. The first of the following approvals to occur with respect to a residential project: subdivision approval, building permit or any permit or approval under the Zoning Ordinance.
- O. For-Sale Project. A residential project, or portion thereof, where the dwelling units are offered to the public for purchase.
- P. Household Income. The combined adjusted 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.
- Q. Incentives or Concessions. Regulatory concessions as listed in Section 17.31.060
- R. Inclusionary Units. Dwelling units within a residential project which are consistent with the zoning district's density standard and which are required by Section 17.31.030 of this chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households.
- S. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published by the state of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.
- T. Maximum Residential Density. The maximum number of residential units permitted by the city's zoning ordinance on the date the application is deemed complete.
- U. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published by the state of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.
- V. Market-Rate Unit. Any unit within a residential project which is not an affordable unit.
- W. Rental Project. A residential project, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the residential project.
- X. Residential Project. Any parcel map, subdivision map, use permit, building permit, or other city approval which, for purposes of the inclusionary requirement set forth in Section 17.31.030, results in a net increase of at least six (6) or more dwelling units and/or residential lots or parcels or combination thereof, and for purposes of a density bonus as set forth in 17.31.050, results in a net increase of at least five (5) or more dwelling units and/or residential lots or parcels or combination thereof. A residential project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling.
- Y. Senior Citizen Housing Development. A residential project of thirty-five (35) or more dwelling units as defined in California Civil Code Section 51.3, a mobile home park that limits residency to persons eligible to reside in a senior citizen housing development pursuant to California Civil Code Section 798.76 or 799.5, or a residential project of any number of dwelling units for senior citizens with disabilities provided such project complies with federal and state fair housing laws.
- Z. Target Units. Dwelling units affordable to moderate, low, or very low income households within a residential project that qualify the project for a density bonus if provided as required under Section 17.31.050 of this chapter.
- AA.

I-1.4B

Very Low Income Household. A household whose income does not exceed the very low income limits applicable to San Mateo County, as published by the state of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

(Ord. No. 537. § 1, 2-17-09)

17.31.030 - Basic inclusionary requirement.

- A. This section shall apply to all residential projects with six (6) or more dwelling units, except for the following:
1. Residential projects which are developed pursuant to the terms of a development agreement executed prior to the effective date of this chapter, provided that such residential projects shall comply with any affordable housing requirements included in the development agreement.
 2. Residential projects if exempted by Government Code Section 66474.2 or 66498.1, provided that such residential projects shall comply with any predecessor ordinance in effect on the date the application for the development was deemed complete.
- B. In a residential project with six (6) or more dwelling units, units shall be made available exclusively at affordable rents or affordable ownership cost for both rental and for-sale projects as prescribed in the chart in subsection (B)(3) below.
1. For purposes of calculating the number of inclusionary units required by this section, any density bonus units authorized pursuant to this chapter shall not be counted as part of the residential project.
 2. In order to prevent evasion of the provisions of this chapter, contemporaneous construction of six (6) or more dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same city land use approval, shall also be considered a single residential project. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.
 3. Chart Showing Inclusionary Requirements:

Total # of Units in Project	<i>For-Sale Project</i>		<i>Rental Project</i>	
	Units Required to be Affordable to Low-Income Households	Units Required to be Affordable to Moderate-Income Households	Units to be Affordable to Very-Low Income	Units to be Affordable to Low Income Households
0-5	0	0	0	0
6-10	0	1	0	1
11-15	1	1	1	1
16-20	1	2	1	2
21-25	1	3	1	3
26-30	2	3	2	3
31-40	2	4	2	4
41-50	2	5	2	5
51-60	3	6	3	6
61-70	3	7	3	7
71-80	4	8	4	8
81-90	4	9	4	9
91-100	5	10	5	10
101-110	5	11	5	11
	6	12	6	12

I-1.5B

111– 120				
121– 130	<u>6</u>	<u>13</u>	<u>6</u>	<u>13</u>
131– 140	<u>7</u>	<u>14</u>	<u>7</u>	<u>14</u>
141– 150	<u>7</u>	<u>15</u>	<u>7</u>	<u>15</u>
151– 160	<u>8</u>	<u>16</u>	<u>8</u>	<u>16</u>
161– 170	<u>8</u>	<u>17</u>	<u>8</u>	<u>17</u>
171– 180	<u>9</u>	<u>18</u>	<u>9</u>	<u>18</u>
181– 190	<u>9</u>	<u>19</u>	<u>9</u>	<u>19</u>
191– 200	<u>10</u>	<u>20</u>	<u>10</u>	<u>20</u>

Note: For projects of more than two hundred (200) units, the pattern set in the above chart shall be continued, with the numbers in the second and fourth columns being increased by one for each twenty (20) additional units, and the numbers in the third and fifth columns being increased by one for each ten (10) additional units.

(Ord. No. 537, § 1, 2-17-09)

17.31.040 - Inclusionary housing incentives.

- A. The following incentives shall apply to all residential projects that provide one or more inclusionary units in accordance with the provisions of this chapter:
1. Single-family detached inclusionary units need not be constructed on lots the same size as the market-rate units in the same residential development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as provided by Section 17.31.060(B)(1).
 2. Inclusionary units may be smaller in size than market-rate units in the same residential development.
 3. Inclusionary units may consist of different unit types than market-rate units in the same residential development. Secondary dwelling units proposed as inclusionary units shall be required to be rented at affordable rents per Section 17.31.030(B)(3) of this chapter, as specified in a regulatory agreement, covenant, deed of trust, or other document approved by the city council pursuant to Section 17.31.150(B) of this chapter, in addition to being subject to the requirements of Chapter 17.43 of this title.
 4. Inclusionary units may have different interior finishes and features than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality.

(Ord. No. 537, § 1, 2-17-09)

17.31.140 - Developer affordable housing agreement.

- A. Developers subject to the inclusionary housing requirements set forth in this chapter and developers requesting a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this chapter shall enter into a developer affordable housing agreement with the city. A developer affordable housing agreement shall be made a condition

I.1.6B

of the discretionary planning permits for all residential projects pursuant to this chapter and shall be recorded as a restriction on any parcels on which the target or inclusionary units will be constructed.

- B. The developer affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the residential project does not include a map, prior to issuance of a building permit for any structure in the residential projects. The developer affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- C. The developer affordable housing agreement shall be in a form provided by the city and shall include, without limitation, the following:
1. The total number of units approved for the residential project, the number, location, and level of affordability of the target units and the inclusionary units.
 2. Standards for determining affordable rent or affordable ownership cost for the target units and any inclusionary units.
 3. The location, unit size in square feet, and number of bedrooms of target units and any inclusionary units.
 4. Provisions to ensure initial and continuing affordability in accordance with the requirements of this chapter, including the execution and recordation of subsequent agreements ensuring continued affordability pursuant to Section 17.31.150
 5. If applicable, a schedule for completion and occupancy of target units and inclusionary units in relation to construction of market-rate units and specification of the security provided to the city to ensure that the target and/or inclusionary units will be constructed.
 6. A description of any incentives, concessions, waivers, or reductions being provided by the city.
 7. A description of remedies for breach of the agreement by either party. The city may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
 8. Procedures for qualifying tenants and prospective purchasers of target units, including any preferences.
 9. Provisions requiring maintenance of records to demonstrate compliance with this chapter.
 10. Other provisions to ensure implementation and compliance with this chapter.
 11. In the case of senior citizen housing developments, the developer affordable housing agreement shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project.
 12. Developer affordable housing agreements for land dedication, child care facilities, and condominium conversion shall ensure continued compliance with all conditions included in Sections 17.31.070, 17.31.080, and 17.31.090 respectively.

(Ord. No. 537, § 1, 2-17-09)

17.31.150 - Continued affordability and initial occupancy.

- A. Definitions. The following definitions shall be applicable to such terms as used in this section:
1. "Resale restriction agreement" means an agreement, covenant, deed of trust, or other document, approved as to form by the city council, which is executed by the property owner and recorded against each affordable unit to insure that such unit remains affordable for the applicable term. The city manager is hereby granted the authority to execute the resale restriction agreement and any related documents following approval of form documents by the city council.

1-1-7B

2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in an affordable unit. Where the affordable unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:
- a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the affordable unit with the transferor;
 - b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the unit as his or her principal place of residence;
 - c. Any transfer between spouses as part of a marriage dissolution proceeding;
 - d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;
 - e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.

The exemptions listed above shall apply only during the period in which the affordable unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.

3. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- B. Owner-Occupied Target Units and Inclusionary Units. A resale restriction, agreement shall be recorded against each for-sale target unit and for-sale inclusionary unit to ensure that the unit remains affordable for a term of forty-five (45) years. Upon any transfer of the unit (as defined in Section 17.31.150(A)(2) during the term of the resale restriction agreement, the transferee shall execute and record a new resale restriction agreement for a term of forty-five (45) years, commencing from the date of such transfer. If a unit is inherited and such transfer is not exempt under Section 17.31.150(A)(2), the beneficiaries may live in the unit and assume the obligations in the homeowner documents if he/she income qualifies; if he/she does not income qualify, he/she must sell the unit according to the resale restriction agreement, following a grace period not to exceed one year. Owner-occupied inclusionary units that are later rented shall be rented at a rent affordable to the corresponding income level as designated in Section 17.31.030(C).
- C. Rental Target Units and Inclusionary Units. A resale restriction agreement or regulatory agreement shall be recorded against each residential project containing rental target units and inclusionary rental units to ensure that the rental target units and inclusionary rental units remain affordable for a minimum term of fifty-five (55) years. Upon any transfer of the project (as defined in Section 17.31.150(A)(2) during the term of the resale restriction agreement or regulatory agreement, the transferee shall execute and record a new resale restriction agreement or regulatory agreement for a term of fifty-five (55) years, commencing from the date of such transfer. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rental inclusionary units that are later sold shall be affordable upon sale to the corresponding income level as designated in Section 17.31.030(C).

1.1.8 B

- D. Eligibility Requirements. No household shall be permitted to begin occupancy of a target or inclusionary unit unless the city or its designee has approved the household's eligibility, unless the household has been exempted under Section 17.31.150(A)(2). If the city or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of target and inclusionary units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the city council or its designee.

(Ord. No. 537, § 1, 2-17-09)

I.1.9B