Chapter 3 Development and Land Use Approval Requirements

3.010 - Purpose
This Chapter describes the City’s requirements for the approval of proposed development and new land uses. The permit requirements established by this Zoning Ordinance for specific land uses are in Chapters 4 through 10.

3.020 - General Requirements for Development and New Land Uses
Each structure and land use shall be designed, established, constructed, reconstructed, altered, moved and/or replaced in compliance with the following requirements.

A. **Allowed use.** The land use shall be allowed by this Zoning Ordinance in the zone applied to the site. The basis for determining whether a use is allowable is described in Section 3.030 (Allowable Land Uses and Planning Permit Requirements).

B. **Permit and approval requirements.** Any planning permit or other approval required by Section 3.030 (Allowable Land Uses and Planning Permit Requirements) shall be obtained before the issuance of any required grading, building, or other construction permit, and before any development or other act to locate, establish, or otherwise operate a proposed use on a site.

C. **Development standards, conditions of approval.** Each land use and structure shall comply with the development standards of Chapter 4, all other applicable standards and requirements in this Zoning Ordinance, and any applicable conditions imposed by a previously granted planning permit.

D. **Legal lot.** The site of a proposed development or new land use shall be a lot that was legally created in compliance with the Subdivision Map Act and the City's subdivision regulations.

3.030 - Allowable Land Uses and Planning Permit Requirements

A. **Allowable land uses.** The uses of land allowed by this Zoning Ordinance in each zone are listed in tables of allowable land uses in Chapters 4 and 6 together with the type of planning permit required for each use. Each land use listed in the tables is defined in the Glossary.

B. **Establishment of an allowable use.**

1. Any one or more land uses identified by the tables in Chapter 4 as being allowable within a specific zone may be established on any lot within the zone, subject to the planning permit requirements of Subsection B, and compliance with all applicable requirements of this Zoning Ordinance.

2. Where a single lot is proposed to be simultaneously occupied by two or more land uses listed in the tables, the overall project shall be subject to the highest permit level required by Subsection B, for any individual use. For example, a site proposed for development or occupancy with a use that is listed as permitted, and also a use that is listed as requiring a Conditional Use Permit shall require Conditional Use Permit approval for all development and uses.

C. **Use not listed.**

1. A land use that is not listed in the tables in Chapter 4 and is determined by the Director to not be included in the Zoning Ordinance Glossary under the definition of a listed land use, is not allowed within the City, except as otherwise provided Subsection A.3.

2. A land use that is listed in the tables, but not within a particular zone, is not allowed within that zone, except as otherwise provided in Subsection A.3.

3. **Similar and compatible use may be allowed.** The Director may determine that a proposed use not listed in this Chapter is allowable in one or more specific zones as follows:
D. **Required findings.** The Director may determine that a proposed use is similar to and compatible with a listed use and may be allowed, after first making all of the following findings with the determination that:

1. The characteristics of, and activities associated with the use are similar to one or more of the listed uses, and will not involve a greater intensity than the uses listed in the zone;
2. The use is consistent with the purposes of the applicable zone;
3. The use is consistent with the General Plan, and any applicable specific plan;
4. The use will be compatible with the other uses allowed in the zone; and
5. The use is not listed as allowed in another zone.

E. **Applicable standards and permit requirements.** When the Director determines that a proposed, but unlisted, use is similar and compatible to a listed use, the proposed use will be treated in the same manner as the listed use in determining where it is allowed, what permits are required, and what other standards and requirements of this Zoning Ordinance apply.

F. **Referral for determination.** The Director may refer the question of whether a proposed use qualifies as a similar and compatible use directly to the Commission for a determination at a public meeting.

G. **Appeal.** A determination of similar and compatible use may be appealed in compliance with Section 24.070 (Appeals).

H. **Permit requirements.** The tables listing allowable land uses in Chapter 4 provide for land uses that are:

1. Permitted subject to compliance with all applicable provisions of this Zoning Ordinance. These are shown as "P" uses in the tables;
2. Allowed subject to the approval of a Conditional Use Permit (Section 24.030), and shown as "CUP" uses in the tables;
3. Allowed subject to the type of City approval required by a specific provision of Chapter 7 (Standards for Specific Land Uses), and shown as "S" uses in the tables; and
4. Not allowed in particular zones, and shown as "—" in the tables.

**Note:** A permitted land use, or a use authorized through the approval of a Conditional Use Permit may also require Site Plan and Architectural Review (Section 24.010), a Building Permit, and/or other permit required by the Municipal Code.

### 3.040 – Inclusionary Housing

This section shall govern inclusionary housing as part of residential development pursuant to Housing Element Policy 4.2 and associated Program 4.3.

A. **Applicability.** The provisions of this section shall apply to all residential projects of five or more units, including residential components of mixed-use projects.

B. **Requirements.** All residential projects of five or more units shall comply with the following requirements:

1. **Location.** Unless otherwise permitted in accordance with this section, inclusionary housing units shall be provided on the site of the residential development.
2. **Quantity.** The number of onsite inclusionary housing units shall be equal to or greater than 15 percent of the total number of residential units or lots in the residential project.

3. **Income Levels.** The following income restrictions shall apply based on the ownership structure of the residential project.
   a. Inclusionary housing units in a rental project shall be made affordable to very low and low income households as follows: 7.5% of the total number of residential units or lots in the residential project shall be affordable to very low income households and 7.5% of the total number of residential units or lots in the residential project shall be affordable to low income households.
   b. Inclusionary housing units in an ownership project shall be made affordable to low and moderate income households as follows: 7.5% of the total number of residential units or lots in the residential project shall be affordable to low income households and 7.5% of the total number of residential units or lots in the residential project shall be affordable to moderate income households.

4. **Duration.** Affordable units required pursuant to this section shall be made subject to affordability covenants that are binding on owners of the units and their successors for a duration of at least 55 years in the case of rental projects and for a duration of at least 45 years in the case of ownership projects.

5. **Fractional Units.** In determining the number of inclusionary units required to be provided pursuant to this section, fractional units shall be rounded up to the nearest whole integer. For fractions less than 0.5 the number shall be rounded down and the fractional unit shall be paid by applicable in-lieu fee. For fractions 0.5 or greater, the number shall be rounded up to the nearest whole integer to provide onsite units. For example, in the case of a 20 unit residential rental project, provision (B)(3)(a) would require making 7.5% or 1.5 of the units affordable to very low income households, and 7.5% or 1.5 of the units affordable to low income households. In this example, the inclusionary unit obligation for the project would be rounded up to 2 units affordable to very low income households and 2 units affordable to low income households.

C. **Inclusionary unit development standards.** In addition to other development standards and requirements set forth in this ordinance and other applicable laws and regulations, all inclusionary housing units shall be consistent with the following standards:

   1. Inclusionary units shall be constructed and occupied concurrently with or prior to the construction and occupancy of the market rate residential units in the project, unless an alternative schedule based on extenuating circumstances is adopted as part of the project approval. In phased projects inclusionary units shall be constructed and occupied in proportion to the number of units in each phase of the project.

   2. Inclusionary units shall be distributed throughout the residential project site, to the fullest extent practicable.

   3. The design, appearance and general quality of the affordable units shall be comparable and compatible with the design of the market rate units as determined through the Site Plan and Architectural Review process, provided that all other zoning and building codes are met.

D. **Alternative Compliance.** At the sole discretion of the City Council, a project's inclusionary housing requirement may be met through alternative compliance in one of the following ways or a combination thereof:

   1. Donation of a portion of the project site or an off-site property to the City or a non-profit organization deemed acceptable by the City for development of affordable housing; or

   2. Payment of a housing in-lieu fee established by the City's adopted fee schedule; or

   3. Alternative mixture of units by income levels; or
4. Use of an alternative method, such as provision of a smaller percentage of onsite inclusionary units coupled with payment of in-lieu fee for the inclusionary units not provided.

E. **Submittal Requirements.** All applications submitted to the City for development of a residential project of five or more units or a mixed-use project including a residential component of five or more units shall include the proposed method of satisfying the requirements of this section. Compliance with the inclusionary housing requirements shall be reviewed as part of the development review process and presented to the decision making body as part of the overall project analysis for consistency with both the City’s General Plan and this section. Submittal requirements to demonstrate compliance with this section shall include the following:

1. Total number of residential units in the project
2. Number of onsite inclusionary units
3. Proposed sale price of both market rate and inclusionary units and/or proposed rental price for both market rate and inclusionary units
4. Location of onsite inclusionary units within the project
5. Size and bedroom count for the proposed inclusionary units
6. Should the applicant wish to request alternative compliance from the City Council, the application shall include the request and describe the method and details of proposed alternative for compliance. In considering requests from a developer for alternative compliance to creating inclusionary affordable units, the City Council’s consideration will include whether creating inclusionary affordable units would render the overall project financially infeasible under then current economic conditions. To that end, the developer may, at its option and at its own expense, provide its project financial information to an independent third-party housing/real estate analyst retained by the City to conduct a financial feasibility analysis. The independent analysis will be conducted utilizing the applicant’s data, and any additional information that may be required of the developer to complete a thorough assessment. The independent analyst shall employ recognized best practices for the industry and render a detailed recommendation to the City Council to support its conclusions. Any of the developer’s sensitive proprietary information shall be redacted before making the report public to the extent permitted by law.