

Chapter 16.194**BELOW MARKET RATE
HOUSING PROGRAM****Sections:**

- 16.194.010 Purpose and Findings.
- 16.194.020 Definitions.
- 16.194.030 Basic Requirement.
- 16.194.040 Time Performance Required.
- 16.194.050 Requirements for Affordable Units.
- 16.194.060 Continued Affordability.
- 16.194.070 Alternative to On-Site Construction.
- 16.194.080 Use and Expenditure of Fees.
- 16.194.090 Refunds.
- 16.194.100 Enforcement.
- 16.194.110 Severability.
- 16.194.120 Rent Restrictions.

16.194.010 Purpose and Findings.

It is the purpose of this Chapter to provide a method for providing affordable housing opportunities for all segments of the Community, and for the Community to meet its fair share of regional housing needs. In addressing this issue, the City Council finds the following:

A. The need for affordable housing in the City is acute. 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. Many residents must pay a very high percentage of their incomes for housing.

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 low-

or moderate income households who want or need housing in the City. Generally, newly constructed housing which does not receive assistance is available in the City only at prices which low and moderate-income households cannot afford to pay.

D. At the same time new housing contributes to the demand for goods and services in the City, increasing local employment at wage levels which are often not high enough to permit employees to afford housing in the City.

E. The citizens of the City wish to retain a balanced community, with housing available to low and moderate-income households, and to carry out the established policy of the State of California that each community should make available an adequate supply of housing to persons of all economic levels.

F. New housing developments in the City do not now, to any appreciable extent, provide housing affordable to low and/or moderate-income households. A balanced community is only possible if part of the new housing built in the City is affordable to low and moderate-income households. Requiring builders of new housing to include some housing affordable to low or moderate-income households is fair because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal of economic balance.

G. In general, affordable units within each housing development best serve the goal of maintaining an economically integrated community. Construction of required units off-site is appropriate in certain cases. Also, the City should strive to maintain a balance between ownership and rental affordable units.

H. The housing program authorized by this Chapter serves the public necessity and general welfare and will promote the orderly development of the City. The program will serve to implement

California law by enabling the City to address a share of regional housing need, assisting the City to meet replacement housing obligations imposed by the Community Redevelopment Law, and carrying out the Housing Element of the City's General Plan. (Ord. 646 §1, 2001; Ord. 783 § 1, 2011)

16.194.020 Definitions.

AFFORDABLE HOUSING AGREEMENT.

An agreement executed by the City Administrator or his/her designee on behalf of the City, and by an authorized representative of the owner of a residential project, specifying how the residential project will comply with this Chapter. A development agreement pursuant to California Government Code Sections 65864 et seq. which states that it is an affordable housing agreement under this Chapter may serve as an affordable housing agreement.

AFFORDABLE HOUSING COST. Average monthly housing payments, including mortgage loan principal and interest, any associated loan insurance and financing fees, property taxes and assessments, an allowance for property maintenance and repairs established by the City based on the initial cost and size of the home, homeowners insurance, a reasonable allowance for utilities based on the utility allowance applicable under Section 8 of the U.S. Housing Act of 1937 (not including telephone service), land rent (if the home is on rented land) and homeowners association dues, if any, which during the first calendar year of a household's occupancy, are equal to or less than one-twelfth (1/12) of the maximum housing cost specified below. For lower income households, the maximum affordable housing cost shall be thirty percent (30%) of seventy percent (70%) of area median income. For moderate income households whose incomes exceed eighty percent (80%) of area median income but do not exceed one

hundred and ten percent (110%) of area median income, the maximum affordable housing cost shall be thirty five percent (35%) of one hundred ten percent (110%) of area median income. For moderate income households whose incomes exceed one hundred ten percent (110%) of area median income the maximum affordable housing cost shall be thirty five percent (35%) of the household's income. For very low income households, the maximum affordable housing cost shall be thirty percent (30%) of fifty percent (50%) of area median income. The maximum household income for an affordable unit shall be based on presumed household sizes appropriate to the unit as defined in California Health & Safety Code Section 50052.5 or, if Section 50052.5 no longer provides for such household sizes, the presumed household size defined in any successor statutory provision which applies under the California Community Redevelopment Law. Pursuant to an affordable housing agreement, the maximum affordable housing cost allowed by this Section may be modified to conform to changes in California Health & Safety Sections 50052.5 or 50053 or the terms of any other housing program which affects a residential project.

AFFORDABLE UNITS. Dwelling units which are required under this Chapter to be available at an affordable housing cost to specified households.

CITY/AGENCY SUBSIDY. An amount equal to the difference between the fair market value of the owner-occupied affordable unit at the time it was sold to the owner and the actual purchase price of the owner-occupied affordable unit that was paid by the owner. Includes developer contribution, if any, for any unit.

DWELLING UNIT. One or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.

ELIGIBLE HOUSEHOLD. A household whose income does not exceed the maximum specified in this Section for a given affordable unit.

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 U.S. Housing Act of 1937, as amended, or its successor.

LOWER INCOME HOUSEHOLD. A household whose income does not exceed eighty percent (80%) of the area median income for San Joaquin County, as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

MARKET RATE UNITS. New dwelling units in residential projects which are not affordable units under this Chapter.

MODERATE INCOME HOUSEHOLD. A household whose income does not exceed one hundred and twenty percent (120%) of the area median income for San Joaquin County, as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

RESIDENTIAL PROJECT. (1) Any planned development district, subdivision map, conditional use permit or other discretionary City land use approval, which authorizes five (5) or more new dwelling units or residential lots, or a combination of five (5) or more residential lots and new dwelling units; or (2) contemporaneous construction of four (4) or more new dwelling units on a lot or contiguous lots not within the area of such an approval, if, in the case of contiguous lots, there is evidence of overlapping ownership or control of the lot or lots in question. Construction shall be considered contemporaneous for all units for which, at any one time, a planned unit development, planned community development, subdivision map, conditional use permit or other discretionary City

land use approval, or building permit, or application for such an approval or permit, is outstanding, and a final inspection or certificate of occupancy has not yet been issued.

Notwithstanding the remainder of this Section, any development which has received one or more planned development district, subdivision map, or conditional use permit approval before the effective date of this Chapter, to the extent dwelling units are constructed pursuant to those approvals without substantial modification of the approvals, shall not be considered a residential project.

A project shall not cease to be a residential project because it receives public assistance.

VERY LOW INCOME HOUSEHOLD. A household whose income does not exceed fifty percent (50%) of the area median income for San Joaquin County as established pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision). (Ord. 646 §1, 2001; Ord. 680 §1, 2003; Ord. 683 §1, 2003; Ord. 783 § 1, 2011)

16.194.030 Basic Requirement.

A residential project shall include at least 3% of its dwelling units for initial sale exclusively to very low income households at prices affordable to very low income households; and, 3% of its dwelling units for initial sale exclusively to low income households at prices affordable to low income households; and, 3% of its dwelling units for initial sale exclusively to moderate income households at prices affordable to moderate income households. In meeting these percentage requirements, for fractions of units, the number shall be rounded up to the next whole number for residential projects with more than ten (10) units. But in no case shall the requirement be less than 10% of the project and any fractional units shall be affordable to low income households. For very

low income dwelling units, the developer may choose to pay an in-lieu fee specified in Section 16.194.070, or build second dwelling units at a two-to-one ratio. For low income, second dwelling units may be built for fifty (50) percent of the required units, at a two-to-one ratio. Residential projects of ten (10) or less, shall pay an in-lieu fee for any corresponding fractional amount.

The requirements of this Chapter are minimum requirements. The City may require additional affordable units or additional measures to further affordable housing to the extent it has authority to do so without respect to this Chapter. (Ord. 646 §1, 2001; Ord. 680 §1, 2003; Ord. 696 §1, 2004; Ord. 758 §2 (part), 2007; Ord. 783 § 1, 2011)

16.194.040 Time Performance Required.

A. Unless otherwise specifically provided in an affordable housing agreement: (i) no building permit shall be issued for any market-rate unit until the permittee has obtained building permits for affordable units sufficient to meet the requirements of Section 16.194.030, or executed an affordable housing agreement and met the requirements of that agreement for issuance of the building permit; and (ii) no final inspection, temporary or permanent certificate of occupancy for any market rate units shall be issued until the permittee has met the requirements of Section 16.194.030, or executed an affordable housing agreement and met the requirements of that agreement for a final inspection or for issuance of the certificate. An affordable housing agreement may, for some or all phases of a residential project which is to be constructed in phases, allow the requirements of this Chapter to be met for each phase.

B. Conditions to carry out the purposes of the Chapter shall be imposed on the first of the following approvals to occur with respect to a

residential project: planned unit development or planned community development approval, subdivision approval, conditional use permit, building permit. The conditions may provide for execution of an affordable housing agreement. Additional conditions may be imposed on later City approvals or actions, including without limitation planned unit development and planned community development approvals, subdivisions approvals, conditional use permits and building permits. (Ord. 646 §1, 2001; Ord. 783 § 1, 2011)

16.194.050 Requirements for Affordable Units.

A. Affordable units shall be comparable in materials, exterior appearance and overall quality of construction to market rate units in the same residential project. Subject in each case to the approval of the Director, or his/her designee, interior features in affordable units need not be the same as or equivalent to those in market rate units, so long as they are of good quality and are consistent with contemporary standards for new housing. Affordable units shall be dispersed throughout the residential project. The minimum average number of bedrooms of all affordable units in a residential project shall be the lesser of either (i) three; or (ii) the average number of bedrooms of all market rate units in the residential project. The minimum average number of bathrooms of all affordable units in a residential project shall be the lesser of: (iii) two; or (iv) the average number of bathrooms of all market rate units in the residential project.

B. Affordable units required within a residential project may be constructed by a developer independent of the developer of market rate units in the same project, including without limitation a non-profit developer.

C. Actual sale prices for units provided under this program will be calculated in

accordance with the provisions in Section 16.194.20 (Affordable Housing Cost). Staff will determine the fair market home value at the time such units are available for occupancy using locally available realty sources, updated on a quarterly basis.

1. Down Payments. The amount of down payment required of any purchaser of an affordable unit provided under this program will be determined by the Department and updated on a quarterly basis, using prescribed limits defined in comparable housing programs (i.e. HUD, HOME, Fannie Mae, Freddie Mac, etc.). Any variations may be considered on a case by case basis, by the Community Development Loan Committee. (Ord. 646 §1, 2001; Ord. 696 §1, 2004; Ord. 758 §2 (part), 2007; Ord. 783 § 1, 2011)

16.194.060 Continued Affordability.

A. Resale restrictions, deeds of trust and/or other documents acceptable to the City Administrator or his/her designee, all consistent with the requirements of this Chapter and California Community Redevelopment Law, shall be recorded against affordable owner occupied units and shall be effective for a term of forty-five (45) years. In the case of affordable owner-occupied units, unless sold at market rate as permitted by law or this Chapter, renewed restriction shall be entered into on each change of ownership, with a renewal term of forty-five (45) years that occurs within the term of affordability, so that restrictions remain in force for a total of 45 years from initial sale, or the life of the unit, whichever comes first. Regulatory agreements and resale restriction documents may provide for specific affordability and/or occupancy requirements for particular affordable units, consistent with Section 16.194.030 of this Chapter or, where a residential project is approved under Section 16.194.080 of this Chapter, consistent

with the terms of the project's affordable housing agreement. Regulatory agreements and resale restriction documents shall include maintenance requirements for affordable units.

B. Resale Restrictions.

1. Resale restrictions for affordable owner-occupied units shall: i) conform to the provisions of the California Community Redevelopment Law, including without limitation the equity-sharing provisions of California Government Code Section 33334.3(f); and (ii) provide that an owner who keeps a unit for forty-five (45) years is entitled to the full value of the unit.

2. The resale restrictions shall authorize the City to purchase any affordable owner-occupancy unit for its fair market value, at any time the owner proposes sale.

3. If an owner sells an affordable unit before the end of the forty-five (45) years resale restriction term, the owner shall:

i. Repay the city/agency subsidy balance. The balance is any remaining principal and accrued interest after the subsidy has been reduced as defined in the Buyer's Resale Agreement.

C. No household shall be permitted to occupy a unit which is required to be affordable under this Chapter unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility with the time or other limits provided by a regulatory agreement or resale restrictions. If the City or its designee maintains a list of eligible households, households newly occupying affordable units shall be selected first from that list to the extent provided in the regulatory agreement or resale restrictions. (Ord. 646 §1, 2001; Ord. 670 §1, (part) 2003; Ord. 680 §1, 2003; Ord. 696 §1, 2004; Ord. 758 §2 (part), 2007; Ord. 783 § 1, 2011)

16.194.070 Alternatives to On-Site Construction.

An applicant may elect, in lieu of or in connection with building the very low income units within a residential project choose to pay an in lieu fee as follows:

A. If the residential development contains more than ten (10) units, the developer may choose in lieu of constructing the required very low income units, pay an amount equal to 25% of the median sales price of homes in Ripon, averaged over the prior six (6) months as established by the Central Valley Association of Realtors or another bona fide source as determined by the City Administrator or his/her designee at the time of issuance of the first building permit of the project multiplied by 3% (the required number of very low income units to be provided) of the total number of units in the residential project.

B. If the residential development contains ten (10) or less units, the developer may choose in lieu of constructing the affordable units, pay an amount equal to 25% of the median sales price of homes in Ripon, averaged over the prior six (6) months as established by the Central Valley Association of Realtors or another bona fide source as determined by the City Administrator or his/her designee at the time of issuance of the first building permit of the project multiplied by 9% (the required total number of affordable units to be provided) of the total number of units in the residential project.

1. Fees shall be paid upon issuance of building permits for market rate units in a residential project, or secured at that time by a contract pursuant to subsection (3). The City Administrator or his/her designee shall determine which of these forms of security is required. If building permits are issued for only part of a residential project, the fee amount shall be based only on the number of permitted market rate units.

2. Where payment is delayed based on provision of security under subsection (3), in the event of default, or for any other reason, the amount of the in lieu fee payable shall be based upon the fee schedule in effect at the time the fee is paid.

3. For all fees not paid upon issuance of building permits, the City Administrator or his/her designee shall require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee. Secured but unpaid fees required pursuant to this Chapter shall be paid in full to the City before any final inspection of occupancy will be conducted or temporary or permanent certificate of occupancy will be issued for any corresponding market rate unit in the residential project. The obligation to pay the fee shall inure to the benefit of, and be enforceable by, the City. The contract shall be recorded in the Office of the County Recorder of San Joaquin County and, from the date of recordation, shall constitute a lien for the payment of the fee, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the City as grantee and in the name of the record title holder at building permit issuance as grantor. The contract may require appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and that the fee be paid to the City from the sale proceeds in escrow prior to disbursing proceeds to the seller. (Ord. 762 §1, 2008; Ord. 783 § 1, 2011)

16.194.080 Use and Expenditure of Fees.

A. All fees collected under this Chapter shall be deposited into a separate account administered by the City Administrator or his/her designee, to be designated the City Affordable Housing Fund.

B. The fees collected under this Chapter and all earnings from investment of the fees shall be

expended exclusively for provision of below market rate housing in the City through acquisition, construction, development assistance, paying the costs of administering this Chapter, rehabilitation, financing, rent subsidies or other methods. The housing shall be of a type, or made affordable at a cost or rent, for which there is an unmet need in the City and which is not adequately supplied in the City by private housing development in the absence of public assistance. (Ord. 646 §1, 2001; Ord. 680 §1, 2003; Ord. 783 § 1, 2011)

16.194.090 Refunds.

A. Fees collected under this Chapter must be expended or committed to one or more qualifying projects within ten (10) years after receipt of the fee. If this is not done, the City shall refund to the then-current owner or owners of each unit in a residential project which paid a fee, as shown on the latest equalized assessment roll, on a prorated basis, the uncommitted or unexpended portion of the fee and any interest accrued thereon. If the administrative costs of refunding unexpended or uncommitted revenues pursuant to this Section exceed the amount to be refunded, the City, after a noticed public hearing, may determine that the revenues shall remain in the Housing Fund and be applied for the same purposes established for that fund herein.

B. Any other refunds of unexpended or uncommitted fees required pursuant to law shall be made to the current owner or owners of the property as shown on the latest equalized assessment roll. (Ord. 646 §1, 2001; Ord. 680 §1, 2003; Ord. 783 § 1, 2011)

16.194.100 Enforcement.

A. It shall be a misdemeanor for any person to sell an affordable unit under this Chapter at a price exceeding the maximum allowed under this Chapter or to a household not qualified under this

Chapter. In the alternative, the City Attorney may proceed in accordance with Chapter 1.12 of the Ripon Municipal Code.

B. The City Attorney shall be authorized to enforce the provisions of the Chapter and all regulatory agreements and resale controls placed on affordable units by civil action and any other proceeding or method permitted by law.

C. The City may revoke, deny or suspend any permit or development approval, including without limitation a final inspection for occupancy or certificate of occupancy, for a residential project which has failed to comply with this Chapter.

D. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.

E. The City shall be entitled to recover all its costs, including reasonable attorneys' fees, incurred in enforcing this Chapter. (Ord. 646 §1, 2001; Ord. 680 §1, 2003; Ord. 783 § 1, 2011)

16.194.110 Severability.

If any clause, sentence, section, or part of this Chapter, or any fee or requirement imposed upon any person or entity, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part, or such person or entity, and shall not affect or impair any of the remaining provisions, clauses, sentences, sections, or parts or the effect of this Chapter on other persons or entities. It is hereby declared to be the intention of the City Council that this Chapter would have been adopted had such unconstitutional, illegal, or invalid clause, sentence, section, or part not been included herein, or had such person or entity been expressly exempted from the application of this Chapter. (Ord. 646 §1, 2001; Ord. 680 §1, 2003)

16.194.120 Rent Restrictions.

The City may, as part of an Owner Participation Agreement, impose specified rent restrictions on residential projects where the developer receives financial assistance from the City and/or the Ripon Redevelopment Agency. (Ord. 646 §1, 2001; Ord. 680 §1, 2003; Ord. 783 § 1, 2011)