

HOUSING COMMISSION AGENDA

Thursday, January 18, 2024
7:00 P.M.

City Council Chamber, 200 Old Bernal Avenue

The meeting will be held in-person and streamed live at
<https://www.youtube.com/user/TheCityofPleasanton>.

Public participation: It is requested that members of the public wishing to address the Housing Commission submit a speaker card in person at the meeting. When public comment is opened on an agenda item, individuals may speak once per agenda item. You may submit a physical speaker card to the clerk at the meeting.

CALL TO ORDER

- Pledge of Allegiance
- Roll Call

AGENDA AMENDMENTS

MINUTES

1. Approve Special Meeting Minutes of August 17, 2023

CONSENT CALENDAR

Items included on the Consent Calendar are routine and discussion by the Commission is not anticipated. Anyone wishing to speak on a Consent Calendar item should step to the rostrum and ask the Chairperson to remove that item from the Consent Calendar.

MEETING OPEN TO THE PUBLIC

2. Introductions / Awards / Recognitions
3. Public Comment from the audience regarding items not listed on the agenda
Speakers are encouraged to limit comments to 3 minutes.

MATTERS BEFORE THE COMMISSION

Members of the audience wishing to address the Commission are requested to step to the rostrum or submit a speaker card to the Chair after the agenda report on a particular item. If necessary to assure completion of the following items, the Chairperson may establish time limits for the presentations by individual speakers.

4. Review and Provide Recommendation to City Council for an Affordable Housing Agreement with City Ventures for the Harmony Condominium Project
5. Appointment of New Officers (Chairperson and Vice Chairperson) for 2024

MATTERS INITIATED BY MEMBERS OF THE COMMISSION

COMMISSION REPORTS: Brief reports on any meetings, conferences, and/or seminars attended by the Commission members.

FUTURE AGENDA ITEMS

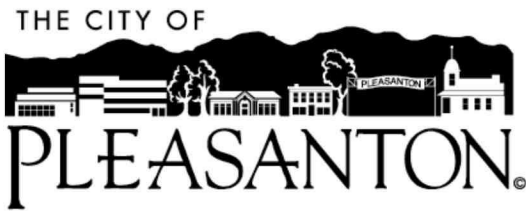
ADJOURNMENT

Notice

Under Government Code §54957.5, any writings/documents regarding an open session item on this agenda provided to a majority of the Commission after distribution of the agenda packet are available for public inspection by contacting the Housing Division at housing@cityofpleasantonca.gov.

Accessible Public Meetings

The City of Pleasanton can provide special assistance for persons with disabilities to participate in public meetings. To make a request for a disability-related modification or accommodation (e.g., an assistive listening device), please contact the Housing Division, housing@cityofpleasantonca.gov or (925) 931-5007 at the earliest possible time. If you need sign language assistance, please provide at least two working days' notice prior to the meeting date.



Housing Commission Meeting Minutes [SUBJECT TO APPROVAL]

August 17, 2023 – 7:00 p.m.

CALL TO ORDER

Chair Fischer called to order the special meeting of the Housing Commission at 7:01 p.m. from the Library's Large Meeting Room located at 400 Old Bernal Avenue and streamed live via YouTube.

Chair Fischer led the Pledge of Allegiance and provided opening remarks.

Roll Call

Present: Commissioners Galvin, Renton, and Chair Fischer.

Absent: Commissioners Chillinsky, Schempp, and Kripalani.

AGENDA AMENDMENTS

None.

MINUTES

1. Approve Regular Meeting Minutes of July 20, 2023

Motion: It was m/s by Galvin/Renton to approve the regular meeting minutes of July 20, 2023.

Motion passed by the following vote:

Ayes: Commissioners Galvin, Renton, Chair Fischer.

Noes: None.

Absent: Commissioners Chillinsky, Schempp, and Kripalani.

CONSENT CALENDAR

No items.

MEETING OPEN TO THE PUBLIC

2. Introductions / Awards / Recognitions

There were none.

3. Public Comment from the audience regarding items not listed on the agenda.

None.

MATTERS BEFORE THE COMMISSION

4. Review of Housing & Human Services Grant (HHSG) Program Consolidated Annual Performance and Evaluation Report (CAPER) for Fiscal Year 2022/23 for Housing-Related Programs.

Recommendation: Receive an overview of Fiscal Year 2022/23 Housing-Related Programs.

Representatives from the following Housing-Related Agencies presented their FY 2022/23 achievements and answered questions from commissioners:

Abode Services, Centro Legal de la Raza, CityServe, CRIL, ECHO Housing, Habitat for Humanity, Goodness Village, and Tri-Valley REACH.

Chair Fischer opened the item for public comment.

MATTERS INITIATED BY MEMBERS OF THE COMMISSION

There were none.

COMMISSION REPORTS

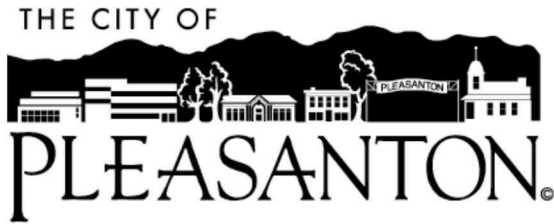
There were none.

FUTURE AGENDA ITEMS

Housing Manager Steve Hernandez advised commissioners there may be future Affordable Housing Agreements for the Housing Commission to review in September and October.

ADJOURNMENT

Chair Fischer adjourned the meeting at 7:47 p.m.



Housing Commission Agenda Report

January 18, 2024
Item 4

SUBJECT **Review and Provide Recommendation to City Council for an Affordable Housing Agreement with City Ventures for the Harmony Condominium project, a residential development proposed at 2025 Santa Rita Road**

RECOMMENDATION

Review the Affordable Housing Agreement for Harmony Condominium Project and recommend approval by the City Council.

ATTACHMENTS

1. Draft Affordable Housing Agreement (AHA)
2. Inclusionary Zoning Ordinance -Pleasanton Municipal Code (PMC) Ch. 17.44

BACKGROUND

City Ventures (the “Developer”) submitted an application for Design Review (P23-0332) and Vesting Tentative Tract Map (P23-0605) approval pursuant to California law referred to as SB 330¹ to demolish an existing motel and restaurant and construct a housing development consisting of 42 three-story townhome style condominiums ranging in size from approximately 1,400 to 2,150 square feet and related site improvements.

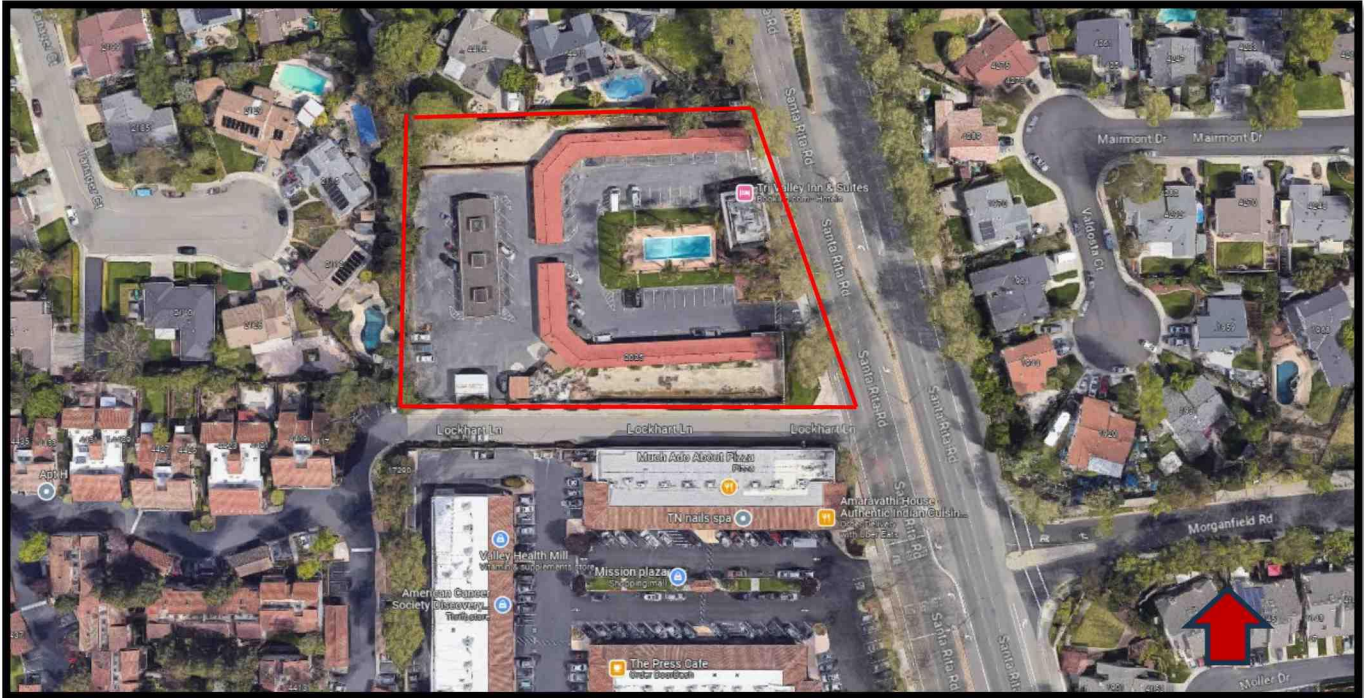
Project Location

The 1.96-acre project site is currently occupied by the Tri Valley Inn & Suites Motel, which includes 34 motel rooms, office space, parking spaces, and an in-ground pool. A restaurant, Curry Cravings, is also located on the site with a frontage on Santa Rita Road. The project site is surrounded by single-family housing to the north, east, and west with multi-family apartments farther to the southwest and townhomes to the southeast. To the south, the project site is bordered by Mission Plaza, a commercial business development.

The 1.96-acre site is part of a larger, 2.3-acre site that is identified in the Housing Element Update as Area 16 – Tri-Valley Inn. The 2.3-acre site includes the Lockhart Lane right-of-way, which is being offered for dedication to the City as part of the project approval process.

¹ SB 330 is the Housing Crisis Act of 2019 (Skinner) amending California Government Code §§65589.5 et. seq. by changing the Permit Streamlining Act and Housing Accountability Act.

Figure 1: Aerial Photograph



The project site has a General Plan designation of Retail/Highway/Service Commercial Business and Professional Offices, with a zoning designation of Freeway Commercial (C-F) and Housing Opportunity Zone District (HOZ). This designation would have allowed the site to continue as a commercial use, and also provides the option for conversion to residential use.

Concurrent with adoption of the Housing Element Update on June 20, 2023, the City Council adopted the necessary General Plan amendments for the Housing Element sites to allow residential development at the prescribed density. The Housing Element sites are included as Housing Element Sites Overlay (HESO) in the General Plan Land Use Map, and development on the sites must comply with the site-specific densities set forth in the Housing Element. The project site, Area 16, has a density range of 15 to 25 dwelling units per acre, and the project proposes a density of 21.4 dwelling units per acre. On December 19, 2023, the City Council adopted Ordinance 2272, rezoning the site to Housing Opportunity Zone (HOZ), which references the Housing Element to assign the allowable density range for the site as specified in the Housing Element.

The City has adopted Objective Design Standards (ODS) to implement development consistent with the Housing Element. Objective standards are defined in State Law as “uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” The ODS are applicable to each of the Housing Element sites and include standards that regulate height, setbacks, massing, site planning, lighting, landscaping and building design to ensure projects will be compatible with their surroundings, attractively designed and landscaped, and minimize impact to aesthetic resources.

The project is subject to the Housing Element sites ODS, including the specific standards for Area 16 that include a larger setback from existing single-family residential properties than is typically required for sites of similar density.

The Design Review application was approved by the Zoning Administrator on October 30, 2023, and the Vesting Tentative Map was approved by the Planning Commission on November 8, 2023. No appeal of either action was filed, and the approvals are currently effective.

Project Description

The project proposes seven, three-story buildings with a total of 42 townhome-style condominiums, totaling 69,302-square-feet of residential space. The townhomes would range in size from approximately 1,403 to 2,150 square feet, with either 3 or 4 bedrooms. The proposed project would also include approximately 20,000 square feet of group open space. Each townhome would have a two-car private garage accessed via common access streets and three guest parking spaces are provided within the project's interior streets. The project is accessed off Lockhart Lane via Evergreen Court and Scarlet Court. The internal streets loop around the site, with Willow Oak Court dead-ending to provide access to three units at the end of Building F. A site plan is shown in Figure 2 and an elevation of the proposed project is shown in Figure 3. In issuing the Design Review approval, the Zoning Administrator found the project to be in conformance with all of the applicable standards as defined in the ODS and elsewhere in City regulations.

Figure 2: Site Plan

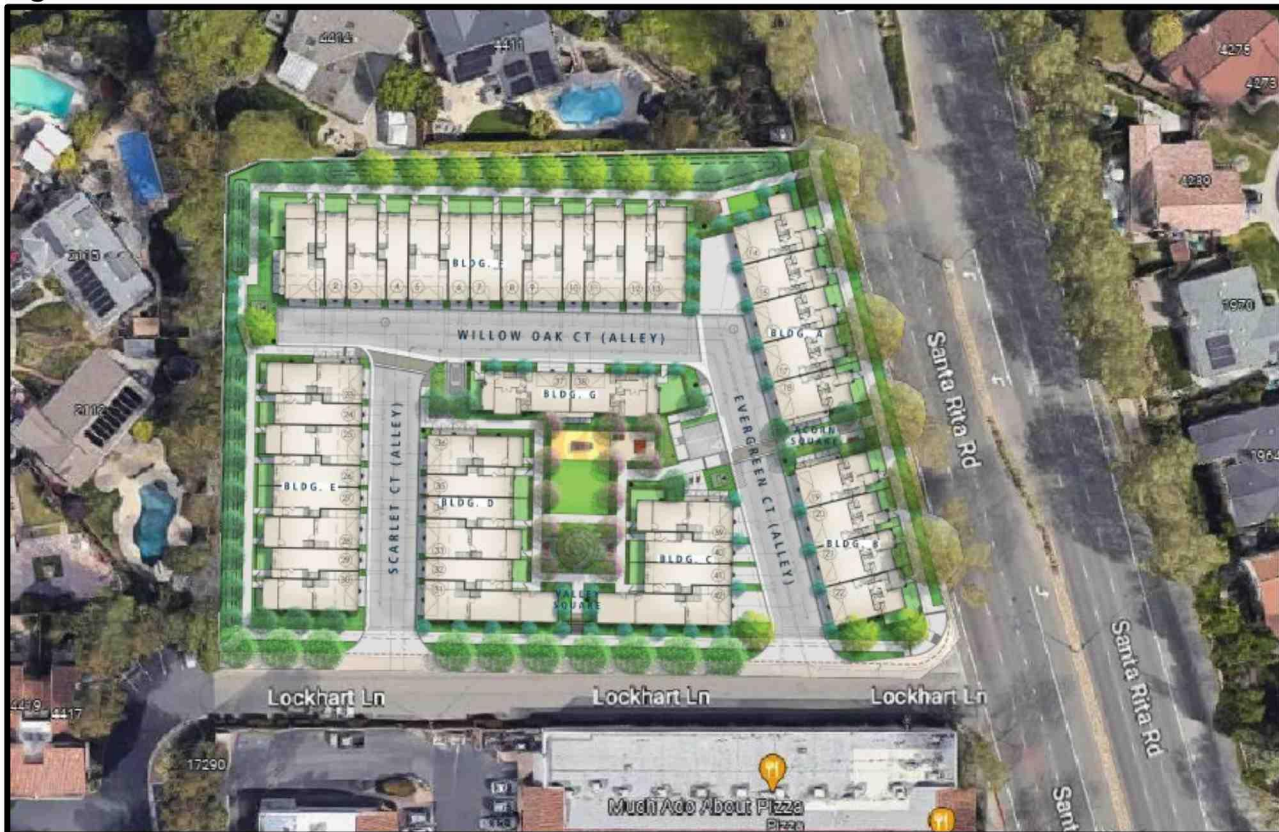


Figure 3: Building A Elevation



Affordable Housing Requirements

The proposed development includes more than 15 units, and as condominiums is considered a multi-family development pursuant to the definitions included in the Inclusionary Zoning Ordinance (IZO).² Therefore, the proposed development is generally subject to a 15 percent affordability requirement for very low and low- income households (i.e., should provide a minimum of six (6) affordably priced units in the development).

However, the IZO also includes provisions for alternative compliance in Section 17.44.080, as follows: *“The primary emphasis of this inclusionary zoning ordinance is to achieve the inclusion of affordable housing units to be constructed in conjunction with market rate units within the same project in all new residential projects. However, the city acknowledges that it may not always be practical to require that every project satisfy its affordable housing requirement through the construction of affordable units within the project itself. Therefore, the requirements of this chapter may be satisfied by various methods other than the construction of inclusionary units on the project site. Some examples of alternate methods of compliance appear below. As housing market conditions change, the city may need to allow alternatives to provide options to applicants to further the intent of providing affordable housing with new development projects.”*

On this basis, the IZO permits a developer to satisfy the inclusionary requirement through alternative means. Alternatives described in the ordinance include options such as off-site development, land dedication, and payment of the Affordable Housing Development Impact Fees (Affordable Housing Fee, previously and sometimes currently referred to as the Lower Income Housing Fee). Historically, the City has taken a flexible approach to negotiating how some residential projects meet their affordable housing requirement; in some cases, most frequently for lower-density single-family ownership projects, the City has allowed payment of

² See Municipal Code §17.44.030.

fees rather than on-site construction. Such past decisions were made at the discretion of the City Council, on the basis of a negotiated Affordable Housing Agreement that sometimes included other benefits such as higher affordable housing fees paid per unit. In addition to affordable units being provided on-site, land dedication and projects using “credits” from other developments have also been accepted.

While it was the City’s past practice to apply discretion in whether or not it accepted alternatives to meet IZO requirements, recent changes in state law require the City to rely only on objective standards in the regulation of development projects. Because the existing IZO is permissive and allows for alternative means to satisfy the inclusionary requirement, without any objective criteria for when or whether to accept such alternative, the City may not exercise discretion in approving proposed alternatives that are within the scope of those allowed by the IZO.

A copy of the Inclusionary Zoning Ordinance (IZO) is included for reference as Attachment 2.

DISCUSSION

Below Market Rate (BMR) and Fees

As described above, the IZO permits payment of fees, rather than constructing on-site units, and this is the approach proposed by the developer. The developer, City Ventures, has asserted that building the units on-site would not be financially feasible; and to support that claim, City Ventures made available pro-forma information which they allowed to be reviewed by the City’s consultant, Economics & Planning Systems, Inc. (EPS). EPS concurred that based on the financial specifics of this development, and under current economic conditions (particularly the current high-interest rate and high construction cost environment), building six (6) affordable units on-site would not be financially viable for the project.

Therefore, for each of the 42 market-rate units, the Affordable Housing Agreement would specify payment of the affordable housing fee in effect at the time of building permit issuance, which effective January 1, 2024, is \$51,077, for a total payment of \$2,145,234. Pursuant to the PMC, Affordable Housing funds paid to the City may be used for a wide range of projects including support for existing City housing programs that benefit lower-income households; used to fund a future affordable housing project if proposed to or by the City; or to acquire land for construction of a project, among other purposes.

While this is a substantial sum, it is nonetheless recognized that the amount is less than the cost to construct six (6) new below-market-rate units that would otherwise have been built. In December 2023, the City embarked on a project to comprehensively update the existing Inclusionary Zoning Ordinance, expected to be complete by approximately August 2024, to, among other changes, incorporate more stringent and objective standards into the IZO. These standards are anticipated to place a much greater emphasis on developers building affordable units. The study will also evaluate an increase to the Affordable Housing Fee to be more commensurate with the actual costs to construct affordable units. To the extent the IZO continues to allow for alternative means of compliance, greater parity between the cost to build on-site units, and the cost of affordable housing fees will discourage developers from choosing to pay the “in-lieu” fees.

Housing Element and RHNA Compliance

The City's recently adopted Housing Element designated this site at an allowable density of between 15 and 25 units per acre. The allowable density range is below the 30 dwelling units/acre minimum that the State of California considers able to support lower-income housing, and so the site was not identified as one that would fulfill the City's lower-income RHNA. The 42 units would be reported in upcoming Annual Planning Reports as satisfying a portion of the City's 2,313 above-moderate income RHNA units in the 2023-2031 Housing Element Cycle.

Staff Recommendation

Staff is recommending the attached Affordable Housing Agreement that includes the following main provision:

- The Developer will pay, at the time of the issuance of a building permit for the 42 residential units in the Project, the applicable Affordable Housing Fee. The Affordable Housing Agreement illustrates a sample payment of \$51,077 per unit, totaling \$2,145,234 for the Affordable Housing Fees for the entire project in effect in 2024.

Staff recommends that the Housing Commission review and recommend the Harmony Condominium Project Affordable Housing Agreement to City Council for review and approval. In accordance with the IZO, the Commission may accept, reject or modify the recommended agreement. Following the Commission's action, staff will forward its recommendation to the City Council.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566
Attention: City Manager

This document is exempt from recording fees pursuant to Government Code § 27383 and exempt from Documentary Transfer Tax pursuant to Revenue and Taxation Code §11922

AFFORDABLE HOUSING AGREEMENT

This **AFFORDABLE HOUSING AGREEMENT** ("Agreement") is made _____, 2024, by the **CITY OF PLEASANTON**, a Municipal Corporation ("City"), and **CITY VENTURES HOMEBUILDING, LLC**, a Delaware Limited Liability Company ("Developer").

Recitals

A. Developer currently owns a legal or equitable interest in land consisting of approximately 1.96 acres in the City of Pleasanton, commonly known as 2025 Santa Rita Road, Pleasanton CA, more particularly described in Attachment 1 attached and incorporated by reference (the "Property").

B. For the Property, Developer will demolish an existing commercial hotel and restaurant, which will be replaced with a forty-two (42) unit condominium residential project for which the City has issued Design Review (P23-0332) and Vesting Tentative Tract Map 8676 (P23-0605) approval to create one lot for condominium purposes (collectively the "Project").

C. Pleasanton Municipal Code (PMC) Section 17.44.080(E) provides options to satisfy the requirements of PMC Chapter 17.44 (Inclusionary Zoning), including through payment of the City's Affordable Housing Fee as set forth in PMC Chapter 17.40.

D. Developer proposed, and the City approved by issuance of Design Review (P23-0332) and Vesting Tentative Tract Map 8676 (P23-0605), that the Project would meet the requirements of PMC Chapter 17.44 by payment of the Affordable Housing Fee pursuant to PMC Sections 17.44.080(E).

E. An independent financial assessment and peer review of proprietary cash-flow pro-forma and other relevant information provided by the Developer and City and conducted by Economic & Planning Systems, Inc., which was hired by the City, determined that the City's Inclusionary Zoning Ordinance (see PMC Chapter 17.44) requirement that six (6) out of the 42 for-sale condominium units be deed restricted to moderate income households would appear to render the Project financially infeasible under current market conditions.

F. The Property is located within Area 16 -- Tri Valley Inn, which is designated in the Housing Element for development of market-rate housing at a density range of 15 to 25 dwelling units per acre. The Project is consistent with Objective Design Standards for the Property, and its density of 21.4 dwelling units per acre is consistent with and would further the housing goals for the Property described in the Housing Element Update.

G. Execution of this Agreement memorializes that the requirements of the City's Inclusionary Zoning Ordinance for the Project shall be met by the payment of the City's Affordable Income Housing Fee (see PMC Ch. 17.40) for this Project.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, City and Developer agree as follows:

1. As required by PMC §17.40.100, at the time of issuance of a building permit for each of the 42 condominium units, Developer shall pay to the City the Affordable Housing Fee in effect.

I. For reference, effective January 1, 2024, the Affordable Housing Fee is \$51,077 for a condominium unit, as outlined in Table 1 below. The City's Affordable Housing Fee ordinance provides for an automatic annual adjustment based on an independent index as set forth in PMC §17.40.070 (see Ordinances 1488 (1990) and 2192 (2019); and Resolution No. 18-1047 (2018)) which annual adjustment is therefore applicable to the Project as allowed by California Government Code §65589.5(o).

Table 1 –Sample Affordable Housing Fee

# OF UNITS	CURRENT AFFORDABLE HOUSING FEE FOR RESIDENTIAL CONDOMINIUM UNITS (EFFECTIVE 01.01.2024)	TOTAL FEE
42	\$51,077	\$2,145,234

II. The Project does not qualify for any exemptions in PMC §17.40.040, in particular Subsection A.5. does not apply to this Project because the replacement of a commercial hotel and restaurant with new residential condominium units is not a similar use.

III. The payment of the Affordable Housing Fee shall be in lieu of providing price restricted affordable housing units on or off of the Property or any other affordable housing programs or units which would otherwise be required as part of the Project and shall fully meet any and all of the requirements of the City's Inclusionary Zoning Ordinance as it may be amended in the future.

IV. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators and assigns. However, in no event shall this Agreement be binding or impose any obligations on an owner of a condominium unit located on the Property.

2. Developer shall have the right to transfer and assign all of its rights, duties and obligations under this Agreement to any person or entity acquiring fee simple title to any portion of the Property. Developer shall be immediately released from its obligations under this Agreement upon such assignment so long as: (i) Developer was not in default of this Agreement at the time of conveyance; (ii) Developer provided to City prior written notice of such transfer; and (iii) the transferee executes and delivers to City a written assumption agreement in which: (a) the name and address of the transferee is set forth; and (b) the transferee expressly assumes the obligations of Developer under this Agreement. Failure to deliver a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement. Nothing herein contained shall be deemed to grant the City discretion to approve or deny any such transfer.

3. This Agreement shall be recorded in Alameda County, shall run with the land, and shall bind the parties and their successors in interest.

THIS AGREEMENT is executed the date and year first above written.

CITY OF PLEASANTON, a Municipal corporation

Gerry Beaudin, City Manager

ATTEST:

Jocelyn Kwong, City Clerk

APPROVED AS TO FORM:

Daniel Sodergren, City Attorney

DEVELOPER:

CITY VENTURES HOMEBUILDING, LLC
A Delaware Limited Liability Company

Samantha Hauser, EVP

Attachment:
1. Legal Description

DRAFT

Chapter 17.44 INCLUSIONARY ZONING

Article I. General Provisions

17.44.010 Title:

This chapter shall be called the *INCLUSIONARY ZONING ORDINANCE OF THE CITY OF PLEASANTON*. (Ord. 1818 § 1, 2000)

17.44.020 Purpose:

The purpose of this chapter is to enhance the public welfare and assure that further housing development attains the city's affordable housing goals by increasing the production of residential units affordable to households of very low, low, and moderate income, and by providing funds for the development of very low, low, and moderate income ownership and/or rental housing. In order to assure that the remaining developable land is utilized in a manner consistent with the city's housing policies and needs, fifteen percent (15%) of the total number of units of all new multiple-family residential projects containing fifteen (15) or more units, constructed within the city as it now exists and as may be altered by annexation, shall be affordable to very low and low income households. For all new single-family residential projects of fifteen (15) units or more, at least twenty percent (20%) of the project's dwelling units shall be affordable to very low, low, and/or moderate income households. These requirements shall apply to both ownership and rental projects. (Ord. 1818 § 1, 2000)

17.44.030 Definitions:

For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

"Affordable housing proposal": A proposal submitted by the project owner as part of the city development application (e.g., design review, planned unit development, etc.) stating the method by which the requirements of this chapter are proposed to be met.

"Affordable rent": A monthly rent (including utilities as determined by a schedule prepared by the city) which does not exceed one-twelfth (1/12) of thirty percent (30%) of the maximum annual income for a household of the applicable income level.

"Affordable sales price": A sales price which results in a monthly mortgage payment (including principal and interest) which does not exceed one-twelfth (1/12) of thirty five percent (35%) of the maximum annual income for a household of the applicable income level.

"Amenities": Interior features which are not essential to the health and safety of the resident, but provide visual or aesthetic appeal, or are provided as conveniences rather than as necessities. Interior amenities may include, but are not limited to, fireplaces, garbage disposals, dishwashers, cabinet and storage space and bathrooms in excess of one. Amenities shall in no way include items required by city building codes or other ordinances that are necessary to ensure the safety of the building and its residents.

"Applicant": Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city permits and approvals for a project.

"City": The city of Pleasanton or its designee or any entity with which the city contracts to administer this chapter.

"Commercial, office, and industrial project": For the purposes of this chapter, any new nonresidential (commercial, office, or industrial) development or redevelopment greater than ten (10) gross acres or two hundred fifty thousand (250,000) square feet of gross building area, whichever is less.

"Dwelling unit": A dwelling designed for occupancy by one household.

"HUD": The United States department of housing and urban development or its successor.

"Household": One person living alone; or two (2) or more persons sharing residency whose income is considered for housing payments.

"Household, low income": A household whose annual income is more than fifty percent (50%) but does not exceed eighty percent (80%) of the annual median income for Alameda County, based upon the annual income figures provided by the U.S. department of housing and urban development (HUD), as adjusted for household size.

"Household, moderate income": A household whose annual income is more than eighty percent (80%) but does not exceed one hundred twenty percent (120%) of the annual median income for Alameda County, based upon the annual income figures provided by HUD, as adjusted for household size.

"Household, very low income": A household whose annual income does not exceed fifty percent (50%) of the annual median income for Alameda County, based upon the annual income figures provided by HUD, as adjusted for household size.

"Inclusionary unit": A dwelling unit as required by this chapter which is rented or sold at affordable rents and/or affordable sales prices (as defined by this chapter) to very low, low, or moderate income households.

"Inclusionary unit credits": Credits approved by the city council in the event a project exceeds the total number of inclusionary units required in this chapter. Inclusionary unit credits may be used by the project owner to meet the affordable housing requirements of another project subject to approval by the city council.

"Income": The gross annual household income as defined by HUD.

"Life of the inclusionary unit": The term during which the affordability provisions for inclusionary units shall remain applicable. The affordability provisions for inclusionary units shall apply in perpetuity from the date of occupancy, which shall be the date the city of Pleasanton performs final inspection for the building permit.

"Lower income housing fee": A fee paid to the city by an applicant for a project in the city, in lieu of providing the inclusionary units required by this chapter.

"Median income for Alameda County": The median gross annual income in Alameda County as determined by HUD, adjusted for household size.

"Off-site inclusionary units": Inclusionary units constructed within the city of Pleasanton on a site other than the site where the applicant intends to construct market rate units.

"Ownership units": Inclusionary units developed as part of a residential development which the applicant intends will be sold, or which are customarily offered for individual sale.

"Project": A residential housing development at one location or site including all dwelling units for which permits have been applied for or approved.

"Project owner": Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the project is located.

"Property owner": The owner of an inclusionary unit, excepting a "Project Owner".

"Recapture mechanisms": Legal programs and restrictions by which subsidies provided to inclusionary units will be controlled and repaid to the city and/or other entity upon resale, to ensure the ongoing preservation of affordability of inclusionary units or to ensure funds for inclusionary units remain within the city's affordable housing program.

"Rental units": Inclusionary units which the applicant intends will be rented or leased, or which are customarily offered for lease or rent.

"Resale restrictions": Legal restrictions which restrict the price of inclusionary units to ensure that they remain affordable to very low, low, and moderate income households on resale.

"Residential project, multiple-family": A residential project consisting of condominiums, apartments, and similar dwellings attached in groups of four (4) or more units per structure and including multiple units located on a single parcel of land under common ownership.

"Residential project, single-family": A residential project consisting of detached and attached single-family homes, including paired single-family, duets, duplexes, townhomes, and similar unit types where each unit is located on a separate parcel of land.

"Unit type": Various dwelling units within a project which are distinguished by number of bedrooms and/or the type of construction (e.g., detached single-family, duets, townhomes, condominiums). (Ord. 1818 § 1, 2000)

Article II. Zoning Requirements

17.44.040 General Requirements/Applicability:

- A. Residential Development: For all new multiple-family residential projects of fifteen (15) units or more, at least fifteen percent (15%) of the project's dwelling units shall be affordable to very low, and/or low income households. For all new single-family residential projects of fifteen (15) units or more, at least twenty percent (20%) of the project's dwelling units shall be affordable to very low, low, and/or moderate income households. These dwelling units shall be referred to as "Inclusionary Units". Special consideration will be given to projects in which a significant percentage of the inclusionary units are for very low and low income households. The specific mix of units within the three (3) affordability categories shall be subject to approval by the city.

The inclusionary units shall be reserved for rent or purchase by eligible very low, low, and moderate income households, as applicable. Projects subject to these requirements include, but are not limited to, single-family detached dwellings, townhomes, apartments, condominiums, or cooperatives provided through new construction projects, and/or through conversion of rentals to ownership units. The percentage of inclusionary units required for a particular project shall be determined only once on a given project, at the time of tentative map approval, or, for projects not processing a map, prior to issuance of building permit. If the subdivision design changes, which results in a change in the number of unit types required, the number of inclusionary units required shall be recalculated to coincide with the final approved project. In applying and calculating the fifteen percent (15%) requirement, 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 one unit.

- B. Commercial, Office, And Industrial (COI) Development: In lieu of paying the lower income fee as set forth in city ordinance 1488, COI development may provide affordable housing consistent with this chapter. As a result, new COI developments are strongly encouraged to submit an affordable housing proposal as set forth in section 17.44.090 of this chapter. Upon submittal of the affordable housing proposal, city staff will meet with the developer to discuss the potential for providing incentives to encourage on-site construction of affordable housing units and alternatives to constructing affordable units as set forth in this chapter. In the event a developer requests incentives or alternatives as a means of providing affordable housing in connection with a COI development, the affordable housing proposal will be reviewed as set forth in section 17.44.090 of this chapter. COI development not pursuing the inclusion of affordable housing shall be subject to the lower income fees as set forth in city ordinance 1488. (Ord. 1818 § 1, 2000)

17.44.050 Inclusionary Unit Provisions And Specifications:

- A. Inclusionary units shall be dispersed throughout the project unless otherwise approved by the city.
- B. Inclusionary units shall be constructed with identical exterior materials and an

exterior architectural design that is consistent with the market rate units in the project.

- C. Inclusionary units may be of smaller size than the market units in the project. In addition, inclusionary units may have fewer interior amenities than the market rate units in the project. However, the city may require that the inclusionary units meet certain minimum standards. These standards shall be set forth in the affordable housing agreement for the project.
- D. Inclusionary units shall remain affordable in perpetuity through recordation of an affordable housing agreement as described in section 17.44.060 of this chapter.
- E. All inclusionary units in a project shall be constructed concurrently within or prior to the construction of the project's market rate units.
- F. For purposes of calculating the affordable rent or affordable sales price of an inclusionary unit, the following household size assumptions shall be used for each applicable dwelling unit type:

HUD Income Category

<u>Unit Size</u>	<u>By Household Size</u>
Studio unit	1 person
1 bedroom unit	2 persons
2 bedroom unit	3 persons
3 bedroom unit	4 persons
4 or more bedroom unit	5 or more persons

- G. The city's adopted preference and priority system shall be used for determining eligibility among prospective beneficiaries for affordable housing units created through this inclusionary zoning ordinance. (Ord. 1818 § 1,2000)

17.44.060 Affordable Housing Agreement:

An affordable housing agreement shall be entered into by the city and the project owner. The agreement shall record the method and terms by which a project owner shall comply with the requirements of this chapter. The approval and/or recordation of this agreement shall take place prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for such lots or units.

The affordable housing agreement shall state the methodology for determining a unit's initial and ongoing rent or sales and resale price(s), any resale restrictions, occupancy requirements, eligibility requirements, city incentives including second mortgages, recapture mechanisms, the administrative process for monitoring unit management to assure ongoing affordability and other matters related to the development and retention of the inclusionary units.

In addition to the above, the affordable housing agreement shall set forth any waiver of the lower income housing fee. For projects which meet the affordability threshold with

very low and/or low income units, all units in the project shall be eligible for a waiver of the lower income housing fee. For single-family residential projects which meet the affordability threshold with moderate income units, or multiple-family residential projects which do not meet the affordability threshold, only the inclusionary units shall be eligible for a waiver of the lower income housing fee except as otherwise approved by the city council.

To assure affordability over the life of the unit, the affordable housing agreement shall be recorded with the property deed or other method approved by the city attorney. In the event an inclusionary unit is affordable by design the affordable housing agreement shall stipulate the method for assuring that the units retain their affordability as the housing market changes.

The director of planning and community development may waive the requirement for an affordable housing agreement for projects approved prior to the effective hereof and/or for projects that have their affordable housing requirements included in a development agreement or other city document. (Ord. 1818 § 1, 2000)

17.44.070 Incentives To Encourage On-Site Construction Of Inclusionary Units:

The city shall consider making available to the applicant incentives to increase the feasibility of residential projects to provide inclusionary units. Incentives or financial assistance will be offered only to the extent resources for this purpose are available and approved for such use by the city council or city manager, as defined below, and to the extent that the project, with the use of incentives or financial assistance, assists in achieving the city's housing goals. However, nothing in this chapter establishes, directly or through implication, a right of an applicant to receive any assistance or incentive from the city.

Any incentives provided by the city shall be set out in the affordable housing agreement pursuant to section 17.44.060 of this chapter. The granting of the additional incentives shall require demonstration of exceptional circumstances that necessitate assistance from the city, as well as documentation of how such incentives increase the feasibility of providing affordable housing.

The following incentives may be approved for applicants who construct inclusionary units on-site:

- A. **Fee Waiver Or Deferral:** The city council, by resolution, may waive or defer payment of city development impact fees and/or building permit fees applicable to the inclusionary units or the project of which they are a part. Fee waivers shall meet the criteria included in the city's adopted policy for evaluating waivers of city fees for affordable housing projects. The affordable housing agreement shall include the terms of the fee waiver.
- B. **Design Modifications:** The granting of design modifications relative to the inclusionary requirement shall require the approval of the city council and shall meet all applicable zoning requirements of the city of Pleasanton. Modifications to typical

design standards may include the following:

Reduced setbacks

Reduction in infrastructure requirements

Reduced open space requirements

Reduced landscaping requirements

Reduced interior or exterior amenities

Reduction in parking requirements

Height restriction waivers

- C. **Second Mortgages:** The city may utilize available lower income housing funds for the purpose of providing second mortgages to prospective unit owners or to subsidize the cost of a unit to establish an affordable rent or an affordable sales price. Terms of the second mortgage or subsidy shall be stated in the affordable housing agreement. The utilization of these incentives shall not be the sole source of providing the inclusionary units and they are intended to augment the developer's proposal.
- D. **Priority Processing:** After receiving its discretionary approvals, a project that provides inclusionary units may be entitled to priority processing of building and engineering approvals subject to the approval of the city manager. A project eligible for priority processing shall be assigned to city engineering and/or building staff and processed in advance of all nonpriority items. (Ord. 1818 § 1, 2000)

17.44.080 Alternatives To Constructing Inclusionary Units On-Site:

The primary emphasis of this inclusionary zoning ordinance is to achieve the inclusion of affordable housing units to be constructed in conjunction with market rate units within the same project in all new residential projects. However, the city acknowledges that it may not always be practical to require that every project satisfy its affordable housing requirement through the construction of affordable units within the project itself. Therefore, the requirements of this chapter may be satisfied by various methods other than the construction of inclusionary units on the project site. Some examples of alternate methods of compliance appear below. As housing market conditions change, the city may need to allow alternatives to provide options to applicants to further the intent of providing affordable housing with new development projects.

- A. **Off-Site Projects:** Inclusionary units required pursuant to this chapter may be permitted to be constructed at a location within the city other than the project site. Any off-site inclusionary units must meet the following criteria:
1. The off-site inclusionary units must be determined to be consistent with the city's goal of creating, preserving, maintaining, and protecting housing for very low, low, and moderate income households.
 2. The off-site inclusionary units must not result in a significant concentration of inclusionary units in any one particular neighborhood.
 3. The off-site inclusionary units shall conform to the requirements of all applicable

city ordinances and the provisions of this chapter.

4. The occupancy and rents of the off- site inclusionary units shall be governed by the terms of a deed restriction, and if applicable, a declaration of covenants, conditions and restrictions similar to that used for the on-site inclusionary units. The affordable housing agreement shall stipulate the terms of the off-site inclusionary units. If the construction does not take place at the same time as project development, the agreement shall require the units to be produced within a specified time frame, but in no event longer than five (5) years. A cash deposit or bond may be required by the city, refundable upon construction, as assurance that the units will be built.

- B. Land Dedication: An applicant may dedicate land to the city or a local nonprofit housing developer in place of actual construction of inclusionary units upon approval of the city council. The intent of allowing a land dedication option is to provide the city or a local nonprofit housing developer the free land needed to make an inclusionary unit development feasible, thus furthering the intent of this chapter. The dedicated land must be appropriately zoned, buildable, free of toxic substances and contaminated soils, and large enough to accommodate the number of inclusionary units required for the project. The city's acceptance of land dedication shall require that the lots be fully improved, with infrastructure, adjacent utilities, grading, and fees paid.
- C. Credit Transfers: In the event a project exceeds the total number of inclusionary units required in this chapter, the project owner may request inclusionary unit credits which may be used to meet the affordable housing requirements of another project. Inclusionary unit credits are issued to and become the possession of the project owner and may not be transferred to another project owner without approval by the city council. The number of inclusionary unit credits awarded for any project is subject to approval by the city council.
- D. Alternate Methods Of Compliance: Applicants may propose creative concepts for meeting the requirements of this chapter, in order to bring down the cost of providing inclusionary units, whether on- or off-site. The city council may approve alternate methods of compliance with this chapter if the applicant demonstrates that such alternate method meets the purpose of this chapter (as set forth in section 17.44.020 of this chapter).
- E. Lower Income Housing Fee Option: In lieu of providing inclusionary units in a project, an applicant may pay the city's lower income housing fee as set forth in chapter 17.40 of this title. (Ord. 1818 § 1, 2000)

Article III. Miscellaneous

17.44.090 Administration:

An applicant of a project subject to this chapter shall submit an affordable housing proposal stating the method by which it will meet the requirements of this chapter. The affordable housing proposal shall be submitted as part of the applicant's city development application (e.g., design review, planned unit development, etc.) to the planning

department in a form approved by the city manager. The director of planning and community development may waive the requirement for submittal of an affordable housing proposal for projects approved prior to the effective date hereof and/or for projects that have undergone considerable public review during which affordable housing issues were addressed.

The affordable housing proposal shall be reviewed by the city's housing commission at a properly noticed meeting open to the public. The housing commission shall make recommendations to the city council either accepting, rejecting or modifying the developer's proposal and the utilization of any incentives as outlined in this chapter. The housing commission may also make recommendations to the planning commission regarding the project as necessary to assure conformance with this chapter.

Acceptance of the applicant's affordable housing proposal is subject to approval by the city council, which may direct the city manager to execute an affordable housing agreement in a form approved by the city attorney. The city manager or his/her designee shall be responsible for monitoring the sale, occupancy and resale of inclusionary units. (Ord. 1818 § 1, 2000)

17.44.100 Conflict Of Interest:

The following individuals are ineligible to purchase or rent an inclusionary unit: a) city employees and officials (and their immediate family members) who have policymaking authority or influence regarding city housing programs; b) the project applicant and its officers and employees (and their immediate family members); and c) the project owner and its officers and employees (and their immediate family members). (Ord. 1818 § 1, 2000)

17.44.110 Enforcement:

The city manager is designated as the enforcing authority. The city manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. The provisions of this chapter shall apply to all agents, successors and assigns of an applicant. No building permit or final inspection shall be issued, nor any development approval be granted which does not meet the requirements of this chapter. In the event that it is determined that rents in excess of those allowed by operation of this chapter have been charged to a tenant residing in an inclusionary unit, the city may take appropriate legal action to recover, and the project owner shall be obligated to pay to the tenant, or to the city in the event the tenant cannot be located, any excess rents charged. (Ord. 1818 § 1, 2000)

17.44.120 Appeals:

Any person aggrieved by any action or determination of the city manager under this chapter, may appeal such action or determination to the city council in the manner provided in chapter 18.144 of this code. (Ord. 1818 § 1, 2000)