

ORDINANCE NO. 354

**AN ORDINANCE OF THE CITY OF EAST PALO ALTO
AMENDING CHAPTER 8.5 (BELOW MARKET RATE
HOUSING PROGRAM) OF THE CITY'S COMPREHENSIVE
ZONING ORDINANCE.**

THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES HEREBY
ORDAIN AS FOLLOWS:

ARTICLE 1. AMENDMENT OF COMPREHENSIVE ZONING ORDINANCE

The existing Chapter 8.5 of the Comprehensive Zoning Ordinance (No. 197, as amended) is hereby amended. The Comprehensive Zoning Ordinance (No. 197, as amended from time to time) as hereby further amended to by revising Chapter 8.5 regarding a "Below Market Rate Housing Program."

CHAPTER 8.5. BELOW MARKET RATE HOUSING PROGRAM

Section 8.5.010 FINDINGS

In enacting this chapter, the City finds as follows:

- (a) The Legislature of the State of California has found that the availability of housing is of vital statewide importance, and that providing decent housing for all Californians requires the cooperative participation of government and the private sector. The Legislature has further found that local governments have a responsibility to use the powers vested in them to make adequate provision for the housing needs of all economic segments of the community. This chapter is intended to utilize the police powers of the City to enhance the public welfare by making adequate provision for the housing needs of all economic segments of the community through the cooperative participation of government and the private sector. This chapter will also assist in meeting the City's share of the region's housing needs and will implement the goals, policies, and actions specified in the Housing Element of the City's General Plan.
- (b) The Housing Element of the City's General Plan, adopted on June 15, 2010, concluded that:
 - (1) There are a number of market forces that impact the supply of affordable and quality housing in the City. Regional housing market conditions have created high land values, which directly affect housing affordability. More stringent underwriting and tighter loan standards have also led to an increase in loan denials, reducing the pool of eligible homebuyers, especially low-income homebuyers. The majority of households in the City are low-income.

- (2) To provide its fair share of the region's housing needs, the City must have adequate sites for 630 new housing units for the period from 2007 to 2014, including sites for 144 very-low income units, 103 low-income units, and 122 moderate-income units.
 - (3) In general, extremely low- and very low-income households cannot afford market rental or owner-occupied housing. Based on prevailing rents in the City, low-income households and above can afford market rate rents. Most low-income households cannot afford to purchase the typical median-priced home in the City.
 - (4) The City serves as an affordable housing resource for service workers that would otherwise need to travel across the San Francisco Bay.
 - (5) As many City residents cannot afford to own a home in the community, long-time residents with aspirations of owning a home most often move to other communities. Furthermore, many lower income residents also leave the City because of the shortage of safe, habitable, and affordable rental housing.
 - (6) The City's Below Market Program has been and will continue to be instrumental in creating affordable housing opportunities for a variety of ethnically and economically diverse population of families who otherwise could not afford the market rate sales prices in the City.
- (c) Federal and State government programs do not provide nearly enough affordable housing or subsidies to satisfy the housing needs of lower 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 lower income households cannot afford to pay.
 - (d) Rising land prices have been a key factor in preventing development of new affordable housing. New market-rate housing construction in the City aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This not only reduces the supply of land for affordable housing, but further increases the price of remaining residential land. 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 lower income local households. The City agrees with the established policy of the State of California that each community should make available an adequate supply of housing to persons at all economic levels.
 - (f) As new investment and redevelopment revitalizes the City, it is critical to provide housing opportunities for local residents and others who could be displaced by "gentrification." A balanced community is only possible if part of the new housing built in the City is affordable to lower income households. Zoning and other ordinances concerning new housing in the City should be consistent with the community's goal of economic balance.
 - (g) It is important that housing created under this chapter provide housing opportunities to local residents and workers, who have particularly limited housing options. Household incomes in

East Palo Alto are generally below those in San Mateo County as a whole, and affordable housing created under this chapter should be targeted at income levels affordable to local households with lower incomes.

- (h) In general, affordable units within each housing development best serve the goal of maintaining an economically integrated community.
- (i) 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 provide a share of the regional housing need, assist the City in meeting housing obligations imposed by the Community Redevelopment Law, and implement the Housing Element of the City's General Plan.

Section 8.5.020 DEFINITIONS

- (a) Affordable ownership cost. The maximum purchase price that will be affordable to the specified household at the specified income level. The purchase price shall be considered affordable only if it is based on a reasonable down payment, and 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 United States Housing Act of 1937 (not including telephone service), land rent (if the home is on rented land) and homeowners association dues, if any, which are equal to or less than one-twelfth (1/12) of thirty percent (30%) of the maximum annual household income designated for an affordable unit, during the first calendar year of a household's occupancy. The maximum household income for an affordable unit shall be based on presumed occupancy levels of one person in a studio dwelling unit, two persons in a one bedroom dwelling unit, three persons in a two bedroom dwelling unit, and one additional person for each additional bedroom thereafter. Affordable ownership cost shall be calculated assuming a down payment equal to ten percent (10%) of the total purchase price, and a conventional fixed-rate thirty-year fully amortizing loan in the amount of the difference between the purchase price and the down payment.
- (b) Affordable rent. Monthly rent, including a reasonable allowance for utilities based on the utility allowance applicable under Section 8 of the United States Housing Act of 1937, and all fees for housing services, equal to or less than one-twelfth (1/12) of thirty percent (30%) of the maximum annual household income designated for an affordable unit. Affordable rent shall be based on presumed occupancy levels of one person in a studio dwelling unit, two persons in a one bedroom dwelling unit, three persons in a two bedroom dwelling unit, and one additional person for each additional bedroom thereafter.
- (c) Affordable units. Dwelling units which are required under this chapter to be available at an affordable ownership cost to specified households and other dwelling units that have been proposed by the applicant and approved by the City to meet the requirements of this chapter.

- (d) Attached Housing. A residential project, or part thereof, in which each dwelling unit has one or more exterior walls in common with or attached to a wall of another dwelling unit.
- (e) Detached Housing. A residential project, or part thereof, in which each dwelling unit has no exterior wall in common with or attached to another dwelling unit.
- (f) Dwelling unit. One or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.
- (g) Eligible household. A household whose income does not exceed the maximum specified in Sections 8.5.030 and 8.5.070 (a)(1) for a given affordable unit.
- (h) 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.
- (i) Market rate units. New dwelling units in residential projects which are not affordable units under this chapter.
- (j) Master Fee Schedule. The schedule of fees established by the City Council and updated from time to time.
- (k) Median income. The area median income, adjusted for household size, applicable to San Mateo County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provisions) by the California Department of Housing and Community Development.
- (l) Residential project. (1) Any planned district, subdivision map, conditional use permit or other discretionary City land use approval, which authorizes two or more new dwelling units or live-work units or residential lots, or a combination of two or more residential lots, new dwelling units and live-work units; or (2) contemporaneous construction of two 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 certificate of occupancy has not yet been issued. For the purposes of this chapter, a residential project shall not include two (2) dwelling units to be constructed on the same lot where one of the units to be constructed will be owner occupied. Evidence of owner occupancy shall be made by providing to the Community Development director or his/her designee a copy of a valid certificate of homeowner's exemption as recorded in the San Mateo County Offices of the Recorder/Assessor for the year in which the unit receives a certificate of occupancy. A project shall not cease to be a residential project because it receives public assistance, but all assisted dwelling units in a publicly assisted project which are subject to recorded restrictions that impose rental affordability requirements restricting occupancy to households at or below fifty percent (50%) of median income at affordable rents shall not be considered as part of the residential project for purposes of this chapter.

- (m) Residential ownership project. Any residential project that includes the creation of one or more residential dwelling units that may be sold individually. A residential ownership project also includes condominium and stock cooperative conversions.
- (n) Residential rental project. Any residential project that creates residential dwelling units that cannot be sold individually.

Section 8.5.030 BASIC REQUIREMENT – RESIDENTIAL OWNERSHIP PROJECTS

- (a) At least twenty percent (20%) of all new dwelling units in residential ownership projects constructed in the City shall be affordable as prescribed in this Section and shall be constructed not later than the related market-rate units in the same residential project. For fractions of units equal to or greater than one-half, the owner of the property must construct the next higher whole number of affordable units. For all other fractions of units, the owner of the property must either construct the next higher whole number of affordable units or pay the corresponding fraction of the fee specified in this Section.
- (b) Affordability for Detached Housing. The affordable units constructed as detached housing in a residential ownership project shall be sold at an affordable ownership cost as follows:
 - (1) One-quarter (1/4) of the affordable units shall be sold to households whose income does not exceed sixty percent (60%) of the median income.
 - (2) One-half (1/2) of the affordable units shall be sold to households whose income does not exceed eighty percent (80%) of the median income.
 - (3) One-quarter (1/4) of the affordable units shall be sold to households whose income does not exceed ninety percent (90%) of the median income.
 - (4) Notwithstanding the above:
 - a. For households whose household income does not exceed fifty percent (50%) of median income, affordable ownership cost shall be calculated so monthly housing payments do not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of median income.
 - b. For households whose household income is between fifty percent (50%) and seventy percent (70%) of median income, affordable ownership cost shall be calculated so monthly housing payments do not exceed one-twelfth (1/12) of thirty percent (30%) of seventy percent (70%) of median income.
 - (5) Where the number of required affordable units calculated after rounding fractions in accordance with Section 8.5.030(a) is not divisible by four (4), the number of units affordable at or below sixty percent (60%) and/or at or below ninety percent (90%) of median income shall be rounded down, and the number of units affordable at or below eighty percent (80%) of median income shall be the number of units necessary to achieve the full number of required affordable units.

- (c) Affordability for Attached Housing. The affordable units constructed as attached housing in a residential ownership project shall be sold at an affordable ownership cost for owner-occupancy as follows:
- (1) One-quarter (1/4) of the affordable units shall be sold to households whose income does not exceed fifty percent (50%) of the median income.
 - (2) One-half (1/2) of the affordable units shall be sold to households whose income does not exceed sixty percent (60%) of the median income.
 - (3) One-quarter (1/4) of the affordable units shall be sold to households whose income does not exceed seventy percent (70%) of the median income.
 - (4) Notwithstanding the above, for households whose household income does not exceed fifty percent (50%) of median income, affordable ownership cost shall be calculated so monthly housing payments do not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of median income.
 - (5) Where the number of required affordable units calculated after rounding fractions in accordance with Section 8.5.030(a) is not divisible by four (4), the number of units affordable at or below fifty percent (50%) and/or at or below seventy percent (70%) of median income shall be rounded down, and the number of units affordable at or below sixty percent (60%) of median income shall be the number of units necessary to achieve the full number of required affordable units.

Section 8.5.040 BASIC REQUIREMENT – RESIDENTIAL RENTAL PROJECTS

- (a) For residential rental projects receiving no City assistance, any affordable housing impact fees adopted by the City Council shall be paid at the time specified in Sections 8.5.050 and 8.5.080(b) to mitigate the residential rental project's impact on the need for affordable housing in the City.
- (b) For residential rental projects for which the applicant requests and receives direct City financial contribution or any form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code, affordable housing may be required by the City pursuant to the terms of that assistance. If affordable housing is required, the City shall require, as a condition of City assistance, that the rent regulatory agreement include the applicant's agreement to any limitation on rents in consideration for the City's assistance, to ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code).

Section 8.5.050 TIME PERFORMANCE REQUIRED

- (a) Affordable Housing Plan and Conditions of Approval.
 - (1) An application for the first approval of a residential project shall include an affordable housing plan describing how the residential project will comply with the provisions of

this chapter. The affordable housing plan shall be processed concurrently with all other applications required for the residential project.

- (2) The affordable housing plan shall be considered by and acted upon by the approval body with authority to approve the residential project. Conditions shall be imposed to carry out the purposes of this chapter. Before approving the affordable housing plan, the approval body shall find that the affordable housing plan conforms to this chapter.
 - (3) Additional conditions may be imposed on later City approvals or actions, including without limitation planned unit developments, subdivision approvals, conditional use permits, and building permits, to implement the purposes of this chapter.
- (b) Issuance of Building Permits and Recordation of Final and Parcel Maps. No building permit shall be issued for any market-rate unit in a residential ownership project until the permittee has either: (1) obtained all required discretionary approvals for affordable units sufficient to meet the requirements of Section 8.5.030, and documents to assure continued affordability as required by Section 8.5.030, have been recorded against the property being developed; (2) paid or provided security for payment of in-lieu fees or affordable housing impact fees pursuant to Section 8.5.080(b); (3) received certification from the City Manager or the Manager's designee that the permittee has met, or made arrangements satisfactory to the City to meet, an alternative requirement of Section 8.5.070; or (4) complied with an alternative phasing schedule adopted as a condition of approval. Additionally, any required affordability restrictions shall be recorded against the property prior to the recordation of any parcel or final map for the residential ownership project.
- (c) Construction of Units. No temporary or permanent certificate of occupancy for any market rate unit in a residential ownership project shall be issued until the permittee has met the on-site construction requirement of Section 8.5.030, provided, however, that guidelines adopted under Section 8.5.060(f) may, for some or all residential projects which are constructed in phases, allow the construction requirements of Section 8.5.030 to be met for each phase.
- (d) Residential Rental Projects. For residential rental projects receiving City assistance, the timing of construction and occupancy of the market-rate units shall comply with the terms specified in consideration for City assistance. The time requirement set forth in this subsection may be modified by City Council resolution or ordinance.
- (e) Amendment of Affordable Housing Requirements. Any affordable housing requirement may be amended prior to issuance of any building permit for the residential project. Any proposed amendment shall be acted upon by the approval body that previously approved the affordable housing plan.

**Section 8.5.060 CONTINUED AFFORDABILITY; ADMINISTRATIVE
GUIDELINES**

- (a) Maximum Sales Price. The maximum sales price permitted on resale of an affordable unit shall be the lowest of the following amounts: (1) the seller's lawful purchase price increased by the percentage of increase in the median income from the date of the original purchase of

the home by the seller to the date the city is notified of the seller's intent to sell the home; or (2) fair market value; provided, however, that in no event shall this chapter require a sales price lower than the seller's lawful purchase price, plus the seller's reasonable cost of sales and the value of capital improvements, to the extent (if any) authorized by resale restrictions entered into by the City and the owner.

- (b) Primary Residence. The documents recorded under subsection (d) shall require that the affordable units be maintained as the purchaser's primary place of residence.
- (c) Household Eligibility. No household shall be permitted to begin occupancy of a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility. 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. To the extent permitted by existing law, households in which at least one member has lived or worked in the City for at least one year shall have priority in receiving the opportunity to purchase or rent affordable units.
- (d) Recorded Restrictions. Regulatory agreements and, if the affordable units are owner-occupied units, resale restrictions, deeds of trust and/or other documents, all consistent with the requirements of this ordinance, shall be recorded against affordable owner-occupied units and residential projects containing affordable rental units.
 - (1) For owner-occupied units, restrictions shall be effective for fifty-nine (59) years, and thereafter until payment of any funds due to the City under the applicable resale restrictions, and shall renew for a new term of fifty-nine (59) years upon any transfer during an existing fifty-nine (59) year term. The resale restrictions shall grant an option to the City or its designee to purchase any affordable owner-occupied unit at the maximum price which could be charged to a purchaser household, at any time the owner proposes sale.
 - (2) For rental units, restrictions shall be effective for a term of ninety-nine (99) years, or for so long as the structures which make up the residential rental project remain in existence, whichever period is shorter.
 - (3) The City Council shall approve model forms of the documents required by this Section and all major variances from those forms for specific residential projects.
- (e) Comparability of Units. Affordable units shall be comparable to market rate units in the same residential project in size, number of bedrooms, exterior appearance, interior features, overall quality of construction and all other respects, except for affordable multifamily units in a residential project in which all the market rates units are detached housing, which need not be comparable in size or exterior appearance. Affordable units shall be dispersed throughout the residential project in a manner acceptable to the City.
- (f) Guidelines/Procedures. The City Manager or the Manager's designee may adopt guidelines and/or procedures for implementing this chapter.

- (g) Minimum Requirements. 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 ordinance.

Section 8.5.070 ALTERNATIVES TO ON-SITE CONSTRUCTION

An applicant may propose one of the following alternatives as part of its affordable housing plan, submitted with the first approval of a residential ownership project as required by Section 8.5.050(a). The alternatives in this Section are not applicable to residential rental projects. The City may approve the alternative if the alternative conforms to the standards in the relevant subsection.

(a) Provision of Rental Units.

- (1) Where owner-occupied affordable units are required by Section 8.5.030, an applicant may instead request to construct the same or a greater number of rental units, affordable to households and at rents as follows:
- a. One-quarter (1/4) of the affordable units shall be rented to households whose household income does not exceed thirty-five percent (35%) of median income.
 - b. One-half (1/2) of the affordable units shall be rented to households whose income does not exceed fifty percent (50%) of median income.
 - c. One-quarter (1/4) of the affordable units shall be rented to households whose income does not exceed sixty percent (60%) of the median income.
 - d. Where the number of required affordable units calculated after rounding fractions under Section 8.5.030(a) is not divisible by four (4), the number of units affordable at or below thirty-five percent (35%) and/or at or below sixty percent (60%) of median income shall be rounded down, and the number of units affordable at or below fifty percent (50%) of median income shall be the number of units necessary to achieve the full number of required affordable units.
- (2) To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may only approve this request if the applicant agrees in a rent regulatory agreement to limit rents as required by this Section in consideration for a direct financial contribution or form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.
- (3) The rental units shall either: (1) be equal in number of bedrooms to the owner-occupied units which would have been required, or (2) shall compensate for any comparative deficiency by providing either at least ten percent (10%) more affordable units than required or units affordable to households in a lesser income category than required.

- (4) A rent regulatory agreement acceptable to the City, consistent with the requirements of this Section, shall be recorded against the residential project prior to recordation of any parcel or final map or issuance of any building permit for the residential project.
- (5) The rent regulatory agreement shall include provisions for sale of the affordable units and relocation benefits for tenants of the affordable units if the owner of the residential project later determines to offer any affordable units in the residential project for sale. The owner shall provide all notices to prospective tenants of the residential project required by state law and shall additionally, at the time sale of the units is proposed, provide all tenants of the rental affordable units with the same notices, rights and relocation benefits as provided for residential condominium conversion projects. The owner shall provide written notice to the City at least ninety (90) days before offering any rental affordable unit for sale. The owner shall provide as many ownership affordable units at affordable ownership cost as is required by Section 8.5.030. At the time of sale, resale restrictions, deeds of trust and/or other documents acceptable to the City, all consistent with the requirements of this Section, shall be recorded against the ownership affordable units for a term of fifty-nine (59) years.
- (b) In-Lieu Fees - Residential Projects of Four or Fewer Units. If the residential project contains four (4) or fewer units, the applicant may pay a fee in-lieu of providing the otherwise required affordable units at the time required by Sections 8.5.050(b) and 8.5.080(b). Such fee shall be a per gross square foot fee established by the Master Fee Schedule and applied to the aggregate building area of all the market-rate homes in question, including the building footprint, plus additional square footage provided by additional stories and a porch/deck minus any garage or other parking area. In the event the fee required by this provision has not been adopted, a fee of Thirteen Dollars and Twenty-Seven Cents (\$13.27) per square foot of such building area shall be required which fee shall increase annually by the percentage increase in the construction cost index. For purposes of this Section, the Construction Cost Index shall mean the Engineering News Record/McGraw-Hill Construction Weekly Building Cost Index for San Francisco or if that index ceases to exist, the City Manager shall substitute another construction cost index which in his or her judgment is as nearly equivalent to the original index as possible. Where payment is delayed based on provision of security under Section 8.5.080(b)(2), in the event of default, or for any other reason, the amount of the in-lieu fee payable shall be based upon the Master Fee Schedule in effect at the time of the fee is paid.
- (c) In-Lieu Fees - Residential Projects of Five or More Units. If the residential project contains five (5) or more units, the applicant may pay a fee in-lieu of providing the otherwise required affordable units if approved by the City Council. Such fees will be determined prior to issuance of building permits and shall approximate the cost to the City of providing the units that would otherwise have been required to be constructed by the applicant at the same affordable ownership cost. In no event shall the in-lieu fee be less than the amount specified in Section 8.5.070(b) above.

- (a) Establishment of Fees. In-lieu fees and affordable housing impact fees shall be set by City fee resolution or other action of the City Council, except that the fee specified in Section 8.5.070(b) shall be in effect until in-lieu fees are adopted by the City Council. Fees may be based on a fee per market-rate unit, fee per square foot, or any other reasonable basis. The City Council may review the fees from time to time at its sole discretion and may, based on that review, adjust the fee amount. For any annual period during which the City Council does not review the fee authorized by this subsection, fee amounts shall be adjusted once by the City Manager based on the annual percentage increase in the construction cost index.
- (b) Security for Fee Payment.
- (1) Any adopted or approved in-lieu fees and affordable housing impact 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 (2). 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) For all in-lieu fees and affordable housing impact fees not paid upon issuance of building permits, the City Manager or the Manager's designee shall require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee in full to the City before any temporary or permanent certificate of occupancy may 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 Mateo 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.
- (c) City Affordable Housing Fund. All fees collected under this chapter shall be deposited into a separate account administered by the City Manager or the Manager's designee, to be designated the City Affordable Housing Fund.
- (d) Provision of Affordable Housing. 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, rehabilitation, financing, rent or other subsidies, provision of supportive services, or other methods and for the costs of administering this ordinance. 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.

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

- (a) The applicant will benefit from any incentives set forth in the Municipal Code; and
- (b) The applicant will be obligated to provide the most economical affordable housing units feasible in terms of financing, construction, design, location and tenure.

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

Section 8.5.100 ENFORCEMENT

- (a) It shall be a misdemeanor for any person to sell or rent an affordable unit under this chapter at a price or rent exceeding the maximum allowed under this chapter or to a household not qualified under this chapter.
- (b) The City Attorney shall be authorized to enforce the provisions of this 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 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.

ARTICLE 2. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

ARTICLE 3. GENERAL PLAN CONSISTENCY

This Ordinance is consistent with the East Palo Alto General Plan and the General Plan's map, objective, goals, policies and implementation programs.

ARTICLE 4. EFFECTIVE DATE

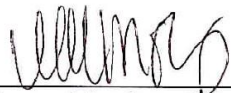
This chapter shall become effective thirty (30) days following adoption.

ARTICLE 5. PUBLICATION

The City Clerk is directed to post and/or publish this ordinance as required by law.

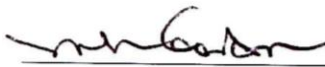
Introduced at a regular City Council meeting held December 13, 2011, and adopted at a regular City Council meeting held December 20, 2011, by the following vote:

AYES:	ABRICA, EVANS, MARTINEZ, ROMERO, WOODS
NOES:	0
ABSTAIN:	0
ABSENT:	0




Laura Martinez, Mayor

ATTEST:



ML Gordon, City Clerk

APPROVED AS TO FORM:



Valerie J. Armento, Interim City Attorney