

Summary of Proposed Changes to the Milpitas Affordable Housing Ordinance

Ordinance Section	Proposed Change to the Ordinance	Reason for Proposed Change
Entire document	Minor numbering and text changes have been made throughout the document.	To update the numbering and to maintain consistency. These minor changes are highlighted in the “redline” of the ordinance but are not included in this summary table.
XII-1-2.01	Updated reference to Accessory Dwelling Unit (ADU) definition	To match changes in the Municipal Code.
XII-1-2.02	Added definition for “Affordable Housing Cost”	To clarify that affordable housing cost includes utilities cost and is determined using official HCD income limits.
XII-1-2.04	Updated definition for an “Affordable Unit”	To clarify that ADUs shall not be counted as an affordable unit to satisfy on-site affordable housing requirements.
XII-1-2.07	Created separate definition for “Low Income Household”	To further clarify that “Low Income Household” is defined the same as in state law and that state HCD income limits apply to this program, not federal TCAC income limits.
XII-1-2.08	Added a definition for mixed use development.	To clarify that the ordinance applies to both vertical and horizontal mixed use projects.
XII-1-2.09	Created separate definition for “Moderate Income Household”	To further clarify that “Moderate Income Household” is defined the same as in state law and that state HCD income limits apply to this program, not federal TCAC income limits.
XII-1-2.11	Added definition for “on-site” development of affordable housing	To further clarify that on-site development must be within the boundaries of the proposed development. Otherwise it is considered to be off-site.
XII-1-2.16	Created separate definition for “Very Low Income Household”	To further clarify that “Very Low Income Household” is defined the same as in state law and that state HCD income limits apply to this program, not federal TCAC income limits.
XII-1-3.00	Sometimes 15% of the total units results in a fraction. This change would require developers to round up the number of affordable units they are required to build if the fraction is equal to or greater than 0.5. If the fraction is less, the developer could pay an in-lieu fee	This change reduces a developer’s ability to pay in-lieu fees for fractional units greater than 0.5. It could result in 1 extra affordable unit being built on-site per project. It also clarifies that ADUs are not factored into the calculation of the total number of

	for that fraction of a unit. This change also clarifies that ADUs shall not be included in the calculation of the total number of units subject to the on-site 15% inclusionary requirement.	units subject to the 15% on-site inclusionary requirement.
XII-1-3.02	Added mixed-use to the “Conditions of Approval” section and a list of documents needed for staff to review.	To further clarify that this ordinance applies to mixed-use projects that include residential and to clarify key documents that must be provided for staff to review.
XII-1-3.03	Added language to explain how concurrent construction of affordable housing units must be carried out for phased developments before final discretionary permits are issued. If extenuating circumstances exist, a developer must provide a schedule showing how the affordable units will be built expeditiously and this schedule must be approved by the City Manager or designee.	To further clarify that affordable units must be constructed in advance of or concurrently with market rate units within each phase.
XII-1-3.04	Added more specific language on how the design and distribution of affordable units should be ensured.	To further clarify how the quality of affordable units shall be reasonably consistent with the market rate units.
Section 4A (Ownership)	Made substantial changes to the process for granting exceptions to building affordable <u>ownership</u> units on-site. Added more specific findings for Council approval.	To clarify the City Council findings required for certain exceptions to on-site construction of affordable units and to encourage the production of more on-site ownership units.
Section 4B (Rental)	Added text relating to rental projects and exceptions to the on-site requirement.	To clarify that developers of rental projects do not need City Council approval to utilize alternative forms of compliance as set forth in Subsections XII-1-4.00-XII-1-4.02. However, staff is exploring options for an alternative approach to providing alternatives to development of on-site affordable units.
XII-1-4.00	Clarified how to calculate in-lieu fees and that ADUs are included when calculating the gross square footage for the in-lieu fee.	The existing ordinance does not explain how in-lieu fees are calculated.
XII-1-4.01	Added text clarifying that off-site projects must be located within the City of Milpitas.	To clarify where off-site projects can be located.
XII-1-4.01	Added new language that would allow developers flexibility to build off-site affordable units with a	To provide flexibility so developers can creatively develop more market

	different tenure from the market rate units. The current ordinance is silent about this. The proposed change would require more square footage of affordable units off-site at an equivalent or lower income category.	rate and affordable housing while encouraging on-site construction.
XII-1-4.02	Added text clarifying that dedicated land must be within the City of Milpitas and must be zoned and usable for the required amount of housing.	To provide specifics on what land is acceptable for dedication under the ordinance. Dedication non-residentially zoned land is unacceptable as it would require the conversion of employment lands.
XII 1-4.03	Removed credit transfers as a compliance option.	To date this option has not been used and would be very staff intensive to administer. As an alternative, staff has proposed allowing mixed tenure off-site compliance for added flexibility.
XII-1-4.04	Removed "Transfer of square foot equivalent" section.	No longer needed as addressed in other sections.
XII-1-6.00	Changed affordability covenant for ownership from 45 to 55 years. Updated the time by which affordable housing agreement should be recorded to prior to the City allowing occupancy.	To be consistent with the rental affordability term and to gain a longer-term affordability. To provide reasonable timeframe for completing affordable housing agreement.
XII-1-6.02	Changed affordability covenant for ownership from 45 to 55 years.	To be consistent with the rental affordability term and to gain a longer-term affordability. The change would apply 55 years to all affordable units created under this ordinance.
XII-1-6.03	Updated selection criteria to ensure that prioritization conforms with state and federal fair housing laws. Added broader language about setting aside some of the affordable units for households that live, are employed in, or have been displaced from Milpitas.	To clarify the need to conform with fair housing laws and to apply local preferences for the affordable housing units under the ordinance.
Section 7	Removed "Affordable Unit Credits" section.	The credits option has not been used and would be very staff intensive to administer. As an alternative, staff has proposed allowing mixed tenure off-site compliance for added flexibility.
Section 9	Renumbered as Section 8 and revised Affordable Housing Ordinance Fund to Affordable Housing Fund.	To provide consistency with the definition in Section 2.