



memorandum

City Clerk's Office
510-284-4060

January 10, 2023

To: Mayor and Councilmembers

From: Susan Gauthier, City Clerk

Re: **CORRECTION TO AGENDA ITEM 2.C** - SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY OF FREMONT AMENDING FREMONT MUNICIPAL CODE TITLE 18 PLANNING AND ZONING, CHAPTER 18.155 AFFORDABLE HOUSING, ADDING SECTION 18.155.095 LIVE/WORK LOCAL PREFERENCE AND MAKING FINDINGS OF CEQA EXEMPTION (CEQA GUIDELINES SECTIONS 15162, 15183, AND 15061(B)(3))

The ordinance was introduced by the City Council at its December 20, 2022 meeting, not on December 10, 2022, as noted in the staff report.

Please see attached Draft Ordinance which was not uploaded with the agenda packet.

ORDINANCE NO. XX-2022

AN ORDINANCE OF THE CITY OF FREMONT AMENDING FREMONT MUNICIPAL CODE TITLE 18 PLANNING AND ZONING, CHAPTER 18.155 AFFORDABLE HOUSING, ADDING SECTION 18.155.095 LIVE/WORK LOCAL PREFERENCE AND MAKING FINDINGS OF CEQA EXEMPTION (CEQA GUIDELINES SECTIONS 15162, 15183, AND 15061(b)(3))

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FREMONT DOES ORDAIN AS FOLLOWS:

SECTION 1. FMC § 18.155 AMENDED

Fremont Municipal Code Title 18, Chapter 18.155, Affordable Housing is amended as attached (Exhibit A) and as summarized as follows:

Sec. 18.155.095 Title.

This section shall be known as “**Live/Work Local Preference.**”

SECTION 2. FMC § 18.155 AMENDED

Fremont Municipal Code Title 18, Chapter 18.155, Section 18.155.010 is amended as follows:

Sec. 18.155.010 Basis and purposes.

For purposes of this chapter, the following statements are added:

(b) (4) The ability for lower wage workers to live and work in the same city has become increasingly difficult. Local workers that cannot access affordable housing in Fremont face longer, more costly commutes and reduced access to public transit. Additionally, the increased distance between affordable housing and job opportunities contributes to traffic congestion and green-house gas emissions.

(j) The purpose of a local resident preference for affordable housing units is to remedy or mitigate the displacement and gentrification impacts that may result from development activities and increasing job opportunities in a community. A local resident preference is designed to increase the probability that current residents can remain in the community in the face of increasing market rate rents and housing prices and the loss of affordable units due to the expiration of covenants restricting rents. The purpose of a local worker preference for affordable housing units is to maximize the effect of an improved jobs to housing ratio by increasing local housing opportunities for local employees.

(k) The city commissioned the preparation of the City of Fremont Residential Displacement Study report dated June 10, 2021. The report demonstrated that (a) the City of Fremont region has experienced and is at risk of experiencing continued significant displacement of lower-income households; (b) a City of Fremont live/work preference is necessary to prevent additional displacement of lower-income households; (c) a City of Fremont live/work preference will not result in limits to access to housing by any individual protected class; and (d) the lower-income

population that will be eligible for residency in affordable housing developments is more racially and ethnically diverse than the general population in the area.

Sec. 18.155.020 Definitions.

For purposes of this chapter, the following additional definitions shall apply:

(c) “Affordable units” means living units which are required (i) under this chapter, (ii) as a condition of city financing, or (iii) otherwise pursuant to an agreement with the city, to be rented at affordable rents or to be sold at an affordable ownership costs to eligible households; provided that, in the case of city financed projects the definitions of affordable rent, affordable ownership cost, and household income have the equivalent meanings set forth in the documents evidencing city financing.

(k) “Live/work local preference” means a priority which is applied to eligible households who live or work within the city.

SECTION 3. FMC §18.155.095 ADDED

Fremont Municipal Code Title 18, Chapter 18.155, Section 18.155.095 is added to read as follows:

18.155.095 Live/Work Local Preference.

(a) The live/work local preference is to be applied when selling or leasing affordable units within rental and ownership projects. “Live/work local preference” and “affordable units” are defined in Section 18.155.020.

(b) An eligible household, as defined in Section 18.155.020, will be determined to live within the city if either of the following are true:

(1) The applicant resides at a residential address that is physically located within the current incorporated area of the city of Fremont. The city may require applicants to submit a driver license, voter registration, utility bill, vehicle registration or other evidence as proof of residency in the city.

(2) If the applicant lacks the resources and support networks to obtain housing and (A) has a nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (including a car, abandoned building, bus or train station, or camping ground) that is physically located within the current incorporated area of the city of Fremont or (B) has a nighttime residence that is a supervised public or privately operated shelter designated to provide living arrangements (including hotels and motels paid for by federal, state or local government programs for low-income individuals or by charitable organizations), congregate shelter, transitional housing, or temporary care facility/institution that is physically located within the current incorporated area of the city of Fremont. The city may require applicants to submit a letter from a homeless service or other social service provider, school enrollment record, vehicle registration, or other evidence as proof of residency in the city.

(c) An eligible household, as defined in Section 18.155.020, will be determined to work within the city if the applicant is working at least 20 hours or more per week within the incorporated area of the city. This includes applicants who have been hired or have received bona fide work offered in the city. Employment must be by an employer that pays business tax in Fremont, through operation of a city-based business that pays business tax in Fremont. Working in the city does not include self-employment consisting solely of operating a business entity established solely for the purposes of investment in a rental property.

(d) The live/work local preference must be applied at both initial occupancy and subsequent sale or rental of affordable housing units during the affordability term. Waiting lists for subsequent rental of an existing affordable unit must be established and periodically updated as approved by the Housing Manager consistent with the preferences and procedures stated herein.

SECTION 4. FMC § 18.155.100 AMENDED

Fremont Municipal Code Title 18, Chapter 18.155, Section 18.155.100 is amended to add the following text:

(b) The community development director may adopt guidelines to implement this article.

SECTION 5. CEQA

The City Council determines that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) per, without limitation, each on a separate and independent basis, (1) CEQA Guidelines Section 15162, as the proposed amendments are part of the project analyzed in the General Plan EIR and none of the circumstances necessitating preparation of a subsequent EIR pursuant to CEQA Guidelines Section 15162 are present; (2) CEQA Guidelines Section 15183, as a project consistent with the development densities and policies in the general plan and existing zoning and which does not involve any peculiar significant effects that were not previously analyzed or discussed as significant effects in prior EIRs, including the General Plan EIR (SCH#2010082060), Final Supplemental EIR for the Downtown Community Plan (SCH#2010072001 and SCH#2010082060), and the Final EIR for the Warm Springs/South Fremont Community Plan (SCH#2013032062). In addition, there are no previously identified significant effects which are substantially more severe than analyzed in the prior EIRs or cannot be substantially mitigated by the imposition of uniformly applied development policies or standards applied on a citywide basis. Any potential impact of the proposed amendments would be too speculative for reasoned analysis in the absence of specific development proposals. In addition, as a separate and independent basis, the proposed amendments are exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3) in that the amendments do not have the potential to cause a significant effect on the environment.

SECTION 6. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Fremont hereby declares that it would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences,

clauses or phrases be declared invalid.

SECTION 7. EFFECTIVE DATE

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

SECTION 8. PUBLICATION AND POSTING

The City Clerk has prepared and published at least five days before the date of adoption, this ordinance once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within fifteen (15) days after adoption of this ordinance, the City Clerk shall cause the ordinance to be published again with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

The foregoing ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on the ____ day of _____, 2022, and finally adopted at a regular meeting of the City Council held on the ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

EXHIBIT A TO ORDINANCE XX-2022

AN ORDINANCE OF THE CITY OF FREMONT AMENDING FREMONT MUNICIPAL CODE TITLE 18 PLANNING AND ZONING, CHAPTER 18.155 AFFORDABLE HOUSING, ADDING SECTION 18.155.095 LIVE/WORK LOCAL PREFERENCE AND MAKING FINDINGS OF CEQA EXEMPTION (CEQA GUIDELINES SECTIONS 15162, 15183, AND 15061(b)(3))

The Fremont Municipal Code is current through Ordinance 07-2022, passed June 21, 2022.

Chapter 18.155

AFFORDABLE HOUSING

Sections:

- 18.155.010 Basis and purposes.
- 18.155.020 Definitions.
- 18.155.030 Basic requirement.
- 18.155.040 Incentives.
- 18.155.050 Affordable housing plan – Timing of performance.
- 18.155.060 Standards for on-site affordable units.
- 18.155.070 Continued affordability.
- 18.155.080 Alternatives for for-sale residential projects.
- 18.155.085 Alternatives for rental housing projects.
- 18.155.090 Establishment of affordable housing fees – Use.
- 18.155.095 **Live/Work Local Preference**
- 18.155.100 Enforcement.

Prior legislation: 1990 Code § 8-22177.

18.155.010 Basis and purposes.

In enacting the ordinance codified in 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 provisions 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 ensure that market-rate housing mitigates its impacts on the need for affordable housing, assist in meeting the city's share of the region's housing need and help implement the goals, policies, and actions specified in the housing element of the general plan.
- (b) The housing element of the city's general plan, adopted on December 2, 2014, concluded that:
- (1) The shortage of affordable housing is one of the greatest challenges facing the San Francisco Bay Area. The region's housing costs are among the highest in the nation, potentially threatening its future economic vitality, environment, and quality of life.
 - (2) Fremont needs new housing to survive as a healthy city and to accommodate additional workers in its industrial and commercial areas, as well as housing for those serving the local economy. In recent years, most of the new homes constructed have been affordable to only a small fraction of the city's population and workforce. Between 2015 and 2020, the private market did not produce sufficient unregulated housing units affordable to households earning extremely low, very low, low, or moderate incomes.
 - (3) The city has adopted a goal of encouraging the development of affordable housing to help meet the city's assigned share of the regional housing need and has adopted a policy of encouraging the development of a diverse housing stock that provides a range of affordability levels. To implement this goal, the city has committed to consideration of modifications to this chapter to increase the production of affordable units at all income levels; in part through production of the moderate income share on site and payment of affordable housing fees to the city to be used for development of low, very low and extremely low income households.

The Fremont Municipal Code is current through Ordinance 07-2022, passed June 21, 2022.

This chapter retains alternatives that allow for creativity in achieving the overall goal of producing and retaining affordable units.

(4) The ability for lower wage workers to live and work in the same city has become increasingly difficult. Local workers that cannot access affordable housing in Fremont face longer, more costly commutes and reduced access to public transit. Additionally, the increased distance between affordable housing and job opportunities contributes to traffic congestion and green-house gas emissions.

(c) The Association of Bay Area Governments is currently finalizing the regional housing needs assessment for the Bay Area region, which occurs every eight years. Fremont's assessment is expected to more than double compared to 2015 to 2023. The assessment of affordable units is expected to represent about 60 percent of the total assessment. The city must adopt an updated general plan housing element by January 1, 2023, that has adequate sites zoned to accommodate the assigned number of housing units to serve all income-based allocations.

(d) Federal and state government programs do not provide nearly enough affordable housing or subsidies to satisfy the housing needs of moderate, low, very low, and extremely low income households.

(e) Land availability, land prices and increasing construction costs are key factors preventing development of new affordable housing. New housing construction in the city which does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This further reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the affordable units and affordable housing fees required by this chapter will help to ensure that part of the city's remaining developable land is used to provide affordable housing. At the same time, new market-rate housing contributes to the demand for goods and services in the city, increasing local service employment at wage levels which often do not permit employees to afford housing in the city. The "Affordable Housing Nexus Analysis, Fremont, California" study, dated October 2020 (the "Nexus Study"), prepared by Keyser-Marston Associates, Inc., quantifies the impacts of new market-rate units on the need for affordable housing in the city and the justified affordable housing fees to mitigate those impacts.

(f) An economically balanced community is only possible if part of the new housing built in the city is affordable to households with limited incomes. Requiring builders of new for-sale housing to include some affordable housing or to contribute to increasing the affordable housing stock in some other way is fair, not only because new development without affordable units contributes to the shortage of affordable housing but also because zoning and other ordinances concerning new housing production in the city should be consistent with the community's goal of fostering an adequate supply of housing for households at all affordability levels and should address the need for affordable housing related to market-rate housing production.

(g) In general, affordable units within each housing development would serve the goal of maintaining an economically balanced community. However, collection of affordable housing in-lieu fees from for-sale projects, instead of on-site construction of affordable housing, can be used to leverage outside funding sources for higher-density, 100 percent affordable projects, resulting in a greater number of affordable housing units that are affordable to households with extremely low, very low, and low incomes. Construction of affordable units off site and other alternatives to on-site construction may also provide affordable housing units. Consequently, the city desires to retain on-site production of moderate income units with opportunities for market-rate developers to utilize in-lieu fees and other alternatives to on-site construction.

(h) The city continues to experience the loss of affordable housing due to the expiration of covenants restricting rents in some affordable housing developments. Affordable housing fees may provide a source of financing to enable the city to preserve existing affordable housing that would otherwise be lost.

(i) The limited production of rental housing and the displacement of rental housing units through conversions to residential condominiums reduce the city's rental housing supply, which causes increased rental housing costs and decreased housing affordability. The provision of affordable units within residential condominium conversion projects provides affordable housing ownership opportunities that help offset the loss of affordable rental units.

The Fremont Municipal Code is current through Ordinance 07-2022, passed June 21, 2022.

(Ord. 2493 § 1, 11-26-02; Ord. 19-2006 § 3, 10-3-06; Ord. 5-2008 § 18, 4-1-08; Ord. 13-2010 § 1, 6-15-10; Ord. 10-2015 § 1, 4-7-15; Ord. 10-2021 § 1, 11-2-21. 1990 Code § 8-22170.)

(j) The purpose of a local resident preference for affordable housing units is to remedy or mitigate the displacement and gentrification impacts that may result from development activities and increasing job opportunities in a community. A local resident preference is designed to increase the probability that current residents can remain in the community in the face of increasing market rate rents and housing prices and the loss of affordable units due to the expiration of covenants restricting rents. The purpose of a local worker preference for affordable housing units is to maximize the effect of an improved jobs to housing ratio by increasing local housing opportunities for local employees.

(k) The city commissioned the preparation of the City of Fremont Residential Displacement Study report dated June 10, 2021. The report demonstrated that (a) the City of Fremont region has experienced and is at risk of experiencing continued significant displacement of lower-income households; (b) a City of Fremont live/work preference is necessary to prevent additional displacement of lower-income households; (c) a City of Fremont live/work preference will not result in limits to access to housing by any individual protected class; and (d) the lower-income population that will be eligible for residency in affordable housing developments is more racially and ethnically diverse than the general population in the area.

18.155.020 Definitions.

(a) “Affordable ownership cost” means a sales price resulting in projected average monthly housing payments, during the first calendar year of a household’s occupancy, including interest, principal, mortgage insurance, property taxes, homeowners’ insurance, homeowners’ association dues, if any, and a reasonable allowance for utilities, property maintenance, and repairs, not exceeding the following pursuant to the requirements of Cal. Health & Safety Code § 50052.5(b), as may be amended from time to time. Such affordable ownership cost currently is defined as follows:

- (1) Moderate income households: 110 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 35 percent and divided by 12.
- (2) Low income households: 60 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.
- (3) Very low income households: 50 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.

The city may determine sales prices of affordable units by any reasonable method, so long as average monthly housing payments of eligible households do not exceed those permitted by this subsection (a).

(b) “Affordable rent” means maximum monthly rent, including fees for housing services such as use and occupancy of the unit and land and associated facilities; any separately charged fees or service charges assessed by the property owner which are customarily charged in rental housing and required of all tenants, which include parking and other than security deposits; an allowance as determined by the Alameda County Housing Authority for the cost of an adequate level of service for utilities paid by the tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the applicant, and paid by the tenant, not exceeding the following, based on assumed household size pursuant to the Cal. Health & Safety Code § 50053(b):

- (1) Extremely low income households: 30 percent of the area median income, adjusted for household size based on unit size, multiplied by 30 percent and divided by 12.
- (2) Very low income households: 50 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.

The Fremont Municipal Code is current through Ordinance 07-2022, passed June 21, 2022.

- (3) Low income households: 60 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.
- (4) Moderate income households: 110 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12, but in no event greater than market rent.
- (c) “Affordable units” means living units which are required: (i) under this chapter, (ii) as a condition of city financing, or (iii) otherwise pursuant to an agreement with the city, to be rented at affordable rents or to be sold at an affordable ownership cost to eligible households; provided that, in the case of city financed projects the definitions of affordable rent, affordable ownership cost, and household income have the equivalent meanings set forth in the documents evidencing city financing.
- (d) “Area median income” means median income for Alameda County, adjusted for household size, as published pursuant to California Code of Regulations, Title 25, § 6932 (or its successor provision) by the California Department of Housing and Community Development (HCD).
- (e) “Assumed household size” means one person in a studio apartment, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter, unless a federal standard applicable to the development requires the use of a different assumed household size, in which case the federal standard shall apply.
- (f) “Construction cost index” means the Engineering News Record McGraw-Hill Construction Weekly Building Cost Index for San Francisco. If that index ceases to exist, the community development director shall substitute another construction cost index which in his or her judgment is as nearly equivalent to the original index as possible.
- (g) “Eligible household” means a household whose household income does not exceed the maximum specified for an extremely low, very low, low, or moderate income household defined in subsection (j) of this section, as applicable for a given affordable unit.
- (h) “First approval” means the first of the following approvals to occur with respect to a residential project: planned district approval, subdivision approval, conditional use permit, design review permit approval, other discretionary land use approval, or building permit.
- (i) “For-sale project” means a residential project, or portion thereof, that includes the creation of one or more residential living units that may be sold individually, including a condominium, stock cooperative, community apartment, or attached or detached single-family home. A for-sale project also includes a residential condominium conversion project as defined in Section 18.190.060, and the creation of residential living units that may be sold individually but are initially rented rather than sold.
- (j) “Household income” means the combined adjusted gross income for all adult persons living in a living unit as calculated for Alameda County and adjusted for household size that is published for extremely low, very low, low, and moderate income annually in Title 25 of the California Code of Regulations, § 6932 (or its successor provision), by the State of California Department of Housing and Community Development (HCD).
- (k) “Live/work local preference” means a priority which is applied to eligible households who live or work within the city.
- (l) “Living unit” means one or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.
- (m) “Market-rate units” means new living units in residential projects which are not affordable units under subsection (c) of this section.
- (n) “On-site” means at the project site.

- (o) “Planning area” means a geographic boundary identified within the city’s general plan.
- (p) “Rental project” means a residential project, or portion thereof, that creates living units that cannot be sold individually, except that construction of any accessory dwelling unit pursuant to Section 18.190.005 shall not be considered a rental project.
- (q) “Residential project” means any project containing two or more net new living units or residential lots or living units and residential lots which total two or more net new units and/or lots in combination, built pursuant to or contained in an application for a planned district, subdivision map, conditional use permit, design review permit approval, other discretionary city land use approval, or building permit. Contemporaneous construction of two or more living units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same city land use approval, shall also be considered a residential project. Construction shall be considered contemporaneous for all units which do not have completed final inspections for occupancy and which have outstanding, at any one time, any one or more of the following: planned district, subdivision map, conditional use permit, design review permit approval, or other discretionary city land use approvals, or building permits, or applications for such approval or permits. A residential condominium conversion project as defined in Section 18.190.060 is considered a residential project and is subject to this chapter. The provisions of this section shall be interpreted broadly to effect the purposes of this chapter and to prevent evasion of its terms. (Ord. 2493 § 1, 11-26-02; Ord. 20-2004 § 1, 7-27-04; Ord. 8-2005 § 2, 4-26-05; Ord. 19-2006 § 4, 10-3-06; Ord. 13-2010 § 1, 6-15-10; Ord. 16-2011 § 1, 10-4-11; Ord. 9-2014 § 21, 3-4-14; Ord. 10-2015 § 1, 4-7-15; Ord. 01-2017 § 12, 1-3-17; Ord. 10-2021 § 1, 11-2-21. 1990 Code § 8-22171.)

18.155.030 Basic requirement.

(a) For-Sale Projects. The following basic requirements apply to all for-sale projects unless an alternative is approved pursuant to Section 18.155.080:

- (1) In a for-sale residential project 15 percent of units shall be allocated as follows: At least five percent of all living units shall be made available at an affordable cost to moderate income households. Additionally, at least 10 percent of the units shall be made available as affordable to low income households.
- (2) For the purpose of calculating the number of affordable units required by this section, any accessory dwelling units authorized under Section 18.190.005 and any additional units authorized as a density bonus pursuant to Chapter 18.165 shall not be counted as part of the for-sale project.
- (3) Affordable units provided pursuant to subsection (a)(1) of this section or provided pursuant to one of the alternatives set forth in Section 18.155.080 shall be approved and completed no later than the times prescribed in Section 18.155.050.
- (4) For fractions of affordable units required in for-sale projects, the developer may either construct an additional affordable unit or pay an affordable housing fee for the fractional unit as prescribed by Section 18.155.090(b).

(b) Rental Projects. The following basic requirement applies to all rental projects unless an alternative is approved pursuant to Section 18.155.085:

In a rental housing project, at least 10 percent of all living units shall be made available at an affordable cost to low income households. Where the calculation of the required number of affordable units results in a fraction of a unit, the applicant is required to provide one additional unit if the fraction is at or above 0.5. If the fraction is below 0.5, no additional unit nor fee is required for the fractional unit.

(c) For residential projects that include both a for-sale project and a rental project, the provisions of subsection (a) of this section shall apply to the for-sale project, and the provisions of subsection (b) of this section shall apply to the rental project. (Ord. 2493 § 1, 11-26-02; Ord. 13-2010 § 1, 6-15-10; Ord. 16-2011 § 2, 10-4-11; Ord. 9-2014 § 21, 3-4-14; Ord. 10-2015 § 1, 4-7-15; Ord. 01-2017 § 13, 1-3-17; Ord. 10-2021 § 1, 11-2-21. 1990 Code § 8-22172.)

18.155.040 Incentives.

(a) Residential projects that include on-site affordable units in compliance with this chapter and that do not request a density bonus or other incentives pursuant to Chapter 18.165 may receive the following incentives:

(1) Subject to approval of the community development director or designee, affordable units may have different interior finishes and features than market-rate units in the same residential project, so long as the finishes and features are durable, of good quality and consistent with contemporary standards for new housing. Notwithstanding the above, all such units shall meet the criteria set forth in Section 18.155.060.

(2) In a residential project which contains attached multi-story living units, affordable units may contain only one story.

(b) Residential projects that include on-site affordable units in compliance with this chapter and request a density bonus or other incentives pursuant to Chapter 18.165 may receive incentives as specified in Chapter 18.165. (Ord. 2493 § 1, 11-26-02; Ord. 8-2005 § 2, 4-26-05; Ord. 19-2006 § 5, 10-3-06; Ord. 13-2010 § 1, 6-15-10; Ord. 16-2011 § 3, 10-4-11; Ord. 10-2015 § 1, 4-7-15; Ord. 10-2021 § 1, 11-2-21. 1990 Code § 8-22173.)

18.155.050 Affordable housing plan – Timing of performance.

(a) Affordable Housing Plan.

(1) An application for the first approval of a residential project shall include an affordable housing plan describing how the 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. As an alternative to compliance with the basic provisions included in Section 18.155.030, an applicant for a for-sale project may propose one or a combination of the alternatives listed in Section 18.155.080 as part of the affordable housing plan and an applicant for a rental project may propose the alternative listed in Section 18.155.085 or a combination of rental units and the payment of a portion of the affordable housing fees.

(2) The affordable housing plan shall be considered by and acted upon by the approval body with authority to approve the residential project. Before approving the affordable housing plan, the approval body shall consider whether the affordable housing plan conforms to this chapter. The approval body may approve an alternative or a combination of alternatives listed in Section 18.155.080 or 18.155.085 if it concludes that the alternative conforms to the applicable standards in the relevant subsection(s) of Section 18.155.080 or 18.155.085. If the affordable housing plan contains affordable units, timing requirements and occupancy of the affordable units shall be established at a ratio proportional to the timing and occupancy of the market-rate units within the residential project. The approval body may also modify the timing requirements for construction and occupancy of market-rate units to accommodate phasing schedules, model variations, or other factors, if the approval body determines this will provide greater public benefit. If an approval body modifies the timing requirements and occupancy of affordable units in a residential project resulting in an occupancy ratio of market-rate units proportionally exceeding the timing requirements for construction and occupancy of the affordable units, the city may require that completion of the affordable units be further secured by the applicant's agreement to pay an affordable housing in-lieu fee in the amount due under Sections 18.155.080 and/or 18.155.085. In the event the affordable units are not timely completed, the city shall transfer the deposited affordable housing fees to the city of Fremont affordable housing development fund.

(3) Conditions to carry out the purposes of this chapter shall be imposed on the first approval for a residential project. Additional conditions regarding the approved affordable housing plan may be imposed on later city approvals or actions, including without limitation development agreement, planned district approvals, subdivision approvals, conditional use permits, and building permits.

(4) An approved affordable housing plan which includes affordable units within a residential project or within a building phase of a residential project, where phasing has been approved as part of discretionary project approvals, may be amended prior to issuance of any building permit for the residential project or building phase, if applicable. If the applicant desires any modification to the approved affordable housing plan, an

application shall be submitted by the applicant to revise the approved affordable housing plan that is subject to review and action by the approval body that previously approved. Any proposed amendment to an approved affordable housing plan must be made prior to issuance of building permit for the residential project or a building phase of the residential project.

(5) Residential project applications deemed complete for processing prior to December 2, 2021, may continue to fulfill the requirements of their approved affordable housing plans including use of the previously established fee structure in effect at the time of their residential project application deemed complete. Fees established under this fee structure will be adjusted annually as set forth in Section 18.155.090.

(b) Affordable Housing Agreement.

(1) In all residential projects, affordable housing agreements acceptable to the community development director, and consistent with the requirements of state law and this chapter, shall be recorded against the project prior to approval of any final or parcel map, or issuance of any building permit, whichever occurs first. However, if the project's affordable housing obligation will be met entirely through the payment of affordable housing in-lieu fees, no affordable housing agreement need be recorded. For the purposes of this subsection (b), in the case where an early final or parcel map is proposed to facilitate phasing and/or financing of the residential project, or a building permit is proposed for site preparation, grading, and clearance, recording of an acceptable affordable housing agreement may be delayed, subject to the discretion of the community development director. If recording of an affordable housing agreement is delayed for the reason of an early final or parcel map, the community development director shall require the recordation of an agreement against all parcels created or adjusted by an early final or parcel map to ensure that certain ongoing conditions and restrictions related to the approved affordable housing plan, including phasing, completion, and occupancy, shall be met. In any case, an acceptable affordable housing agreement shall be completed and accepted by the community development director prior to issuance of a building permit for construction of any market-rate unit in the residential project.

(2) The affordable housing agreement shall specify the number, type, location, size, and phasing of all affordable housing units, provisions for income certification and screening of potential purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved affordable housing plan, as determined by the community development director.

(c) Issuance of Building Permits. In any residential project, no building permit shall be issued for any market-rate unit until the permittee has either:

- (1) Obtained permits for on-site affordable units sufficient to meet the requirements of the affordable units sufficient to meet the requirements of the affordable housing agreement; or
- (2) Paid affordable housing fees consistent with city-adopted procedures for payment; or
- (3) Received certification from the community development director that the permittee has met, or made arrangements satisfactory to the city to meet, an alternative requirement of Section 18.155.080 or 18.155.085.

(d) Final Inspections for Occupancy. In any residential project, unless modified by a development agreement or other approvals, including an approved affordable housing plan, no final inspections for occupancy of any market-rate unit shall be completed until the permittee has either:

- (1) Completed construction of on-site affordable units sufficient to meet the requirements of the affordable housing agreement; or
- (2) Paid affordable housing fees consistent with city-adopted procedures for payment; or

- (3) Completed corresponding alternative performance under Section 18.155.080 or 18.155.085. (Ord. 16-2011 § 4, 10-4-11; Ord. 10-2015 § 1, 4-7-15; Ord. 10-2021 § 1, 11-2-21. 1990 Code § 8-22174.)

18.155.060 Standards for on-site affordable units.

Except as provided in Section 18.155.040 on-site affordable units shall be comparable to the market-rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction. Affordable unit size should be generally representative of the unit sizes within the market-rate portion of residential projects, as acceptable to the community development director or designee. Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing. The affordable units shall be dispersed throughout the residential project in a manner acceptable to the community development director except that for an approved affordable housing plan that includes for-sale affordable units located outside of the project site as an alternative provided under Section 18.155.080. (Ord. 2493 § 1, 11-26-02; Ord. 19-2006 § 7, 10-3-06; Ord. 13-2010 § 1, 6-15-10; Ord. 16-2011 § 5, 10-4-11; Ord. 10-2015 § 1, 4-7-15; Ord. 10-2021 § 1, 11-2-21. 1990 Code § 8-22175.)

18.155.070 Continued affordability.

- (a) The initial and subsequent sales price of for-sale projects must be set at affordable ownership cost. The community development director may, from time to time, establish affordable ownership cost in compliance with the requirements of this chapter and based on reasonably available data.
- (b) For affordable ownership units, resale restrictions, deeds of trust and/or other documents acceptable to the community development director, all consistent with the requirements of this chapter, shall be recorded against the affordable units prior to sale of the units. For affordable rental units, a rent regulatory agreement consistent with the requirements of this chapter shall be recorded against the rental project prior to building permit issuance.
- (c) The forms of affordable housing agreements, resale restrictions, deeds of trust, rent regulatory agreements, and/or other documents authorized by this chapter, and any change in the form of any such document which materially alters any policy in the document, shall be approved by the city attorney and the community development director prior to being executed with respect to any residential project.
- (d) The documents required by subsection (b) of this section for affordable ownership units shall be for a term of a minimum of 30 years or longer as determined appropriate by the community development director. In the case of ownership affordable units that are transferred during the required term, renewed restrictions shall be entered into on each change of ownership with a minimum of a 30-year renewal term.
- (e) Affordable units which are initially owner-occupied shall not be rented by the owner, except in cases of substantial hardship including, but not limited to, active military duty and illness, and on specified terms as provided in a resale restriction agreement or other agreement acceptable to the community development director.
- (f) The maximum sales price permitted on resale of an affordable unit designated for owner-occupancy shall be the lower of: (1) fair market value; or (2) the seller's lawful purchase price, increased by the rate of increase of area median income during the seller's ownership. The sales price may also be modified to account for capital improvements made by the seller and deferred maintenance. The resale restrictions shall provide an option to the city to purchase any affordable owner-occupancy unit at the maximum price set forth in Section 18.155.020(a) or the appraised value, whichever is lower, that could be charged to a purchaser household, at any time the owner proposes sale.
- (g) No household shall be permitted to begin occupancy of a unit which is required to be affordable under this chapter unless the city has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by an affordable housing agreement, rent regulatory agreement, or resale restrictions. If the city maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of affordable units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with rules approved by the community development director.

(h) If the city has failed to identify an eligible buyer for initial sale of an affordable unit which is intended for owner-occupancy 90 days after the unit receives a completed final inspection for occupancy, upon 90 additional days' notice to the city and on satisfaction of such further conditions as may be included in city-approved restrictions (such as a further opportunity to identify an eligible buyer, sale to a nonprofit affordable housing organization, or additional marketing by owner), the owner may sell the unit at a fair-market value and shall pay the city an amount equal to the difference between the sales price and the affordable ownership cost.

The amount paid to the city shall be deposited into the city of Fremont affordable housing development fund. After such a sale, the unit shall not be subject to any requirement of this chapter. (Ord. 2493 § 1, 11-26-02; Ord. 20-2004 § 3, 7-27-04; Ord. 19-2006 § 8, 10-3-06; Ord. 13-2010 § 1, 6-15-10; Ord. 16-2011 § 5, 10-4-11; Ord. 9-2014 § 21, 3-4-14; Ord. 10-2015 § 1, 4-7-15; Ord. 10-2021 § 1, 11-2-21. 1990 Code § 8-22176.)

18.155.080 Alternatives for for-sale residential projects.

As an alternative to compliance with the other provisions of this chapter, an applicant proposing a for-sale residential project may propose one or a combination of the following alternatives as part of its affordable housing plan submitted with the first approval of the project. The approval authority may approve the alternative if the alternative conforms to the standards in the relevant subsection. Any affordable units provided by an applicant pursuant to one of the following alternatives shall comply with the standards specified in this chapter, including without limitation Section 18.155.070, Continued affordability, and shall be roughly equivalent in value to the basic requirement specified in Section 18.155.030.

(a) Affordable housing in-lieu fee only: For a for-sale project, the applicant may pay an affordable housing fee to mitigate the impacts of the project in lieu of construction of units affordable to low income and moderate income households on site. No affordable housing fee shall be imposed on accessory units and density bonus units. The levels of the fee and eligible uses of the fee by the city are set forth in Section 18.155.090.

(b) Affordable housing in-lieu fee plus construction of on-site moderate income units: For a for-sale project, the applicant may construct five percent of on-site units affordable to moderate income households as described in Section 18.155.070 and pay an affordable housing fee to mitigate the impacts of the project in lieu of construction of units affordable to low income households on site. No affordable housing fee shall be imposed on moderate income units, accessory units, and density bonus units. The levels of the fee and eligible uses of the fee by the city are set forth in Section 18.155.090.

(c) Voluntary Provision of Affordable Rental Units. Where ownership affordable units are required in a for-sale project by Section 18.155.030(a), and where applicants are constructing a project that includes a mix of for-sale and rental (i.e., housing without a subdivision map), the applicant may propose to meet the affordable housing obligation entirely by providing affordable rental units if the proposal meets all of the following conditions:

(1) At least 7.5 percent of all living units in the residential project shall be exclusively offered for rent to low income households and 7.5 percent of all living units in the residential project shall be exclusively offered for rent to very low income households. Variations focusing provision of units towards very low and low income households or that provide a higher total percentage of affordable units may be considered. For the purpose of calculating the number of affordable units required by this section, any accessory dwelling units authorized under Section 18.190.005 and any additional units authorized as a density bonus pursuant to Chapter 18.165 shall not be counted as part of the for-sale project.

(2) The affordable rental units shall be integrated with the proposed residential project and shall be comparable in infrastructure (including sewer, water and other utilities), construction quality, exposure to environmental conditions, access to amenities, and exterior and interior design to the market-rate units, including the number of bedrooms per unit. Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing.

(3) A rent regulatory agreement establishing affordable rents acceptable to the community development director, consistent with the requirements of this chapter, shall be recorded on the property title against the

residential project containing the affordable rental units prior to or concurrent with building permit issuance for any living unit in the residential project.

(4) The community development director may, from time to time, establish affordable rents in compliance with the requirements of this chapter and based on recently available data.

(d) Off-Site Construction. The applicant, or an entity controlled by the applicant, or another entity that has entered into an agreement with the applicant to provide affordable housing, may propose to construct affordable units on another site. The city may allow off-site construction if the proposal meets all of the following conditions:

(1) The off-site affordable units shall be constructed either within the same planning area as the residential project, within the city center, downtown or Warm Springs Innovation districts, or within a one-mile radius of the existing Fremont BART and Centerville stations, or the planned Irvington BART station;

(2) Financing or a viable financing plan, which may include public funding, shall be in place for the off-site affordable units; and

(3) Construction of the off-site affordable units may not have commenced prior to the first approval of the residential project.

Final inspections for occupancy of the market-rate units will be granted only after final inspections are completed for the off-site affordable units related to those market-rate units. However, the timing requirements set forth in this subsection may be modified by the approval body as provided in Section 18.155.050(a). Prior to issuance of any building permit for any of the market-rate units of the residential projects, the city may require that completion of off-site affordable units be further secured by the applicant's agreement to pay an affordable housing fee in the amount due under subsection (a) of this section in the event the off-site units are not timely completed.

(e) Property Dedication. The applicant may propose to dedicate, without cost to the city, property within or contiguous to the residential project sufficient to accommodate at least the required affordable units for the residential project. The city may approve property dedication pursuant to this subsection only if the proposal meets all of the following conditions at the discretion of the community development director:

(1) The number of affordable units to be constructed on the dedicated property shall be at least 10 percent greater than the number of affordable units required under Section 18.155.030(a), or the affordable units to be constructed on the dedicated property shall provide units affordable to households in a lesser income category than required under Section 18.155.070(a) (for example, low income units rather than moderate income units); and

(2) Financing or a viable financing plan, which may include public funding, shall be in place for construction of the affordable units on the dedicated property; and

(3) The property to be dedicated shall be suitable for construction of affordable housing at a feasible cost, shall be served by utilities, streets and other infrastructure, and shall have no hazardous materials or other conditions that constitute material constraints on development of affordable housing on the property.

The property shall be dedicated to the city prior to issuance of any building permit for the residential project for which it is serving as the affordable housing alternative.

(f) Purchase of Existing Market-Rate Units.

(1) To provide the affordable units required by this chapter, the applicant may propose to purchase existing market-rate units, that may be sold individually, and convert the market-rate units to affordable ownership units. The city may approve a proposal for purchase and conversion of existing market-rate units if the proposal meets all of the following conditions:

- (A) The market-rate units to be converted to affordable units shall be located in a residential project that is not subject to any existing affordability covenants except covenants restricting other converted market-rate units in the development pursuant to this subsection (f); and
 - (B) The market-rate units to be converted to affordable units shall either:
 - (i) When purchased by the applicant, be in the process of foreclosure, including properties with a recorded notice of default, notice of sale, or where the foreclosure process has been completed and title transferred to the lender; or
 - (ii) Be purchased through a lender-approved short sale no more than 24 months before approval of the residential project; or
 - (iii) Require substantial rehabilitation equal to at least 25 percent of the after-rehabilitation value of the property, inclusive of land value; and
 - (C) The market-rate units to be converted to affordable units shall be located either within the same planning area as the residential project, within the city center, downtown or Warm Springs Innovation districts, or within a one-mile radius of an existing rail transit station; and
 - (D) The affordable housing plan shall include a plan for funding long-term financial sustainability of the market-rate units to be converted to affordable units, including, among other things, increases in homeowners' association fees, special assessments and maintenance costs; and
 - (E) Any existing tenants in the market-rate units to be converted to affordable units shall be eligible to remain in the units; or the applicant shall provide relocation assistance pursuant to Cal. Gov't Code § 7260 et seq.
- (2) In reviewing a proposal for conversion of market-rate units to affordable units, the city's desires are:
- (A) The units be sold at affordable ownership cost to low income households; and
 - (B) No more than 15 percent of the units in any one common interest development be converted to affordable units; and
 - (C) In addition, the city encourages applicants to provide market-rate units with three or more bedrooms for conversion.
- (3) The affordable housing agreement shall contain provisions for purchase, rehabilitation, if required, sale, and long-term financial sustainability of the converted market-rate units.
- (4) If the converted market-rate units are not available for sale to eligible households prior to issuance of building permits for the market-rate units in the residential project, the applicant shall deposit affordable housing in-lieu fees in accordance with subsection (a) of this section with the city. The city shall transfer the deposited affordable housing fees to the city of Fremont affordable housing development fund if the market-rate units to be converted to affordable units are not available for sale to eligible households by the earlier of the following:
- (A) Eighteen months after issuance of the first building permit for the residential project, except that the community development director may approve an extension for up to six months if he or she determines that the developer is proceeding in good faith and that the converted market-rate units will be available for sale within six months; or
 - (B) Approval of final inspection for occupancy of more than 50 percent of the market-rate units in the residential project.

The Fremont Municipal Code is current through Ordinance 07-2022, passed June 21, 2022.

The timing requirements set forth in this subsection may be modified by the approval body as provided in Section 18.155.050(a).

(g) Preservation of Affordable Units at Risk of Loss. The applicant may propose to preserve existing affordable units at risk of loss to provide the affordable housing required by this chapter. The city may approve preservation of affordable units at risk of loss pursuant to this subsection only if the proposal meets all of the following conditions:

- (1) The affordable units to be preserved shall be affordable to low income and very low income households; and
- (2) The term of affordability shall be extended for a minimum of 55 years for rental affordable units and for a minimum of 30 years for ownership affordable units; and
- (3) The affordable units to be preserved shall be shown as at risk of loss in the housing element of the city's general plan, or the city council must find at a public hearing that the affordable units are eligible to, and reasonably expected to, convert to market-rate units in the next five years due to termination of subsidy contracts, mortgage repayment, or expiration of restrictions on use; and
- (4) Prior to occupancy of the residential project, the affordable units to be preserved shall be in decent, safe and sanitary condition and in compliance with all codes.

No building permit shall be issued for any units in the residential project until regulatory agreements acceptable to the community development director have been recorded to extend the term of affordability for the affordable units at risk of loss as required by this subsection. (Ord. 10-2015 § 1, 4-7-15; Ord. 27-2016 § 24, 12-6-16; Ord. 01-2017 § 14, 1-3-17; Ord. 10-2021 § 1, 11-2-21.)

18.155.085 Alternatives for rental housing projects.

As an alternative to compliance with the other provisions of this chapter, an applicant proposing a rental residential project may propose the following alternative as part of its affordable housing plan submitted with the first approval of the project. The approval authority shall approve the alternative if the alternative conforms to the standards in the relevant subsection.

(a) Affordable Housing In-Lieu Fee. For a rental project, the applicant may pay an affordable housing fee to mitigate the impacts of the project in lieu of construction of units affordable to low income households on site. No affordable housing fee shall be imposed on accessory units and density bonus units. The levels of the fee and eligible uses of the fee by the city are set forth in Section 18.155.090. (Ord. 10-2015 § 1, 4-7-15; Ord. 10-2021 § 1, 11-2-21.)

18.155.090 Establishment of affordable housing fees – Use.

(a) Affordable housing fees shall be set by city fee resolution or other action of 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, based on that review, may adjust the fee amount within the range justified by the most recently adopted Nexus Study and shall not exceed the cost of mitigating the impact of market-rate housing on the need for affordable housing in the city. The affordable housing fee amounts set forth for projects deemed complete prior to December 2, 2021, shall be adjusted once each fiscal year by the community development director based on the annual percentage increase or decrease in the construction cost index; provided, that any increased adjustment does not exceed the amounts justified by the most recently adopted Nexus Study.

(b) If an applicant provides on-site affordable units and elects to pay affordable housing in-lieu fees for a fractional unit pursuant to Section 18.155.030(a)(4), the fractional in-lieu fee payment shall be calculated as follows: fractional unit/total affordable unit requirement × per square foot fee × total habitable square footage in the project. Where moderate income units are being provided on site and a fractional unit obligation for moderate income is being satisfied with an in-lieu fee payment, then the applicable per square foot fee for purposes of the calculation is the moderate income component of the in-lieu fee and the applicable total affordable unit requirement is the number of

moderate income units required. Where low income units are being provided on site, and a fractional unit obligation for low income units is being satisfied with an in-lieu fee payment, then the applicable per square foot fee for purposes of the calculation is the low income component of the in-lieu fee and the applicable total affordable unit requirement is the number of low income units required.

The community development director may have the authority to review and modify the formula for calculating fractional units as he/she determined as appropriate which shall be available to the public and may be attached as an exhibit to the fee schedule.

- (c) All fees collected under this chapter shall be deposited into a separate account to be designated the city of Fremont affordable housing development fund.
- (d) A residential project that would result in demolition of existing residential units shall not be entitled to a fee credit for the demolished units and new units shall be assessed based upon their full square footage. Residential units that are retained shall not be charged a fee but will be charged for any expanded square footage.
- (e) The fees collected under this chapter and all earnings from investment of the fees shall be expended exclusively to provide or assure continued provision of affordable housing in the city through acquisition, construction, development assistance, rehabilitation, financing, or other methods, and for costs of administering these programs. A maximum of five percent of the fund may be used for administrative costs directly related to the provision of affordable housing financed by the fund. The housing shall be of a type, or made affordable at a cost or rent, for which there is a need in the city and which is not adequately supplied in the city by private housing development in the absence of public assistance and to the extent feasible shall be utilized to provide for low, very low, and extremely low income housing. (Ord. 2493 § 1, 11-26-02; Ord. 13-2010 § 1, 6-15-10; Ord. 10-2015 § 1, 4-7-15; Ord. 08-2017 § 7, 6-6-17; Ord. 10-2021 § 1, 11-2-21. 1990 Code § 8-22178.)

18.155.095 Live/Work Local Preference.

- (a) The live/work local preference is to be applied when selling or leasing affordable units within rental and ownership projects. “Live/work local preference” and “affordable units” are defined in Section 18.155.020.
- (b) An eligible household, as defined in Section 18.155.020, will be determined to live within the city if either of the following are true:
 - (1) The applicant resides at a residential address that is physically located within the current incorporated area of the city of Fremont. The city may require applicants to submit a driver license, voter registration, utility bill, vehicle registration or other evidence as proof of residency in the city.
 - (2) If the applicant lacks the resources and support networks to obtain housing and (A) has a nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (including a car, abandoned building, bus or train station, or camping ground) that is physically located within the current incorporated area of the city of Fremont or (B) has a nighttime residence that is a supervised public or privately operated shelter designated to provide living arrangements (including hotels and motels paid for by federal, state or local government programs for low-income individuals or by charitable organizations), congregate shelter, transitional housing, or temporary care facility/institution that is physically located within the current incorporated area of the city of Fremont. The city may require applicants to submit a letter from a homeless service or other social service provider, school enrollment record, vehicle registration, or other evidence as proof of residency in the city.
- (c) An eligible household, as defined in Section 18.155.020, will be determined to work within the city if the applicant is working at least 20 hours or more per week within the incorporated area of the city. This includes applicants who have been hired or have received bona fide work offered in the city. Employment must be by an employer that pays business tax in Fremont, through operation of a city-based business that pays business tax in Fremont. Working in the city does not include self-employment consisting solely of operating a business entity established solely for the purposes of investment in a rental property.

(d) The live/work local preference must be applied at both initial occupancy and subsequent sale or rental of affordable housing units during the affordability term. Waiting lists for subsequent rental of an existing affordable unit must be established and periodically updated as approved by the Housing Manager consistent with the preferences and procedures stated herein.

18.155.100 Enforcement.

(a) The city attorney shall be authorized to enforce the provisions of this chapter, and all developer and regulatory agreements and resale controls placed on affordable units, by civil action and any other proceeding or method permitted by law.

(b) The community development director may adopt guidelines to implement this article.

(c) 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. (Ord. 2493 § 1, 11-26-02; Ord. 13-2010 § 1, 6-15-10; Ord. 10-2015 § 1, 4-7-15; Ord. 10-2021 § 1, 11-2-21. 1990 Code § 8-22179.)