ORDINANCE NO. 2021-02


WHEREAS, the San Pablo Specific Plan and Form Based Code were adopted in 2014 to promote new high-density and mixed use in transit-oriented development for all income levels;

WHEREAS, the El Cerrito Affordable Housing Strategy adopted on August 17, 2017 identifies four policy pillars for implementation over the next five years to produce, protect and preserve affordable housing for El Cerrito residents;

WHEREAS, Pillar A: Leveraging private development to address affordable housing needs, of the El Cerrito Affordable Housing Strategy, recommends establishing a new inclusionary zoning ordinance and/or enacting new housing in-lieu fees for affordable housing;

WHEREAS, on May 15, 2018, the El Cerrito City Council adopted an ordinance (Inclusionary Zoning Ordinance) adding Chapter 19:30: Inclusionary Zoning to the El Cerrito Municipal Code;

WHEREAS, the Inclusionary Zoning Ordinance initially exempted projects with approved entitlements or a complete entitlement application as of the effective date of the ordinance, provided that a building permit was issued within two years of entitlement or by June 30, 2021, whichever came first;

WHEREAS, the COVID-19 global pandemic has added much uncertainty to financial markets;

WHEREAS, on June 2, 2020, the City Council amended the ordinance allowing existing exempt projects to be exempt from the ordinance until June 30, 2021, provided that a building permit application is submitted by this date and the permit is issued within six months of submittal;

WHEREAS, in order to allow developers to secure financing to construct entitled projects in the current uncertain environment, additional time is needed;

WHEREAS, the proposed ordinance amendments will allow additional time to secure financing by allowing existing exempt projects to submit an application to the City Manager to request a limited extension from the ordinance by June 30, 2021, provided that a building permit application is submitted by January 1, 2022 and construction begins by July 1, 2022;
WHEREAS, any approved extension will expire on January 1, 2022, if a building permit application has not been submitted, and July 1, 2022, if construction has not commenced;

WHEREAS, no extension of exemption may be approved for a project if noticed violations of the Municipal Code, California Building Codes, or other state or federal laws related to conditions on the Residential Development project property have not been corrected prior to the filing of an extension application;

WHEREAS, the City of El Cerrito supports the production of housing at all income levels; and

WHEREAS, on April 21, 2021 the Planning Commission, adopted Resolution PC2021-06 recommending that the City Council amend Chapter 19.30, "Inclusionary Zoning" of the El Cerrito Municipal Code, as detailed in this ordinance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Incorporation of Recitals. The City Council finds that the above Recitals are true and correct and are incorporated herein by reference.

Section 2: Amendment of Title 19 of the Municipal Code. Subsection D of Section 19.30.030 and Subsection A of Section 19.30.040 of the El Cerrito Municipal Code is hereby amended to read as follows: (strikeout indicating deleted text and underline indicating added text)

19.30.030. - Effective Date and Applicability.

D. Special Circumstances Related to Exemptions.

3. Limited extension of exemption due to COVID-19 delay. In recognition of delays to residential development projects resulting from the economic dislocations of the COVID-19 pandemic, Residential Development projects that are exempt under subsections (C)(4) and (C)(5) of this Section may apply for a limited extension of their exemption, as provided for in this subsection.

a. An application for a limited extension under this subsection shall be filed by June 30, 2021, and include all of the following:

1. An application on a form prepared by the City or a Letter of Request.


3. A project schedule for the Residential Development project showing that the applicant will be able to file a substantially complete application for building permits by January 1, 2021, and to begin construction of the Residential Development project by July 1, 2022.

4. An Application Fee to be established by the City Council.
b. The City Manager may grant a limited extension of a Residential Development project's exemption from this Chapter under subsections (C)(4) and (C)(5) of this Section, based upon a determination, in light of the information provided in the application and any other information regarding the economic impact of the COVID-19 pandemic on the project or information regarding the project schedule and delays in the project and delays in the project that the City Manager considers relevant, that the Applicant will be able to comply with the requirements of the extension listed below. Any extension granted shall be subject to the following conditions and any others that the City Manager determines are necessary or appropriate for the Residential Development project:

1. The Applicant shall submit a building permit application by January 1, 2022; and
2. The Applicant shall start construction by July 1, 2022.

c. No extension of exemption may be approved for a Residential Development project if noticed violations of the Municipal Code, California Building Codes, or other state or federal laws related to conditions on the Residential Development project property have not been corrected prior to the filing of an extension application.

d. In the event that an extension is approved by the City Manager and the Residential Development has not submitted a building permit application by January 1, 2022, or construction of the Residential Development project has not commenced by July 1, 2022, the provisions of this Chapter shall apply, unless the requirements are waived pursuant to Section 19.30.070(C).

19.30.040. - Inclusionary Housing Requirements.

A. Inclusionary Housing Requirement.

1. All new residential developments and contiguous property under common ownership and control shall include inclusionary units. Calculations of the number of inclusionary units required by this section shall be based on the number of dwelling units in the residential development, excluding any density bonus units as defined in this chapter.

Section 3: Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

Section 4: Effective Date. This Ordinance shall take effect and be enforced thirty days after the date of its adoption. Prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or
published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on May 4, 2021 and passed by the following vote:

AYES: Mayor Fadelli; Mayor Pro Tem Quinto; Councilmembers Abelson, Motoyama, and Rudnick
NOES: None
ABSENT: None
ABSTAIN: None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on May 18, 2021 and passed by the following vote:

AYES: Mayor Fadelli; Mayor Pro Tem Quinto; Councilmembers Abelson, Motoyama, and Rudnick
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:

Paul Fadelli, Mayor

ATTEST:

Holly M. Charléty, City Clerk

ORDINANCE CERTIFICATION

I, Holly M. Charléty, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2021-02 of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 18th day of May, 2021; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this __ day of May, 2021.

Holly M. Charléty, City Clerk