MEETING DATE: August 26, 2019

ITEM TITLE: Adopt Ordinance 1550 Amending Municipal Code Chapter 18.16 - Affordable Housing Programs - to Require Rental Residential Multifamily Builders to Build Below Market Rate Units, Eliminate the Below Market Rate in Lieu Fee Alternative, and Make Other Conforming Amendments.

RECOMMENDATION:

Adopt Ordinance 1550 amending Municipal Code Chapter 18.16 – Affordable Housing Programs – to require Rental Residential Multifamily Builders to build below market rate units, eliminate the Below Market Rate In Lieu Fee alternative and make other conforming amendments.

FISCAL IMPLICATIONS:

None.

BACKGROUND:

To encourage the development of affordable housing throughout the city, San Carlos adopted Chapter 18.16 (Affordable Housing Programs) in Title 18 (Zoning) of the San Carlos Municipal Code. Chapter 18.16 is an "inclusionary housing" ordinance, which requires a specified share of new residential construction be affordable at below market rate (“BMR”) to households at lower- and moderate-income levels.

In its 2015 decision California Building Industry Ass’n v. City of San José (CBIA), the California Supreme Court determined that inclusionary requirements for residential projects are land use provisions, similar to rent and price controls. Because land use and price control authority comes from a city’s general police power, residential inclusionary requirements that are designed to further the public health, safety, and welfare can be adopted without being justified by a nexus study so long as the requirements do not prevent property owners from having the opportunity to earn a fair return on their properties. To date, efforts to overturn the CBIA case at the United States Supreme Court have failed. Therefore, a nexus study is not currently required for residential inclusionary requirements.

The Palmer/Sixth Street Properties L.P. v. City of Los Angeles (“Palmer”) case was decided in 2009, and for a time, Palmer precluded California cities from requiring long term rent restrictions or inclusionary requirements on rental units. On September 29, 2017, Governor Brown signed
Assembly Bill ("AB") 1505 to restore cities' and counties' ability to require on-site affordable units within rental projects. This law became effective on January 1, 2018 as Government Code Sections 65850(g) and 65850.01. Under AB 1505, cities can impose inclusionary requirements on rental residential developments provided that: (1) the requirements are imposed in the zoning ordinance; (2) if more than 15 percent of rental units are required to be affordable to low-income households, the California department of Housing and Community Development may require that the requirement be justified by an economic feasibility study under certain circumstances; and (3) alternatives to on-site compliance are allowed.

San Carlos Municipal Code Chapter 18.16 currently requires that that builders of for-sale market rate housing who construct seven or more dwelling units restrict at least 15% of the total units as BMR units that are for sale to and occupancy by moderate- and low-income households at an affordable price. In ownership projects, as an alternative to providing 15% of the total units as BMR units on site, a builder can choose to provide fewer BMR units if: (a) there is an increase in the number of bedrooms in larger BMR units (as an incentive for family units); or, (b) provide greater levels of affordability, such as an extremely low-income or very low-income BMR unit. Ownership BMR units may also be provided off-site, but only if there are 10% more BMR units than otherwise required and if the units are located in an area of need (such as near jobs). Finally, in lieu fees may be paid if the builder can demonstrate that it is economically infeasible to construct BMR units.

Rental residential developments are currently subject to an affordable housing impact fee, or, at the builder's option, may satisfy the requirement by constructing at least 15% of the total units as BMR units, with 5% for low- and 10% for very low-income households. The City Council has directed staff to amend Chapter 18.16 to apply BMR production requirements to rental market rate housing developments consistent with AB 1505 and to remove payment of fees as an alternative.

The Planning Commission, at its July 1, 2019 meeting, adopted a Resolution recommending that the City Council introduce this Ordinance to amend Municipal Code Chapter 18.16. At its July 8, 2019 meeting, the City Council introduced this Ordinance.

ANALYSIS:

The form of the Ordinance and specific proposed text changes implementing the City Council's direction to amend Chapter 18.16 are attached to this staff report. The proposed amendments to Chapter 18.16 are primarily intended to accomplish two objectives: (1) require BMR units rather than fees in rental residential developments; and (2) eliminate in lieu fees as an alternative for projects to encourage production of BMR units. Specific proposed amendments in each section of Chapter 18.16 are discussed in more detail below.

In Section 18.16.010: Purpose, new text is proposed to reflect that the Ordinance is adopted to enhance the public health, safety, and welfare, reflecting the language from the CBIA court case discussed above. New text is also proposed to address the BMR requirements for rental residential development and to reflect the alternative methods of compliance that are available to builders.

In Section 18.16.020: Definitions, the definition of "affordable rent" is re-ordered so that the defined terms appear in alphabetical order. Previously defined terms "affordable housing impact fee," "standard unit," and "total development cost" are proposed to be deleted. These terms were used in connection with the calculation of the impact fee charged to rental projects and the...
calculation of in lieu fees available as an alternative. Because the Ordinance proposes to require BMR units in rental developments and removes the in lieu fee as an alternative for projects with seven or more units, these terms are no longer required.

The most substantive changes are proposed in Section 18.16.030: Below market rate housing requirements. Subsection A is proposed to be amended so that the BMR requirement applies to both rental and ownership residential development. The ownership BMR requirement would remain unchanged, requiring 10% of units to be affordable to moderate-income households and 5% of units to be affordable to low-income households. The rental BMR requirement would be added to require at least 15% of units be affordable to lower-income households, specifically 10% affordable to very low-income households, and 5% affordable to low-income households. The Ordinance also proposes language to clarify that affordability requirements are based on a project's total density before any density bonus units are added, and also that units that meet the requirements for this Ordinance and for a density bonus may count towards the satisfaction of a project's BMR obligation. These changes are consistent with recent court cases and recommended to avoid claims that the Ordinance is inconsistent with State Density Bonus Law (Government Code Section 65915). Finally, the Ordinance proposes to retain an in lieu fee for projects with fewer than seven units, which would be set by a resolution of the City Council based on an affordability gap analysis. The City's Nexus Study and Fee Analysis Summary dated February 2, 2019 prepared by Rosenow Spevacek Group, Inc. includes the most recent affordability gap analysis reviewed and approved by the City.

Section 18.16.070: Alternatives, sets forth options for compliance apart from the generally-applicable 15% BMR requirement. However, the Ordinance proposes to remove the option of paying in lieu fees. Other changes in Section 18.16.070 include deletion of references to the former redevelopment area.

No changes are proposed to Sections 18.16.040, 050, 080, 090, 100, 110, 120, or 130. In Section 18.16.060.A, a change is proposed to reflect the renumbered subsection in Section 18.16.030, but the Section otherwise remains unchanged.

Together, the proposed amendments will help the City increase BMR unit production in residential projects while retaining ample clear alternative compliance measures to give builders in San Carlos flexibility.

Environmental Determination

Pursuant to Public Resources Code Section 21065 and California Environmental Quality Act ("CEQA") Guidelines Section 15378, the proposed Ordinance does not constitute a “project” within the meaning of CEQA in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review. The proposed Ordinance also is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) since there would be no possibility of a significant effect on the environment, in that its provisions requiring the provision of affordable housing would not have any effect on the physical environment.
ALTERNATIVES:

The alternatives available to the City Council include:

1. Adopt Ordinance 1550 amending Municipal Code Chapter 18.16 – Affordable Housing Programs – to require Rental Residential Multifamily Builders to build below market rate units, eliminate the Below Market Rate In Lieu Fee alternative and make other conforming amendments; or

2. Do not adopt Ordinance 1550; or

3. Provide staff with alternative direction.

Respectfully submitted by:

Al Savay, AICP
Community Development Director

Martin Romo, Economic Development & Housing Manager

Approved for submission by:

Jeff Maltbie, City Manager

ATTACHMENT(S):
1. Ordinance 1550
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CARLOS
AMENDING MUNICIPAL CODE CHAPTER 18.16 – AFFORDABLE HOUSING
PROGRAMS – TO REQUIRE RENTAL RESIDENTIAL MULTIFAMILY BUILDERS TO BUILD
BELOW MARKET RATE UNITS, ELIMINATE THE BELOW MARKET RATE IN LIEU FEE
ALTERNATIVE, AND MAKE OTHER CONFORMING AMENDMENTS.

WHEREAS, California Government Code Section 65580(d) states that all cities have a
responsibility to use the powers vested in them to facilitate the improvement and development
of housing and to make adequate provision for the housing needs of all economic segments of
the community; and

WHEREAS, pursuant to Public Resources Code Section 21065 and California
Environmental Quality Act (“CEQA”) Guidelines Section 15378, the proposed “project” does not
constitute a “project” within the meaning of CEQA in that it has no potential to cause either a
direct physical change in the environment, or a reasonably foreseeable indirect physical change
in the environment, and therefore does not require environmental review. The proposed
Ordinance also is exempt from environmental review pursuant to CEQA Guidelines Section
15061(b)(3) since there would be no possibility of a significant effect on the environment, in that
its provisions requiring the provision of affordable housing would not have any effect on the
physical environment; and

WHEREAS, at a duly noticed public hearing held on July 1, 2019, the Planning
Commission considered amendments to Chapter 18.16 of the San Carlos Municipal Code; and

WHEREAS, by Resolution PC2019-06, adopted on July 1, 2019, the Planning
Commission recommended the City Council adopt the proposed amendments; and

WHEREAS, the City Council of the City of San Carlos held a duly noticed public hearing
on July 8, 2019 to consider the proposed amendments to Chapter 18.16 of the Municipal Code;
and

WHEREAS, the City Council has duly considered all evidence, including testimony and
the evaluation and recommendations by staff, presented at said hearings.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of San Carlos as
follows:

SECTION 1: The City Council of the City of San Carlos hereby finds and declares that
the foregoing recitals are true and correct and are incorporated into this Ordinance as though fully
set forth herein. The City Council further finds as follows:

1. The ordinance amendment is consistent with the General Plan.

Rental and owner-occupied housing in the city of San Carlos has become steadily
more expensive. In recent years housing costs have escalated sharply, increasing
faster than incomes for many groups in the community. As a result, there is a
severe shortage of adequate, affordable housing for extremely low-, very low-, low-, and moderate-income households. Requiring that new market rate rental
and owner-occupied housing provide a percentage of total units for lower- and moderate-income households will increase the supply of such housing options. By increasing the supply of housing affordable to lower- and moderate-income households, the amendments will help implement Policy HOU-1.2 of the General Plan's Housing Element, which calls for the City to minimize potential displacement of lower-income households from the City due to increasing housing prices and rents.

General Plan Housing Element Policy HOU-5.5 calls for the City to provide an adequate number of affordable housing units to extremely low-, very low- and low-income households based on the City's share of the regional housing needs. These amendments will help increase the supply of affordable rental housing to lower-income households, consistent with the General Plan.

Therefore, as stated in the General Plan's Housing Element, it is the City's policy to encourage the provision of a wide range of housing by location, type of unit, and price to meet the City's share of the regional housing needs. The City can achieve its goals of providing more affordable housing and achieving an economically balanced community only if part of the new housing built in the city is affordable to households with limited incomes, which these amendments would require. Accordingly, the ordinance amendment is consistent with the General Plan.

2. The ordinance amendment is consistent with the purpose of this title to promote the growth of the city in an orderly manner and to promote and protect the public health, safety, peace, comfort, and general welfare.

As described above, the amendments will advance the City's interest in providing additional housing affordable to all income levels and dispersed throughout the city because affordable units required by the ordinance codified in this chapter, including both rental and ownership units, must be affordable to either very low-, lower-, and moderate-income households. Requiring affordable units within new residential development enhances the public welfare by fostering an adequate supply of housing for persons at all economic levels and maintaining both economic diversity and geographically dispersed affordable housing within the city.

Moreover, requiring builders of new market rate housing to provide some housing affordable to very low-, low-, and moderate-income households is also reasonably related to the impacts of their developments, because rising land prices has been a key factor in preventing development of new affordable housing. New market rate housing uses available land and drives up the price of remaining land. New development without affordable units reduces the amount of land development opportunities available for the construction of affordable housing. In addition, new residents of market rate housing place demands on services provided by both public and private sectors, creating a demand for new employees. Some of these public and private sector employees needed to meet the needs of the new residents earn incomes only adequate to pay for affordable housing. Because affordable housing is in short supply in the city, such employees may be forced to live in less than adequate housing within the city, pay a disproportionate share of their incomes to live in adequate housing in the
city, or commute ever increasing distances to their jobs from housing located outside the city. These circumstances harm place strains on the City's ability to accept and service new market rate housing development.

SECTION 2: Chapter 18.16: Affordable Housing Programs is hereby amended as follows:

18.16.010 Purpose.

The purpose of this chapter is to:

A. Encourage the development and availability of housing affordable to a broad range of households with varying income levels within the city as mandated by State law, California Government Code Section 65580 et seq, and following.

B. Enhance the public health, safety, and welfare within the city. Offset: Requiring builders of new market rate housing to provide some housing affordable to very low-, lower-, and moderate-income households is also reasonably related to the impacts of such developments, because there is a need to offset the demand for affordable housing that is created by new development and mitigate environmental and other impacts that accompany new residential and commercial development by: protecting the economic diversity of the City's housing stock; reducing traffic, transit, and related air quality impacts; promoting jobs/housing balance; and reducing the demands placed on transportation infrastructure in the region.

C. Promote the City’s goal to add affordable housing units to the City’s housing stock in proportion to the overall increase in new jobs and housing units.

D. Support the Housing Element policy to consider use of funds for developments with a higher percentage of below market rate units or deeper affordability than otherwise is required.

E. Support the Housing Element policy to encourage second units as a form of affordable housing.

F. Support the Housing Element goal of assisting in the development of new housing that is affordable at all income levels and the policies and actions that support this goal.

G. Support the Housing Element goal of removing and/or mitigating potential governmental constraints to the provision of adequate, affordable housing and the policies and actions that support this goal.

H. Support the guiding principle of the Housing Element that housing in San Carlos supports an economically and socially diverse population.

I. Support the guiding principle of the Housing Element that housing in San Carlos creates and supports vibrant neighborhoods and a cohesive sense of community.

J. Meet the housing needs identified by the Housing Element of the General Plan.
K. Encourage the production of the very low-, low-, and moderate-income units planned for in the Housing Element of the General Plan.

L. Comply with the provisions of Government Code Section 65915 mandating the adoption of a City ordinance that specifies procedures for providing density bonuses and other incentives and concessions.

M. Provide and maintain affordable housing opportunities in the city through an affordable housing program for both ownership and rental housing, and, in furtherance of that goal, includes rental affordable housing requirements in this chapter consistent with Government Code Sections 65850(g) and 65850.01.

N. Provide builders with alternatives to construction of below market rate units on the same site as the market rate residential development. Therefore, this chapter includes a menu of options from which a builder may select an alternative to the construction of below market rate units on the same site as the market rate residential development.

18.16.020 Definitions.

As used in this chapter and in Chapter 18.17, the following terms shall have the following meanings:

A. “Administrator” means the Housing Manager of the City or other person designated by the City Manager.

B. “Affordable rent” means monthly rent, including utilities, for a below market rate unit that does not exceed:

1. For very low-income households, one-twelfth of fifty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

2. For low-income households, one-twelfth of sixty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

C. “Affordable housing impact fee” is a fee applicable only to residential rental developments and residential ownership developments consisting of either one dwelling unit or an addition of one thousand square feet or more that shall be based upon the cost of mitigating the impact of market rate units in a residential development on the need for affordable housing in the City.

B. “Affordable ownership cost” means a sales price for a below market rate unit, based on a reasonable down payment, that results in a monthly housing cost (including mortgage principal
and interest, property taxes, insurance, utilities, and homeowners’ association costs, if any) that does not exceed:

1. For very low-income households, one-twelth of fifty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

2. For low-income households, one-twelfth of seventy percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

3. For moderate-income households, one-twelfth of one hundred ten percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty-five percent.

C. “Affordable rent” means monthly rent, including utilities, for a below market rate unit that does not exceed:

1. For very low-income households, one-twelfth of fifty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

2. For low-income households, one-twelfth of sixty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

D. “Area median income” means the median household income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

E. “Assumed household size based on unit size” means a household of one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom, unless the requirements of another funding source require an alternate method of calculating assumed household size.

F. “Below market rate housing agreement” means a written agreement between a builder and the City as provided by Section 18.16.060(C).

G. “Below market rate housing plan” means a plan for a residential development submitted by a builder as provided by Section 18.16.060(B).

H. “Below market rate incentives” means incentives provided by the City for below market rate (BMR) units and density bonus BMR units pursuant to Chapter 18.17.

I. “Below market rate (BMR) unit” means a dwelling unit that shall be offered at an affordable rent or affordable ownership cost to moderate-, low- and very low-income households and is required by the City pursuant to Section 18.16.030.
J. “Builder” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks City approvals for all or part of a residential development.

K. “City” means the City of San Carlos.

L. “Density bonus” is as defined in Chapter 18.17.

M. “Density bonus below market rate (BMR) unit” is as defined in Chapter 18.17.

N. “First approval” means the first discretionary approval to occur with respect to a residential development, or, for residential developments not requiring a discretionary approval, the issuance of a building permit.

O. “Household” means one person living alone or two or more persons sharing residency whose income is considered for housing payments.

P. “In lieu fee” is as defined in Section 18.16.030(A)(3).

Q. “Low-income household” means a household whose annual income does not exceed the qualifying limits set for lower-income households in Section 50079.5 of the California Health and Safety Code.

R. “Market rate unit” means a dwelling unit in a residential development that is not a below market rate unit or a density bonus BMR unit or is not otherwise required by this chapter to be affordable to very low-, low-, or moderate-income households.

S. “Moderate-income household” means a household whose income does not exceed the qualifying limits set for persons and families of low- or moderate-income in Section 50093 of the California Health and Safety Code.

T. “Off-site below market rate unit” means a below market rate unit that will be built separately or at a different location than the residential development.

U. “On-site below market rate unit” means a below market rate unit that will be built at the same location as the residential development.

V. “Residential development” means any development project requiring any discretionary permit from the City, or a building permit, and which would create one or more additional dwelling units and/or lots by construction or alteration of structures, or by subdivision of existing lots, or which would add one thousand square feet or more to an existing dwelling unit. A residential development includes dwelling units that are part of a mixed-use development and the conversion of existing dwelling units to community housing subdivision ownership as defined in Chapter 17.48.

W. “Residential ownership development” means any residential development project that includes the creation of one or more residential dwelling units and/or lots that may be sold individually, or that would add one thousand square feet or more to an existing dwelling unit that
may be sold individually. A residential ownership development also includes the conversion of existing dwelling units to community housing subdivision ownership as defined in Chapter 17.48.

X. “Residential rental development” means any residential development project that creates one or more residential dwelling units that cannot be sold individually, or that would add one thousand square feet or more to an existing dwelling unit that cannot be sold individually.

Z. “Standard unit” means the base market rate unit that a purchaser could buy or renter could lease without paying for additional features or upgrades such as flooring, cabinetry, or fixtures.

AA. “Total development cost” means the total value of a project’s:

1. Estimated construction costs as defined in the California Building Code;
2. The cost of land;
3. Financing costs; and
4. Any indirect costs.

BB. “Very low-income household” means a household whose income does not exceed the qualifying limits set for very low-income households in Section 50105 of the California Health and Safety Code.

18.16.030 Below market rate housing requirements.

A. Residential Ownership Development. For all residential ownership developments of seven or more dwelling units, at least fifteen percent of the total units shall be below market rate units restricted for rent or sale to and occupancy by moderate-, low-, and very low-income households unless the residential development is exempt under Section 18.16.040. The number and type of below market rate units required for a particular residential ownership development will be determined at first approval of the residential ownership development in accordance with the provisions of Section 18.16.060. If a change in the residential ownership development design results in a change in the total number of units, the number of below market rate units required will be recalculated to coincide with the final approved project.

1. Calculation. In determining the number of whole below market rate units required, any decimal fraction less than one-half shall be rounded down to the nearest whole number, and any decimal fraction of one-half or more shall be rounded up to the nearest whole number.
1. **Type of Below Market Rate Units—Residential Ownership Development.** At least fifteen percent of the total units in a residential ownership development shall be below market rate units, of which ten percent shall be affordable to moderate-income households and five percent affordable to low-income households unless an alternative is approved as described in Section 18.16.070, or the builder chooses the rental alternative specified in subsection C of this section. 18.16.070.

2. **Residential Rental Development.** At least fifteen percent of the total units in a residential rental development shall be below market rate units, of which ten percent shall be affordable to very low-income households and five percent affordable to low-income households unless an alternative is approved as described in Section 18.16.070.

B. **Calculation.** In determining the number of whole below market rate units required, calculations shall be based on the number of dwelling units in the residential development, excluding any units above the otherwise maximum allowable density that are approved pursuant to the State Density Bonus Law, Government Code Section 65915 et seq. Any decimal fraction less than one-half shall be rounded down to the nearest whole number, and any decimal fraction of one-half or more shall be rounded up to the nearest whole number.

C. **In lieu Fee.** Under the circumstances specified in this paragraph, the below market rate housing requirements in Section 18.16.030(A) may be satisfied by the payment of a fee to the City in lieu of constructing the below market rate units within the residential development.

1. **In Lieu Fee.** For a residential ownership development of one dwelling unit, or for an addition of one thousand square feet or more to an existing dwelling unit that may be sold individually, if an affordable housing impact fee has been adopted, the builder shall pay the affordable housing impact fee or construct a second dwelling unit consistent with Section 18.23.210, Second dwelling units.

2. For a residential ownership development that creates one additional lot or two to six dwelling units and/or lots, or for a residential ownership development that triggers a decimal fraction of less than one-half, the builder shall pay an in lieu fee for the partial unit or build a below market rate unit. This obligation to build or pay an in lieu fee shall apply to each type of below market rate unit (i.e., affordable to a low-income household or a moderate-income household), as determined by calculating the decimal fraction pursuant to subsections (A)(1) and (A)(2) of this section or by determining the number and type of below market rate units for which an in lieu fee has been approved pursuant to Section 18.16.070(A)(6). The in lieu fee shall be established by resolution of the City Council and shall not exceed the difference between the approximate average affordable ownership cost of a below market rate unit affordable to a low-income household or a
moderate-income household and the total development cost of the below market rate unit.

3. Purpose of In Lieu Fees The in lieu fee may be established from time-to-time—by resolution of the City Council or may be determined for a specific residential development through the preparation of an affordability gap analysis that will determine the difference between the affordable sales price or rent and the fair market rate price for the unit, but in no event shall the in lieu fee exceed the cost of mitigating the impact of market rate units in a residential development on the need for affordable housing in the city.

4. Nothing in this chapter or Chapter 18.17 shall deem or be used to deem the in lieu fee authorized pursuant to subsection (A)(3) of this section as an ad hoc exaction, as a mandated fee required as a condition to developing property, or as a fee subject to the analysis in Building Industry Association of Central California v. City of Patterson, 171 Cal.App.4th 886 (2009). Any in lieu fee adopted by the City Council is a menu option that may serve as an alternative to the on-site below market rate housing requirements set forth in this chapter.

B. Residential Rental Development. For any residential rental development, if an affordable housing impact fee has been adopted, it shall be paid upon issuance of a building permit for each dwelling unit or addition of one thousand square feet or more in the residential rental development, unless an alternative is approved as described in Section 18.16.070, or the builder chooses the rental alternative specified in subsection C of this section. The affordable housing impact fee shall be established by resolution of the City Council.

C. Rental Alternative. If the builder of a residential ownership development chooses to rent the below market units rather than to sell the below market rate units, or if the builder of residential rental development chooses to provide below market units rather than pay an affordable housing impact fee, then at least fifteen percent of the total units shall be below market rate units, of which five percent shall be affordable to low-income households and ten percent affordable to very low-income households. To ensure compliance with the Costa-Hawkins Act, the City may only approve a proposal to rent the below market rate units if the builder agrees in a below market rate housing agreement to limit rents in consideration for an incentive provided by the City, such as the incentives provided in Section 18.17.030, which is a form of assistance specified in Section 65915 of the Government Code.

D. Below Market Rate Units Not Eligible for State Density Bonus. As further described in Section 18.17.050, if a residential development receives a density bonus pursuant to
Government Code Section 65915, any density bonus BMR unit and any dedication of property that made the residential development eligible for the density bonus must be provided in addition to the required below market rate units and may not also that also satisfies the requirements of this chapter shall be counted as below market rate units pursuant to this chapter.

18.16.060 Compliance procedures.

A. General. Approval of a below market rate housing plan and recordation of an approved below market rate housing agreement prior to the recordation of any final or parcel map, or, if no final or parcel map is required, prior to issuance of any building permit, is a condition of the first approval of any residential development to which Section 18.16.030 applies. This section does not apply to exempt projects or to residential developments where the requirements of Section 18.16.030 are satisfied by payment of a fee under Section 18.16.030(A)(3(C).

D. Recording of Agreement. Prior to the recordation of any final or parcel map for a residential development, or, if no final or parcel map is required, prior to issuance of any building permit for a residential development, below market rate housing agreements that are approved and fully executed shall be recorded against residential developments containing below market rate units. Additional rental or resale restrictions, deeds of trust, options to purchase, and/or other documents acceptable to the Administrator shall also be recorded at the time of sale against owner-occupied below market rate units. In cases where the requirements of this chapter are satisfied through the development of off-site below market rate units, the below market rate housing agreement shall simultaneously be recorded against the property where the off-site below market rate units are to be developed.

18.16.070 Alternatives.

A. Builder Proposal. A builder may propose an alternative means of compliance in a below market rate housing plan required by Section 18.16.060(B) according to the following provisions. The builder may also partner with a nonprofit affordable housing provider to meet its below market rate housing obligations through one of the alternatives set forth in this section.

5. Rental Units in Place of Ownership Units. The builder may propose rental on-site below market rate units in a residential ownership development subject to the provisions of
Section 18.16.030(C), rather than to sell below market rate units. If the builder proposes this alternative, then at least fifteen percent of the total units (excluding any units approved beyond the otherwise maximum allowable density pursuant to the state Density Bonus Law) shall be below market rate units, of which five percent shall be affordable to low-income households and ten percent affordable to very low-income households.

6. In Lieu Fees. The builder may request a waiver of the requirement to build a below market rate unit in exchange for the payment of an in lieu fee, established as described in Section 18.16.030(A)(3). An application for payment of in lieu fees shall include a detailed analysis, to the satisfaction of the Administrator, demonstrating economic infeasibility to construct the below market rate units. Any approved in lieu fee shall be paid prior to issuance of a certificate of occupancy for any unit in the residential development.

7. Combination. The decision-making body may accept any combination of the above options.

8. San Carlos Redevelopment Project Area. If the residential development is located within the San Carlos Redevelopment Project Area, any alternative proposed pursuant to this section shall provide equivalent redevelopment affordable housing production credit under Health and Safety Code Section 33413 as would be obtained if the builder provided on-site below market rate units as required by Section 18.16.030.

B. Findings. The decision-making body for the first approval may approve, conditionally approve or reject any alternative proposed by a builder as part of a below market rate housing plan. Any approval or conditional approval shall be based on the following findings:

1. That the purposes of this chapter would be better served by implementation of the proposed alternative(s) and that the proposal meets the greatest community needs at the time the alternative is reviewed. As one of the factors determining whether the purposes of this chapter would be better served under the proposed alternative, the decision-making body should consider whether implementation of an alternative would overly concentrate below market rate units within any specific area and, if so, shall reject the alternative unless the concentration of below market rate units is offset by other identified benefits that flow from implementation of the alternative at issue.

2. For payment of in lieu fees, that the applicant has sufficiently demonstrated that construction of the below market rate units is economically infeasible and cannot be mitigated through the other alternatives outlined in subsection A of this section.
SECTION 3: Severability. The City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable and if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 4: Publication and Effective Date. This Ordinance shall be published and posted according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

* * * *

Introduced the 8th day of July, 2019. Passed and adopted as an Ordinance of the City Council of the City of San Carlos at a regular meeting thereof held on the 26th day of August, 2019 by the following vote:

AYES, COUNCILMEMBERS: ____________________________________________________________

NOES, COUNCILMEMBERS: __________________________________________________________ 

ABSENT, COUNCILMEMBERS: ________________________________________________________

CITY CLERK of the City of San Carlos

APPROVED:

MAYOR of the City of San Carlos