

EXHIBIT A

CHAPTER 22.22 – AFFORDABLE HOUSING REGULATIONS

Sections:

- 22.22.010 – Purpose of Chapter
- 22.22.020 – Applicability
- 22.22.030 – Application Filing
- 22.22.040 – Prohibitions
- 22.22.050 – Exemptions
- 22.22.060 – Waivers
- 22.22.080 – General Affordable Housing Standards
- 22.22.090 – Inclusionary Housing Standards—~~Lot Creation~~
- 22.22.100 – Non-Residential and Mixed Use Affordable Housing Standards
- 22.22.110 – Decision
- 22.22.120 – Affordable Housing Post Approval

22.22.010 – Purpose of Chapter

Marin County is experiencing a shortage of homes affordable to the workforce of the county, seniors and individuals with disabilities. The California Legislature has found that the availability of housing is of vital statewide importance and a priority of the highest order, and that local governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.

To help attain local and state housing goals, this Chapter requires new developments to contribute to the County’s affordable housing stock through the provision of housing units, land dedication, and/or fees. This Chapter provides procedures and requirements applicable to development proposals in the unincorporated areas of Marin County, which are intended to achieve the following goals:

- A. Countywide Plan housing goals.** Enhance the public welfare and ensure that further residential and non-residential development contribute to the attainment of the housing goals of the Countywide Plan by increasing the production of affordable housing, and stimulating funds for development of affordable housing.
- B. Reduce affordable housing shortage.** Reduce the housing shortage for income qualifying households.
- C. Balanced community.** Achieve a balanced community with housing available for households with a range of income levels.
- D. Affordable housing requirements.** Ensure that remaining developable land within the County is utilized in a manner consistent with the County’s housing policies and needs. This can be accomplished in part by applying the residential and non-residential affordable housing requirements or fees contained in this Chapter.

22.22.020 – Applicability

The provisions of the Chapter apply to new market rate development that entails the development of new residential floor area, lot creation, multifamily housing, residential care facilities, and the development of new non-residential floor area. Additional applicability standards are enumerated below. Table 3-4a provides examples of housing and fee requirements for different types of development.

**TABLE 3-4a
 EXAMPLES OF AFFORDABLE HOUSING REQUIREMENTS**

Type of development	Requirement	Section
New Residences and residential floor area		
A. Single-family	Affordable Housing Impact fee	Ordinance 3500 (and subsequently amended)
B. Multi-family (rental)	20% of units (in lieu fee for up to 0.5 unit)	22.22.020.B
C. Multi-family (ownership with subdivision map)	20% of units (in lieu fee for up to 0.5 unit)	22.22.090.A
Lot Creation		
D. With proposed dwellings	20% of units (in lieu fee for up to 0.5 unit)	22.22.090.A
E. Lots only	20% of lots (in lieu fee for up to 0.5 unit)	22.22.090.A
Non-residential/ Residential Care Facility		
F. Non-residential/Residential Care only	Jobs/Housing Linkage fee	22.22.100.A
G. Mixed use	Jobs/Housing Linkage fee and/or units	22.22.100.B

A. Single-family dwellings. All new single-family dwellings greater than 2,000 square feet, except those located in subdivisions previously subject to an inclusionary requirement, shall pay an Affordable Housing Impact Fee per Ordinance 3500. The fee established by the Board of Supervisors shall be updated annually by the Director to compensate for inflation based on the higher of either the construction cost index published in the Engineering News Record (ENR) or the CPI (Shelter Only). The payment of any applicable fees shall be due prior to issuance of Certificate of Occupancy.

B. Multi-family rental housing. New multi-family housing developed without a subdivision map and where dwelling units cannot be sold separately shall provide affordable housing consistent with Section 22.22.090 (Inclusionary Housing Standards—~~Lot Creation~~). Increments of a unit shall pay a fee established by the Board of Supervisors and shall be updated annually by the Director to compensate for inflation based on the higher of either the construction cost index published in the Engineering News Record (ENR) or the CPI (Shelter Only). The payment of any applicable fees shall be due prior to issuance of Certificate of Occupancy. ~~Building Permits.~~

- C. Multi-family housing with a subdivision map.** All new multi-family housing and condominium conversions approved with a subdivision map or with dwelling units that can be sold separately, including multi-family housing, condominiums, townhouses, and stock cooperatives, shall provide affordable housing consistent with Section 22.22.090 (Inclusionary Housing Standards—~~Lot Creation~~). Increments of a unit shall pay a fee established by the Board of Supervisors and shall be updated annually by the Director to compensate for inflation based on the higher of either the construction cost index published in the Engineering News Record (ENR) or the CPI (Shelter Only). The payment of any applicable fees shall be due prior to issuance of Certificate of Occupancy.
- D. Lot creation with proposed dwellings.** Any subdivision with a proposed development of one or more dwellings shall provide affordable housing consistent with Section 22.22.090 (Inclusionary Housing Standards—~~Lot Creation~~). Increments of a lot shall pay a fee established by the Board of Supervisors and shall be updated annually by the Director to compensate for inflation based on the higher of either the construction cost index published in the Engineering News Record (ENR) or the CPI (Shelter Only). The payment of any applicable fees shall be due prior to issuance of Certificate of Occupancy.
- E. Lot creation without proposed dwellings.** Any subdivision creating one or more new lots shall provide inclusionary lots for the immediate or future development of affordable housing consistent with Section 22.22.090 (Inclusionary Housing Standards—~~Lot Creation~~). Increments of a lot shall pay a fee established by the Board of Supervisors and shall be updated annually by the Director to compensate for inflation based on the higher of either the construction cost index published in the Engineering News Record (ENR) or the CPI (Shelter Only). The payment of any applicable fees shall be due prior to issuance of Certificate of Occupancy.
- F. Non-residential developments.** Non-residential development shall pay a Jobs/Housing linkage fee consistent with Section 22.22.100 (Non-Residential and Mixed Use Affordable Housing Standards). The fee established by the Board of Supervisors shall be updated annually by the Director to compensate for inflation based on the higher of either the construction cost index published in the Engineering News Record (ENR) or the CPI (Shelter Only). The payment of any applicable fees shall be due prior to issuance of Certificate of Occupancy.
- G. Mixed use developments.** Mixed use developments are subject to both the non-residential and residential affordable housing requirements.
- H. Affordable housing regulations.** The requirements of this Chapter shall be imposed only once on a given development approval. Affordable housing requirements imposed on a development shall be consistent with the affordable housing requirements in effect at the time of each successive Precise Development Plan or Design Review approved in conformance with a governing Master Plan. Subdivisions subject to an inclusionary requirement are also not subject to the Affordable Housing Impact Fee.

22.22.030 – Application Filing

An affordable housing plan shall be submitted as part of the first application for any development project, including a housing development project, subject to this Chapter, except single-family dwellings subject to the Affordable Housing Impact Fee, and shall be processed, reviewed, and approved, conditionally approved, or denied concurrently with all other applications required for the project. Any request for a waiver of requirements of this Chapter must be submitted as part of the affordable housing plan.

22.22.040 – Prohibitions

In Marin County, it is unlawful to restrict housing choice on the basis of race, color, disability, religion, sex, familial status, national origin, sexual orientation, marital status, ancestry, age, and source of income.

22.22.050 – Exemptions

The following shall be exempt from the provisions of this Chapter: agricultural development; agricultural worker housing and all related accessory structures; development by special districts and authorities subject to the Marin Local Agency Formation Commission's (LAFCO) authority over boundaries and organization; up to one SB 9 lot/unit; residential Accessory Dwelling Units; and residential projects developed at the targeted income level and percentage cited in the Housing Overlay Designation policies in the Countywide Plan. Affordable housing shall be exempt from Inclusionary Housing Standards; however, if State or Federal Regulations establish a limited term affordability requirement, then the inclusionary standards in this Chapter shall begin to apply once that term is completed, and shall apply in perpetuity.

22.22.060 – Waivers

The ~~Director or designee review authority~~ may grant a waiver to the requirements of this Chapter if the Director they determine an alternative affordable housing proposal demonstrates a better means of serving the County in achieving its affordable housing goals than the requirements of Chapter 22.22 (Affordable Housing Regulations).

A. Residential projects. The review authority may approve one or more of the following alternative means of compliance with the requirements of Section 22.22.090 (Inclusionary Housing Standards—~~Lot Creation~~) or the mixed use residential inclusionary requirements of Section 22.22.100.B (Mixed use development). Any proposed alternative means of compliance must include an analysis of fair housing implications to ensure that any proposed off-site location will promote diversity. Required units or lots must be located in an unincorporated area of the County within the same census tract or in an identified Racially Concentrated Area of Affluence. ~~Required units or lots may also be within the boundaries of a City or Town provided there is an inter-agency agreement with the County which defines the sharing of affordable housing resources and compliance with fair share housing allocations.~~ The options below are listed in order of priority, with the provision of in-lieu fees being the lowest priority. The applicant must demonstrate that each option is infeasible before the County may consider the next option.

1. **Affordable units off-site.** Inclusionary units may be constructed on one or more sites not contiguous with the proposed development. The off-site property shall be located within the same census tract or in an identified Racially

Concentrated Area of Affluence with appropriate zoning, ~~character and~~ density, location, size, accessibility to public transportation, and other services, consistent with sound community planning principles and shall be devoid of contaminants and other hazardous wastes. The offsite location must include either a greater number of inclusionary units than required on-site or the same number of inclusionary units that are affordable at a lower income level.

2. **Lots.** The applicant may dedicate suitable real property to the County or its designee to develop the required inclusionary units. The property shall be located within the same census tract or in an identified Racially Concentrated Area of Affluence with appropriate zoning, ~~character and~~ density, location, size, accessibility to public transportation, and other services, consistent with sound community planning principles and shall be devoid of contaminants and other hazardous wastes. The offsite location must include either a greater number of inclusionary units than required on-site or the same number of inclusionary units that are affordable to a lower income level. ~~Required units may also be constructed within the boundaries of a City or Town provided there is an inter-agency agreement with the County which defines the sharing of affordable housing resources and compliance with fair share housing allocations.~~
3. **In-lieu fee.** The applicant may pay an in-lieu participation fee based on 125% of the requirement of Section 22.22.090 (Inclusionary Housing Standards—~~Lot Creation~~). The review authority shall apply the lowest preference to the payment of an in-lieu fee for compliance with the requirements of this chapter.

B. Non-Residential Development and Residential Care Facilities. If the review authority finds that an alternative provides a better means of serving the County in achieving its affordable housing goals, one or more of the following alternative means may be approved for compliance with the requirements of this chapter. Any proposed alternative means of compliance must include an analysis of fair housing implications to ensure that any proposed off-site location will promote housing diversity. Required units or lots must be located in an unincorporated area of the County within the same census tract or in an identified Racially Concentrated Area of Affluence. ~~Required units or lots may also be within the boundaries of a City or Town provided there is an inter-agency agreement with the County which defines the sharing of affordable housing resources and compliance with fair share housing allocations.~~ A combination of both income-restricted units and affordable housing fees may be allowed. The options below are listed in order of priority, with the provision of in-lieu fees being the lowest priority. The applicant must demonstrate that each option is infeasible before the County may consider the next option.

1. **Affordable units off-site.** Affordable units may be ~~constructed provided~~ off-site on an adjacent property or on one or more sites not contiguous with the proposed development. The off-site property shall be located within the same census tract or in an identified Racially Concentrated Area of Affluence ~~an area~~ with appropriate zoning, ~~character and~~ density, location, size, accessibility to public transportation, and other services, consistent with sound community planning principles and shall be devoid of contaminants and other hazardous wastes. The offsite location must include either a greater number of inclusionary units than required on-site or the same number of inclusionary units that are affordable to a lower income level.

2. **Lots.** The applicant may dedicate suitable real property to the County or its designee to be developed for affordable housing by the County, or a profit or nonprofit, private or public applicant. The off-site property shall be located in the same census tract or in an identified Racially Concentrated area of Affluenceplanning area, and shall be appropriately sized and zoned for development equivalent to or more than the residential units that are not created on-site. The property shall be offered in a condition that is suitable for development, including appropriate access and services, consistent with sound community planning principles and shall be devoid of contaminants and other hazardous wastes.
3. **In-lieu fee.** The applicant may pay an in-lieu participation fee based on 125% of the requirement of Section 22.22.090 (Inclusionary Housing Standards—~~Lot Creation~~). The review authority shall apply the lowest preference to the payment of an in-lieu fee for compliance with the requirements of this chapter.

22.22.080 – General Affordable Housing Standards

- A. Property Restriction.** All affordable housing units shall be restricted by a Regulatory Agreement recorded against the property to place certain rules and regulations on the operation and maintenance of the site and restrict the rent/sale of the housing to Income Qualifying Households at an affordable rental level or sale price.
- B. Eligible occupants.** All affordable housing units shall be sold or rented to Income Qualifying Households, at income levels established pursuant to the applicable affordable housing requirement, as certified by the County or its designee.
- BC. Income restriction.** All affordable housing units shall be income-restricted in perpetuity, unless the review authority reduces the term of the affordability requirement to reflect the maximum term that is permitted by Federal or State financing sources. Once that limited term has expired, the requirements of this Chapter shall begin to apply and shall apply in perpetuity.
- CD. Affordable unit cost.** Units shall be developed using a mix of affordability levels based on Area Median Income, adjusted for household size, as described in Table 3-4b. Required ownership units shall be affordable to households at ~~60~~35 percent of the ~~Area Median Income~~household income, ~~adjusted for household size.~~ Any affordable rental units ~~proposed by an applicant~~ shall be offered at an affordable rent not exceeding 30 percent of the ~~gross income of households~~ income earning at most 50 percent of Area Median Income, adjusted for household size. The housing unit prices shall be established based on applicable income range, the number of bedrooms and consistent with the following:

TABLE 3-4b
AFFORDABLE HOUSING INCOME RANGES AND ASSOCIATED RENT
LEVELS/SALES PRICE REQUIREMENTS

Income Category	Income Range	Rent Level	Sales Price Level
Very Low Income	30-50% AMI	50% AMI	n/a
Low Income	50-80% AMI	65% AMI	65% AMI
Moderate Income	80-120% AMI	100% AMI	100% AMI
Above Moderate Income	120-150% AMI	n/a	135% AMI

~~by the County or its designee and shall be based on the number of bedrooms.~~ See Article VIII for definitions of Affordable Ownership Cost, Affordable Rent and Area Median Income.

- ED.** **Location of affordable housing units.** All required affordable housing units on-site shall be disbursed throughout the development. This requirement may be modified for cause by the review authority.
- EF.** **Design and character of affordable housing units.** Required affordable housing units shall ~~be dispersed throughout the project, and shall be the same size and~~ contain, on average, the same number of bedrooms as the market rate units in a residential development, and shall be compatible with the exterior and interior design and use of the remaining units in appearance, materials, amenities, and finished quality. Residential units constructed on behalf of, or funded by a public entity, must comply with the Department of Justice's *Standards for Accessible Design and other relevant state and federal requirements for accessibility*.
- EG.** **Lots dedicated to affordable housing.** Any required inclusionary lot shall be offered in a condition that is suitable for development, including appropriate access and services, consistent with sound community planning principles, and shall be devoid of contaminants and other hazardous wastes.
- GH.** **Use and payment of affordable housing fees.** Affordable housing fees (including Affordable Housing Impact Fees, Rental Housing Impact Fees, Jobs/Housing linkage fees, and In-lieu fees) shall be used by the County or its designee for the purpose of developing and preserving affordable housing for income qualifying households, with preference for use in the unincorporated areas of the county.
- HJ.** **Requested rental affordable housing.** An applicant may request to provide affordable rental units as an alternative to the provision of ownership units otherwise required by Sections 22.22.090 (Inclusionary Housing Standards ~~— Lot Creation~~) and 22.22.100 (Non-Residential and Mixed Use Affordable Housing Standards) ~~or as an alternative to the Rental Housing Impact Fee.~~ To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the California Civil Code) the County may only approve such a proposal if the applicant agrees in a rent regulatory agreement with the County to limit rents in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 commencing with Section 65915 of Division 1 of Title 7 of the Government Code. All

affordable rental units proposed by an applicant shall comply with all provisions related to rentals in Section 22.22.080 (General Affordable Housing Standards).

- U. Accessory Dwelling Units.** Accessory Dwelling Units and Junior Accessory Dwelling Units cannot be used to satisfy affordable housing requirements.

22.22.090 – Inclusionary Housing Standards –~~Lot Creation~~

This Section addresses the inclusionary housing standards for lot creation with or without proposed dwellings, multifamily development within an existing lot, and the residential portion of mixed use developments. This Section also provides the means to levy in-lieu fees for the construction of affordable housing in cases where the inclusionary requirement includes a decimal fraction of a unit or lot or when a combination of both inclusionary units and an in-lieu fee is required.

- A. Number of inclusionary units/lots required.** ~~20~~Twenty percent of the total number of dwelling units or lots within a subdivision shall be developed as, or dedicated to, affordable housing. Projects with 4 or fewer units/lots ~~Where~~ the inclusionary housing calculation results in a decimal fraction greater than 0.~~75~~0, the fraction shall be rounded up to one additional dwelling unit or lot. Projects with five or more units/lots ~~Where~~ the inclusionary housing calculation results in any decimal fraction ~~less than or equal to 0.50~~, the project applicant shall comply with State Density Bonus Law round up provisions ~~pay an in-lieu fee proportional to the decimal fraction.~~

Developers of rental units shall select from two options for establishing the number of inclusionary units and affordability levels:

TABLE 3-4c
AFFORDABLE RENTAL HOUSING REQUIRMENTS

<u>Project Size</u>	<u>Option 1 (20% Set-Aside)</u>	<u>Option 2 (20% Set-Aside)</u>
<u>10 units or less</u>	<u>10% Very Low-Income Units and 10% In Lieu Fee</u>	<u>15% Low-Income Units and 5% In Lieu Fee</u>
<u>11 to 29 units</u>	<u>10% Very Low-Income Units and 10% Moderate Income Units</u>	<u>15% Low-Income Units and 5% Moderate Income Units</u>
<u>30 or more units</u>	<u>15% Very Low-Income Units; and 5% Moderate Income Units or 5% in Lieu fee</u>	<u>10% Very Low-Income Units, 5% Low Income Units, and 5% Moderate-Income Units</u>

Developers of ownership units shall establish the number of inclusionary units and affordability levels based on the project size:

TABLE 3-4d
AFFORDABLE OWNERSHIP HOUSING REQUIREMENTS

<u>Project Size</u>	<u>Policy (20% Set-Aside)</u>
<u>4 units or less</u>	<u>All Above Moderate-Income Units</u>
<u>5 to 29 units</u>	<u>5% Low-income Units,</u> <u>5% Moderate-Income Units,</u> <u>10% Above Moderate-Income Units</u>
<u>30 or more units</u>	<u>5% Low-income Units,</u> <u>10% Moderate-Income Units,</u> <u>5% Above Moderate-Income Units</u>

Developers may choose to develop units at lower-income ranges than the inclusionary policy identifies.

4.—Lots developed with a primary residence and a Certificate of Occupancy issued at least five years prior to subdivision approval ~~as of July 13, 2006~~ shall be deducted from the total number of lots in the proposed subdivision for the purpose of applying the inclusionary requirement.

B. In-lieu fee. A fee may be required in addition to inclusionary units or lots in cases where the inclusionary requirement includes a decimal fraction of a unit or lot or when a combination of both inclusionary units and in-lieu fees is required. The current fee as established by the County shall be multiplied by the fraction of the inclusionary requirement to determine the applicable fee to be paid.

22.22.100 – Non-Residential, Mixed Use, and Residential Care Facility Affordable Housing Standards

Developments with no residential component are required to pay a Jobs/Housing linkage fee. Mixed use developments proposing residential rental units are required to pay a Jobs/Housing linkage fee for the non-residential component and are subject to the Inclusionary Housing Standards a Rental Housing Impact Fee for the residential component. Mixed use developments proposing residential units which can be sold separately shall comply with the applicable provision of Section 22.22.020.C through E (Applicability). Mixed use development shall also provide new affordable units for the non-residential component consistent with Table 3-4c rather than payment of a Jobs/Housing Linkage Fee. All required affordable housing units shall comply with Section 22.22.080 (General Affordable Housing Standards).

A. A. ~~Non-residential development and Residential Care Facilities.~~ The Jobs/Housing linkage fees for all non-residential development shall be determined based on the development type and floor area of the development; ~~see Table 3-4b below.~~ Alternatively, an applicant for a non-residential development may propose to provide ~~the number of~~ new affordable units ~~required by Table 3-4c,~~ based on relevant data from the applicant or information from the County’s relevant housing studies, at the discretion of the Director. All affordable housing units shall comply with Section 22.22.080 (General Affordable Housing Standards).

Job/Housing linkage fees are established using per square foot of floor area¹ unless noted otherwise for the following development types:

- Office²/Research and Development
- Retail/Restaurant³
- Hotel /Motel
- Residential Care Facility
- Medical- Extended Care

Other types of non-residential development will be assessed based on project specific factors including number of employees and the use of the development.

TABLE 3-4b
AFFORDABLE HOUSING FEES FOR NON-RESIDENTIAL DEVELOPMENT AND
RESIDENTIAL CARE FACILITIES
(Per square foot of floor area¹ unless noted otherwise)

Development Type	Fee per square foot
Manufacturing/Light Industry/Assembly	\$3.74
Office ² /Research and Development	\$7.19
Warehouse	\$1.94
Hotel/Motel ³	\$1,745 per room
Retail/Restaurant	\$5.40
Residential Care Facility ⁴	\$18.00
Medical- Extended Care ⁴	\$21.00
Other types of non-residential development	Applicant to provide information and statistics on new jobs generated by the use of the development.

¹ For purposes of this Chapter, the floor area excludes all areas permanently allocated for vehicle parking, unless such areas are used for commercial or industrial purposes.

² Office uses include those offices associated with professional, business, ~~and~~ medical, religious and educational services.

³ Accessory uses, such as retail, restaurant, and meeting facilities within a hotel shall be subject to requirements for a retail use.

⁴ ~~This base fee, established in 2016, increases annually pursuant to Board of Supervisors Resolution 2016-122.~~

B. Mixed use development. Mixed use developments are subject to both the non-residential and residential affordable housing requirements. The residential inclusionary requirement shall be calculated consistent with the applicable Section 22.22.090 (Inclusionary Housing Standards ~~Lot Creation~~) and the non-residential inclusionary requirement shall be calculated consistent with Section 22.22.100.A (Non-residential development) above, ~~except as described in this section. These requirements shall be combined to produce the total affordable unit and fee requirement.~~

~~**Mixed use development with ownership housing.** Where a mixed use development is proposed and the proposed residences can be sold separately, affordable housing units shall be provided for the non-residential development rather than payment of a linkage fee.~~

- ~~a. The number of affordable units required for non-residential development shall be established by multiplying the floor area of the development times the development type in Table 3-4c below. Other types of non-residential development shall provide housing for 25% of the income-qualifying employee households associated with the new non-residential development.~~
- ~~b. Where the required unit calculation results in any decimal fraction less than or equal to 0.50, the project applicant shall pay a fee proportional to the decimal fraction in compliance with Table 3-4b. Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit.~~

**TABLE 3-4c
 NUMBER OF NEW AFFORDABLE HOUSING UNITS REQUIRED FOR
 NEW NON-RESIDENTIAL DEVELOPMENT**

Development Type	Number of required Affordable Housing Units per square foot of floor area ¹
Manufacturing/Light Industry/Assembly	0.000045
Office ² /Research and Development	0.000085
Warehouse	0.000023
Hotel/Motel ³	0.000020
Retail/Restaurant	0.000058

~~1— Developments are required to provide 25% of the housing need generated by a non-residential development. For purposes of this Chapter, the floor area excludes all areas permanently allocated for residential vehicle parking, unless such areas are used for commercial or industrial purposes.~~

~~2— Office uses include those associated with professional, business, and medical services.~~

~~3— Accessory uses, such as retail, restaurant, and meeting facilities within a hotel shall be subject to requirements for a retail use.~~

Housing Provisions. Affordable housing units provided under this Section shall comply with the Section 22.22.080 (General Affordable Housing Standards).

22.22.110 – Post Approval Decision

A. Requirements PostConditions of approval. Before issuance of construction permits for Aany approved project that is subject to the requirements of this Chapter, the applicant shall submit an affordable housing plan for review and approval and subsequently conform to the approved affordable housing plan. ~~shall contain conditions of approval that will ensure compliance with the provisions of this Chapter.~~ The conditions of approved affordable housing plan shall:

1. Specify the construction of the affordable units and/or the timing of payment of fees. All affordable housing units and other phases of a development shall be constructed prior to, or concurrent with, the construction of the primary project unless the review authority approves a different schedule;
2. Specify the number of units at appropriate price levels, as determined by the review authority;

3. Specify provisions for any incentives granted pursuant to Chapter 22.24 (Affordable Housing Incentives) where applicable;
4. Determine when in-lieu fees shall be paid, including whether payment shall be made prior to recordation of the map or issuance of any building permit.
5. Require a written agreement between the County and the applicant prior to recordation of any final or parcel map or issuance of any building permit which indicates the number, type, location, size, and construction scheduling of all affordable housing units, and the reasonable information that shall be required by the County for the purpose of determining compliance with this Chapter. This agreement shall also specify provisions for income certification and screening of potential purchasers and/or renters of units, and specify resale control mechanisms, including the financing of ongoing administrative and monitoring costs. The applicant shall be responsible for any direct costs associated with the negotiation of this agreement.

- B. Project review procedure.** Affordable housing plans shall be analyzed by the County to ensure that the plan is consistent with the purpose and intent of this Chapter.

22.22.120 – Affordable Housing ~~Post-Approval~~Plan Implementation

- A. Administration.** The County or its designee shall monitor required affordable housing units.

- B. Required inclusionary units:** In addition to the standards in Section 22.22.090 (Inclusionary Housing Standards—~~Lot Creation~~) the review authority shall enter into a Regulatory Agreement to ensure that the following standards are applied to required affordable housing units.

1. **Limitation on Resale Price.** In order to maintain the affordability of the housing units constructed in compliance with this Chapter, the County shall impose the following resale condition. The price received by the seller of a resale unit shall be the lowest of the following:
 - a. **Median income.** The original price paid by the seller increased by an amount equal to purchase price multiplied by the percentage increase in the median household income for the San Francisco Primary Metropolitan Statistical Area since the date of purchase;
 - b. **Index price.** The original price increased by an amount equal to the original price multiplied by the percentage increase in the Consumer Price Index for the San Francisco Bay Area since the date of purchase; or
 - c. **Fair market value.** The fair market value of the resale unit as determined by an appraiser approved by the County or its designee and paid for by the seller.
2. **Eligible purchasers.** Ownership inclusionary units shall be sold and resold from the date of the original sale only to income qualifying households, as

determined to be eligible for inclusionary units by the County or its designee, in compliance with the requirements of this Chapter.

- a. Every purchaser of an inclusionary housing unit shall certify by a form acceptable to the County or its designee that the unit is being purchased for the purchaser's primary place of residence. The County or its designee shall verify this certification. Failure of the purchaser to maintain eligibility for a homeowner's property tax exemption shall be construed to mean that the inclusionary unit is not the primary place of residence of the purchaser.
 - b. The seller shall not levy or charge any additional fees nor shall any "finders' fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.
 - c. The County or its designee shall advertise the inclusionary units to the general public. Upon notification of the availability of ownership units by the applicant, the County or its designee shall seek and screen qualified purchasers through a process involving applications and interviews. Where necessary, the County or its designee shall hold a lottery to select purchasers from a pool of income-eligible applicants.
3. **Income restrictions.** The owners of any inclusionary unit shall, upon purchase, sign and record appropriate resale and other restrictions, deeds of trust, and other documents as provided by the County or its designee, stating the restrictions imposed in compliance with this Chapter. The recorded documents shall afford the grantor and the County the right to enforce the restrictions. The restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Chapter.
4. **Notice of resale restrictions.** The County or its designee shall advise all prospective purchasers of the resale restriction applicable to ownership inclusionary units.
5. **Monitoring of Resales.** The County or its designee shall be given the responsibility of monitoring the resale of ownership inclusionary units. The County or its designee shall have the option to commence purchase of ownership inclusionary units after the owner gives notification of intent to sell or in the event of any default or violation of the income restrictions. Any abuse in the resale provisions shall be referred to the County for appropriate action.
- C. **Requested affordable housing rental units.** In addition to the standards in Section 22.22.080 (General Affordable Housing Standards), the Review Authority shall insure that the following standards are applied to any requested affordable rental units after they are constructed.
1. **Advertising and screening.** The applicant or owner shall agree to advertise available rental housing, screen applicants, and perform annual income certifications for the affordable rental units, or retain a qualified entity to do so. The applicant or owner shall have final discretion in the selection of eligible tenants, provided that the same rental terms and conditions are applied to tenants of income-restricted units as are applied to all other tenants, with the

exception of rent levels, household income, and any requirements of government subsidy programs.

2. **Recorded agreements.** For any requested rental units, the owner shall enter into recorded agreements with the County and take appropriate steps necessary to ensure that the required affordable rental units are provided, and that they are rented to income qualifying households. Recorded documentation may include a Marketing Plan, Rent Regulatory Agreement, Compliance Report, Notice of Affordability Restrictions on Transfer of Property, and other documents as may be required by the County to maintain the continued affordability of the affordable units.
3. **Monitoring.** The owner shall be required to provide tenant income qualification reports to the County or its designee for monitoring on an annual or biennial basis.

Adult Entertainment Establishment (land use). This land use consists of any adult bookstore, adult hotel or motel, adult motion picture arcade, adult motion picture theater, cabaret, sexual encounter center, or any other business or establishment that offers its patrons services or entertainment characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," but not including those uses or activities, the regulation of which is preempted by state law.

Affordable Housing. Dwelling units that are income restricted and rented or sold at rates that are affordable to households with income qualifying as low, very low or extremely low income, as described in Chapter 22.22 (Affordable Housing Regulations) or Chapter 22.24 (Affordable Housing Incentives) and defined by Health and Safety Code Sections 50052.5 and 50053. Affordable Housing includes Transitional and Supportive Housing, and Single Room Occupancy (SRO) consistent with qualifying income requirements.

Affordable Ownership Cost. Figure at which affordable housing must be provided for purchase, which is calculated as annual housing costs, during the first calendar year of a household's occupancy, including mortgage payments, property taxes, homeowners insurance, and homeowners association dues, if any, which do not exceed the following:

1. For inclusionary units required by Chapter 22.22, annual housing costs cannot exceed ~~350~~ percent of ~~household income~~~~60 percent of area median income~~, adjusted for household size. Inclusionary housing income ranges and associated sales price requirements are:

<u>Income Category</u>	<u>Income Range</u>	<u>Sales Price Level</u>
<u>Very Low Income</u>	<u>30-50% AMI</u>	<u>n/a</u>
<u>Low Income</u>	<u>50-80% AMI</u>	<u>65% AMI</u>
<u>Moderate Income</u>	<u>80-120% AMI</u>	<u>100% AMI</u>
<u>Above Moderate Income</u>	<u>120-150% AMI</u>	<u>135% AMI</u>

2. For affordable housing that qualifies a project for a state density bonus, consistent with Government Code Section 65915, annual housing costs cannot exceed the following:
 - (a) For moderate income households: Housing cost shall not be less than 28 percent of the gross income of the household or exceed the product of 35 percent of 110 percent of area median income, adjusted for household size.
 - (b) For low income households: 30 percent of 70 percent of area median income, adjusted for household size.
 - (c) For very low income households: 30 percent of 50 percent of area median income, adjusted for household size.

Affordable Rent. Annual rent, including utilities and all fees for housing services, which does not exceed the following:

1. For inclusionary units required by Chapter 22.22, annual rent cannot exceed 30 percent of ~~household income~~ 50 percent of median area income, adjusted for household size. Inclusionary housing income ranges and associated rent level requirements are:

<u>Income Category</u>	<u>Income Range</u>	<u>Rent Level</u>
<u>Very Low Income</u>	<u>30-50% AMI</u>	<u>50% AMI</u>
<u>Low Income</u>	<u>50-80% AMI</u>	<u>65% AMI</u>
<u>Moderate Income</u>	<u>80-120% AMI</u>	<u>100% AMI</u>
<u>Above Moderate Income</u>	<u>120-150% AMI</u>	<u>n/a</u>

2. For affordable housing that qualifies a project for a state density bonus, annual rent cannot exceed the following:
- (a) For low income households: 30 percent of 60 percent of area median income, adjusted for household size.
 - (b) For very low income households: 30 percent of 50 percent of area median income, adjusted for household size.
 - (c) for extremely low income households: 30 percent of 30 percent of area median income, adjusted for household size.

Agent. A person authorized in writing by the property owner to represent and act for a property owner in contacts with County employees, committees, Commissions, and the Board, regarding matters regulated by this Development Code.

Agency. The Marin County Community Development Agency.

Agriculture (land use). The breeding, raising, pasturing, and grazing of livestock, for the production of food and fiber; the breeding and raising of bees, fish, poultry, and other fowl; and the planting, raising, harvesting and producing of agricultural, aquacultural, horticultural and forestry crops.

Agricultural Accessory Activity (land use). This land use consists of accessory activities customarily incidental to agricultural operations, and which involve agricultural products produced only on-site or elsewhere in Marin County, including:

- Corn shelling;
- Custom milling of flour, feed and grain;
- Drying of corn, rice, hay, fruits, and vegetables;
- Grain cleaning and grinding;

	lasiandra		
Silk tassel	Garrya elliptica	10 inches	30 inches
Sitka willow	S sitchensis	6 inches	18 inches
Tanbark oak	Lithocarpus densiflorus	10 inches	30 inches
Valley oak	Q. lobata	6 inches	18 inches
Wax myrtle	Myrica californica	10 inches	30 inches
White alder	Alnus rhombifolia	10 inches	30 inches

Public Right-of-Way. A street that has been accepted or is being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public.

Public Road. A street or highway owned and maintained by the County, a City, the State, or the Federal government.

Public Safety/Service Facilities (land use). This land use consists of facilities operated by public agencies including fire stations, other fire prevention and fire-fighting facilities, police and sheriff substations and headquarters, including interim incarceration facilities, and civic buildings.

Public Utility Facilities (land use). This land use consists of fixed-base structures and facilities serving as junction points for transferring utility services from one transmission voltage to another or to local distribution and service voltages. These uses include any of the following facilities that are not exempted from land use permit requirements by Government Code Section 53091:

- Corporation and maintenance yards;
- Electrical substations and switching stations;
- Natural gas regulating and distribution facilities;
- Public water system wells, treatment plants and storage;
- Telephone switching facilities;
- Wastewater treatment plants, settling ponds and disposal fields.

These uses do not include office or customer service centers (classified in "Offices").

Q. Definitions, "Q."

Quarry. See "Surface Mining."

R. Definitions, "R."

Racially Concentrated Area of Affluence (RCAA). RCAAs, as defined by the California Department of Housing and Community Development (HCD), are “neighborhoods where the population is disproportionately white and affluent.” The location of RCAAs are defined by HCD. The term was developed to express the continuum of segregation in communities. It represents the opposite of the Racially and Ethnically Concentrated Areas of Poverty (R/ECAP) metric developed by the U.S. Department of Housing and Urban Development.

Recreation, Passive. A type of recreation that does not require the use of organized play areas.

4. Recycling or Recyclable Material. Reusable domestic containers and other materials which can be reconstituted, remanufactured, or reused in an altered form, including glass, metals, paper and plastic. Recyclable material does not include refuse or hazardous materials.

5. Reverse Vending Machine. An automated mechanical device which accepts at least one or more types of empty beverage containers and issues a cash refund or a redeemable credit slip with a value not less than the container's redemption value, as determined by State law. These vending machines may accept aluminum cans, glass and plastic bottles, and other containers.

A bulk reverse vending machine is a reverse vending machine that is larger than 50 square feet, is designed to accept more than one container at a time, and issues a cash refund based on total weight instead of by container.

6. Scrap and Dismantling Yards. See "Junk Yard."

Referral. Any transmittal, notification, posting, consultation, request for or distribution of information, initiated by the Agency to communicate with other agencies, organizations, groups or the public that pertains to a proposed project.

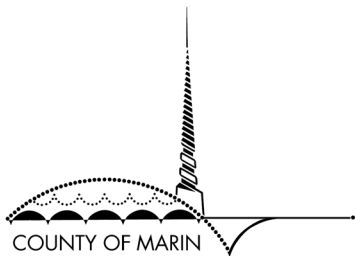
Regulatory Agreement. A written agreement between the County of Marin and the Developer that ensures the continued affordability of the housing at issue by imposing certain rules and regulations on the operation and maintenance of the site and restricting the rent and/or sale of the housing to Income Qualifying Households at an affordable rental level or sale price. The specific terms of each Regulatory Agreement depend on the circumstances of the property and/or development project at issue and are subject to approval by the County. Each Regulatory Agreement will be recorded against the property at issue to ensure that the requirements in such agreement binds all successors in interest with respect to such property.

Religious Places of Worship (land use). This land use consists of religious facilities operated by organizations for worship, or the promotion of religious activities, including:

- Churches;
- Synagogues;
- Mosques;
- Religious schools.

Includes accessory uses on the same site, such as living quarters for ministers and staff, and child day-care facilities where authorized by the same type of land use permit required for the religious facility itself. Does not include other establishments maintained by religious organizations, such as full-time educational institutions, hospitals and other potentially related operations (such as a recreational camp), which are defined under their respective activities.

Religious Residential Retreat (land use). This land use consists of convents, monasteries, and other facilities where members of religious organizations set themselves apart from the external community for short- or long-term periods to participate in worship and other religious activities.



GUIDE FOR THE 2023 AMENDMENTS TO THE MARIN COUNTY DEVELOPMENT CODE RELATED TO INCLUSIONARY HOUSING REQUIREMENTS

Explanations of the key topics addressed in the amendments are provided below. The guide is not intended to be all inclusive and should be used in conjunction with the draft code amendments shown in track changes format in Exhibit A (Development Code 2023 Amendments). All code sections listed are in Marin County Code Title 22.

A. CLARIFICATIONS AND CORRECTIONS

The amendments related to clarifications and corrections include the following sections:

- 22.090 Section title
- 22.020 Table 3-4a
- 22.020.A Single-family dwelling
- 22.020.B Multi-family rental housing
- 22.020.C Multi-family housing with a subdivision map
- 22.020.D Lot creation with proposed dwellings
- 22.020.E Lot creation without proposed dwellings
- 22.020.F Non-residential developments
- 22.080.F Design and character of affordable housing units
- 22.110.A Requirements post approval
- 22.120.B Required inclusionary units

Many of the clarifications and corrections are for the purposes of consistency and clearly denoting administrative processes. For example, changes to Table 3-4a remove reference to implementation practices that are now codified in 22.090 – Inclusionary Housing Standards.

The amendments to 22.020.A-F reflect the administrative process for annual fee updates and apply them consistently across all fee categories. In addition, they detail at what stage fees are due.

The proposed changes to section 22.080.F codifies existing practices of dispersing inclusionary units throughout a development and ensuring that materials are used in such a way that the inclusionary units are not discernable from market-rate units.

The recommended amendments to section 22.110.A and 22.120.B codify the existing requirements for compliance with Affordable Housing Standards. Sections 22.080.A and 22.120.B describe the process for recording a regulatory agreement to ensure ongoing compliance with affordable housing standards. Section 22.110.A details the requirement that applicants prepare and comply with an approved affordable housing plan that meets the requirements of the affordable housing standards.

B. INTERNAL CONSISTENCY WITH CODE AND POLICY

The amendments related to internal consistency with code and policy include the following sections:

- 22.060.A Residential projects
- 22.060.A.1 Affordable units off-site
- 22.060.A.2 Lots
- 22.060.B.2 Non-Residential Development and Residential Care Facilities.
- 22.060.B.1 Affordable units off-site
- 22.060.B.2 Lots
- 22.080.A Property Restriction
- 22.080.I Requested rental affordable housing
- 22.100 Non-Residential, Mixed Use, and Residential Care Facility Affordable Housing Standards

Chapter 22.060 of the Development Code sets out the procedures and requirements for Waivers to Affordable Housing Requirements. There are two changes proposed. The first change is eliminating the option of allowing a developer to place an off-site affordable lot/unit within another city or town jurisdiction. This process is overly cumbersome to administer across jurisdictions and prevents the County from getting credit for the new lot/unit in the Regional Housing Needs Assessment Annual Progress Report. The second change clarifies that new offsite lots/units must be within the same census tract or be in a Racially Concentrated Area of Affluence. The term "Racially Concentrated Area of Affluence" is defined by the California Department of Housing and Community Development (HCD) as "neighborhoods where the population is disproportionately white and affluent." The term was developed to express the continuum of segregation in communities. It represents the opposite of the Racially and Ethnically Concentrated Areas of Poverty (R/ECAP) metric developed by the U.S. Department of Housing and Urban Development. The locations of RCAAs are mapped by HCD. Providing the opportunity to place offsite affordable lots/units within Racially Concentrated Areas of Affluence provides more options to developers for finding suitable offsite locations and is consistent with the County's goals to Affirmatively Furthering Fair Housing, a requirement of AB 686 and an identified strategy in the County's certified Housing Element.

The proposed amendments to 22.080.I and 22.100 eliminate reference to a Rental Impact Fee. The Rental Impact fee was rescinded by the Board of Supervisors in 2019, following the passage of AB 1505, which extended the inclusionary housing policy to rental housing units effective January 1, 2018.

C. ALIGNMENT WITH UNIFORM INCLUSIONARY HOUSING AND COMMERCIAL LINKAGE STANDARDS

The amendments related to Uniform Inclusionary Housing and Commercial Linkage Standards were developed through a comprehensive process that involved evaluating existing policy and development code requirements; conducting detailed studies assessing Marin's development market and establishing thresholds and fee targets in compliance with State law (AB 1505-Inclusionary Housing and AB 602-Commercial Linkage). Further, outreach was conducted with market-rate developers and affordable housing developers/advocates to gather input on the potential impacts of proposed changes to the ordinance and development code. Finally, County staff collaborated with six other city and town jurisdictions to establish common Inclusionary

Housing and Commercial Linkage elements to create consistent policies across jurisdictions. The proposed amendments are found here:

- 22.050 Exemptions SB9
- 22.080.D Affordable Unit Cost
- Table 3-4b Affordable Housing Income Ranges And Associated Rent Levels/Sales Price Requirements
- 22.090 Inclusionary Housing Standards
- 22.090.A Number of inclusionary units/lots required
- Table 3-4c Affordable rental housing requirements
- Table 3-4d Affordable ownership housing requirements
- 22.100 – Non-Residential, Mixed Use, and Residential Care Facility Affordable Housing Standards
- 22.100.A Non-residential development and Residential Care Facilities
- Table 3-4b Affordable housing fees for non-residential development and residential care facilities
- 22.100.B Mixed use development
- Table 3-4c Number of New Affordable Housing Units Required for New Non Residential Development.

Section 22.050 describes exemptions to the Affordable Housing Standards. A proposed amendment is to include up to one lot/unit approved through SB 9 ministerial approval.

Amendments also establish standard household income limit ranges and set rent and sales prices for inclusionary units within those incomes' ranges. This addition derives from an issue identified by developers during consultation. The current development code is limited to very low-income households and offers a range for prices. This creates ambiguity for applicants and uncertainty for project design. The changes to 22.080.D and the inclusion of Table 3-4b, Affordable Housing Income Ranges And Associated Rent Levels/Sales Price Requirements, are designed to create consistent expectations across projects and to eliminate further unknowns in the design of housing.

The recommended amendments to section 22.090, Inclusionary Housing Standards, create distinct requirements for rental housing and ownership housing. These separate requirements are in part necessary because of State law AB 1505, which sets strict requirements for the affordability of inclusionary rental units. In addition, the differences reflect the variations in project design of rental units versus ownership units.

Next, the current development code requires a round up provision at 0.5 lots/units. Meaning if a development proposes three units (0.60 units of inclusionary), the third unit must be restricted for inclusionary. The proposed development code shifts this to create tiered criteria. For projects with four or fewer lots/units there is a round up provision at 0.7 lots/units, meaning a fourth lot/unit would be restricted as inclusionary. For projects with five or more lots/units, the recommendation is to defer to the State Density Bonus Law round up provisions, which require that any fractional unit be rounded up to the next whole number. In both instances fractional units that are not subject to the round up provisions may pay an in-lieu fee equal to the calculated fractional unit.

The proposed addition of Table 3-4c, Affordable rental housing requirements, and Table 3-4d, Affordable ownership housing requirements, detail affordability targets using three different project sizes—small, medium, and large:

Development Type	Small	Medium	Large
Rental	10 units or less	11 to 29 units	30 or more units
Ownership	4 units or less	5 to 29 units	30 or more units

This approach provides opportunities to achieve more affordable units for large projects without burdening small and medium sized projects with costs that may make projects unbuildable. The recommended Table 3-4c, Affordable rental housing requirements, includes two different options for rental projects. The preferred option for rental projects would be selected by the project developer.

The recommended Table 3-4d, Affordable ownership housing requirements, includes a proposed structure designed to create inclusionary units at a variety of household incomes and addresses missing middle-income housing. This is in contrast to the current Development Code, which requires all inclusionary units be restricted at Very Low-Income (60% Area Median Income). The change in practice addresses concerns heard from developers and the administrators of Below Market Rate Homeowner programs. It is generally easier for low and moderate-income households to meet typical lending and homeowner association (HOA) requirements for ownership housing units and more difficult for very low-income households.

The final change recommended in 22.090, Inclusionary Housing Standards, is the removal of a date for existing primary residences to be deducted from the number of lots in a subdivision. This proposed modification replaces the July 13, 2006 date with a five year time window. In this instance, a primary residence would be deducted if its Certificate of Occupancy was issued at least five years prior to the new subdivision's approval.

Section 22.100 Non-Residential, Mixed Use, and Residential Care Facility Affordable Housing Standards defines the applicability of Commercial Linkage fees. The proposed changes to 22.100.A, Non-residential development and Residential Care Facilities, include removing two Development Types – Manufacturing/Light Industry/Assembly and Warehouse. These development types were excluded from the nexus study completed to support Commercial Linkage fees. In addition, it is recommended that Table 3-4b, Affordable housing fees for non-residential development and residential care facilities, be removed from the development code. The fees identified in the table are updated on an annual basis and are not imposed by the development code, but rather by a separate standalone ordinance.

The final proposed changes to Section 22.100 are in 22.100.B, Mixed use development. The first recommended amendment is to remove references to Mixed use development with ownership housing. The rationale for these modifications is all mixed use development are subject to non-residential and residential affordable housing requirements. This added detail is not required. The second amendment is to remove Table 3-4c, Number of New Affordable Housing Units Required for New Non Residential Development. The recently adopted nexus study does not substantiate the per square foot floor area requirements identified in this table.