

Marin County Community Development Agency

Alex Hinds, Director

STAFF REPORT TO THE PLANNING COMMISSION
MARIN COUNTY CODE TITLE 22 (DEVELOPMENT CODE) AMENDMENT
CHAPTER 22.22 – AFFORDABLE HOUSING REGULATIONS
CHAPTER 22.130 - DEFINITIONS

Item No: 5 Application No: Not Applicable

Hearing Date: September 8, 2003 Planner: Thomas Lai
Barbara Collins

RECOMMENDATION: Recommend approval of the proposed
Development Code Amendments to the
Board of Supervisors
APPEAL PERIOD: Not Applicable
LAST DATE FOR ACTION: Not Applicable

PROJECT DESCRIPTION:

This is a County-initiated amendment to Chapter 22.22 (Affordable Housing Regulations) of Marin County Code Title 22 (Development Code) to implement certain inclusionary residential programs identified in the Countywide Plan's Housing Element. The proposed amendments would: (1) expand the applicability of the inclusionary housing requirements for all new residential projects resulting in two or more housing units or lots where the current ordinance applies only to new projects resulting in 10 or more residential units or lots; (2) increase the percentage of required affordable housing units for most new residential projects from 15% to 20%; (3) require that inclusionary residential units be restricted to low and very low income households and not moderate income households; and (4) require new commercial and industrial developments to provide housing for 20% of the number of employees at very low, low, and moderate incomes that would be generated by the development. In conjunction with this, the proposed amendments would also include expansion of the existing definitions contained in Chapter 22.130 for "Dwelling," "Dwelling Unit," and "Medical Services – Extended Care" to include units housing independent seniors, such as assisted living facilities, so that they would be subject to the inclusionary requirements.

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that the proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act pursuant to Section 15162 of the CEQA Guidelines because the proposed Development Code Amendments would implement the Countywide Plan's Housing Element and would not result in new information or new environmental impacts that were not previously evaluated in the Negative Declaration of Environmental Impact for the Housing Element.

PUBLIC NOTICE:

The Community Development Agency has published a display notice of at least one-eighth page in the Marin Independent Journal which includes a general description of the proposed Development Code Amendments. In addition, a copy of the public notice has been mailed to interested public agencies, organizations, community groups, and individuals.

BACKGROUND:

In Marin County, housing affordable to lower and moderate-income persons is in very limited supply. Only 19% of the households living in the county are able to afford a median-priced home. The median home price in the county reached a record high \$739,000 in June 2003. Between 1990 and 2000, employment in Marin County increased by 15,550 jobs, while only 8,107 additional housing units, mostly targeting higher income earners, were constructed. As a result, many lower-wage workers must commute into the county to their jobs, resulting increased traffic congestion, lost quality time for the employee, and a less diverse local workforce. If the increase in demand for affordable housing is not met, employers will have more difficulty attracting and retaining a work force.

The Countywide Plan's Housing Element, which was adopted by the Board of Supervisors on June 2, 2003 and certified by the State of California's Department of Housing, contains goals and policies that promote opportunities to increase the amount of affordable housing. To implement them, the Housing Element identifies programs to update and strengthen the existing inclusionary housing ordinance. The County completed an inclusionary housing study with the consulting firm of David Paul Rosen and Associates to provide economic research and analysis and to make findings supporting the nexus for changes to the inclusionary requirements. (Please refer to Attachment 5.) Another important program contained in the Housing Element is the development of a jobs/housing linkage ordinance that would require new commercial and industrial development to provide workforce housing that offsets in part the demand for affordable housing that is generated by the demand for new jobs. In furtherance of this, the County and the Cities of San Rafael and Novato completed a linkage study with the consulting firm of David Paul Rosen and Associates that documents the need for housing that is affordable to the households that would fill the new jobs. (Please refer to Attachment 6.) The study identified a causal relationship, or nexus, between new job creation and the gap in affordability of housing based on the salaries of employees in specific types of occupations and construction costs. This establishes the non-residential linkage fee that is related to the type of non-residential development.

PLAN CONSISTENCY:

The proposed Development Code Amendment is consistent with the goals and policies of the Marin Countywide Plan (CWP) because it would implement programs identified in the 2003 Housing Element. The Housing Element includes the following four components: (1) an analysis of housing-related conditions and trends; (2) a housing needs assessment; (3) an identification of resources, opportunities, and constraints to meeting the County's housing needs; and (4) policies, programs and quantified objectives to address the housing needs. Objective 3.0 of the Housing Element contains programs that promote the use of land efficiently to meet housing needs and to implement smart and sustainable development principles. One means for accomplishing this objective consists of the adoption of zoning regulations that, "promote closer linkages between creating housing nearby to where people work and to establish commercial, office, industrial and other non-residential use contributions for affordable 'workforce' housing."

The proposed Development Code Amendment would further the following Housing Element Policies and Programs:

- Policy H3.19 **Inclusionary Housing Approach.** To increase affordable housing construction, the county will require residential developments involving one or more units to provide a percentage of units or an “in-lieu” fee for very low, low and moderate income housing. The units provided through this policy are intended for permanent occupancy and must be deed restricted, including but not limited to single-family housing, multi-family housing, condominiums, townhouses, locally approved licensed care facilities, stock cooperatives or land subdivisions.
- Policy H3.20 **Income Levels.** Inclusionary zoning requirements will target very low or low-income rental units and low or moderate-income ownership units. This includes 30-80% of the Area Median Income (AMI) for rental units and 50-120% AMI for ownership units.
- Policy H3.21 **Options for Meeting Inclusionary Requirements.** The primary intent of the inclusionary requirement is the construction of new units on-site, with the focus being multi-family housing developments with deed restrictions to support long periods of affordability. Second priority for meeting inclusionary requirements shall be the construction of units off-site or the transfer of land and sufficient cash to develop the number of affordable units required within the same community or planning area. If these options are not practical, then other alternatives of equal value such as in-lieu fees or rehabilitation of existing units may be considered.
- Policy H3.22 **Long-Term Affordability of Inclusionary Units.** Inclusionary units shall be deed-restricted to maintain affordability on resale to the maximum extent possible (typically in perpetuity or at least 55 years).
- Policy H3.23 **Payment of “In-Lieu” Fees.** Payment of in-lieu fees will only be accepted when it is determined that transfer of land and/or dedication of units would provide fewer affordable housing units than could be obtained by the expenditure of “in-lieu” fees on affordable housing development within the planning area. Fees will be calculated based on the cost for unit development and evaluated every other year (land and improvements).
- Program H3.X **Revise the Inclusionary Housing Regulations.** Update the existing Inclusionary Housing Ordinance to include requirements for residential projects, including development of specific income targets and “in-lieu” fee formula. Guidelines for development of an inclusionary program need to meet specific legal tests, but could include:
- a. Establishment of an in-lieu fee for residential projects involving one to four units.
 - b. All residential projects of 5 or greater will be required to provide units or fees at a rate of at least 20 percent affordable.
 - c. Some flexibility is desirable in implementing this program, depending on the size of units (number of bedrooms), affordability, and consideration of very low, low and moderate-income housing need.
 - d. Apply inclusionary requirements to licensed senior facilities with independent assisted living.
 - e. Payment of in-lieu fees, or for fractional unit requirement, shall be at a rate adequate to create the affordable units off-site.
- Policy H3.2 **Contributions for Workforce Housing from Non-Residential Uses.** Local housing needs for local workers is an important factor for the county when reviewing non-residential development proposals. The county will require specific non-residential uses to contribute to the provision of affordable workforce housing, such as the provision of housing on-site, or other alternatives of equal value.

Program H3.B **Adopt a Job/Housing Linkage Ordinance.** Adopt a Jobs/Housing Linkage Ordinance with consideration of the following exaction requirements:

- a. Set exaction requirements for dwelling units and/or in-lieu fees according to empirically based evidence and must comply with all other legal tests.
- b. Include affordable housing units within manufacturing/light industry/assembly, office/research and development, warehouse, hotel and retail with order of priority being: 1) include housing on-site, 2) provide housing off-site, 3) subsidize mortgages or rents, and 4) as a last resort, collect an in-lieu fee based on subsection c., below.
- c. Establish the payment of fees into a Housing Trust Fund of in-lieu fees based on a dollar amount per square foot of manufacturing/light industry/assembly, office/research and development, warehouse, hotel and retail.

ANALYSIS:

The proposed Development Code Amendments apply to Chapter 22.22 – Affordable Housing Regulations and involve retitling of Sections 22.22.020 and 22.22.080, addition of new Sections 22.22.095 and 22.22.096, and modifications to the text throughout Chapter 22.22, where applicable. Chapter 22.130 – Definitions would also be amended to expand certain definitions. Attachment 3 of this staff report includes all of the proposed modifications with the changes noted in revision marks.

1. Residential Developments

Currently, any proposed development of 10 or more residential units or lots are required to provide 15% of the total number of units or lots as inclusionary units that are affordable to very low, low, or moderate income households. The proposed amendment would expand the applicability of the inclusionary ordinance to all development of 2 or more units or lots and increase the percentage of inclusionary units to 20%. The inclusionary units shall be rented to very low or low income households that earn no more than 50% of the area's median income. For ownership housing, the qualifying households would earn no more than 60% of the area's median income. Deed-restricted affordable housing, agricultural worker housing, and second unit development would be exempt from the inclusionary housing requirements. Staff has included a requirement that all inclusionary units be maintained at affordable levels in perpetuity, unless reduced to 40 years due to financing considerations. Please refer to Table 1 below for a summary of the key proposed changes to the inclusionary ordinance for residential developments.

**TABLE 1
COMPARISON OF EXISTING AND PROPOSED INCLUSIONARY REQUIREMENTS**

	Existing Requirement	Proposed Requirement
Number of units to trigger requirement	10	2
Percentage of units required to be inclusionary	15%	20%
Income levels for inclusionary units	Very Low, Low, Moderate	Very Low, Low

There are two notable exceptions to the recommended inclusionary program, as follows.

- a. Due to the high median incomes in the Bay Area, the affordability gap between the incomes of moderate income households (those making between 80% and 120% of the area's median income) and their ability to afford a market rate ownership housing is smaller than for very low and low

income households. For example a family of four at 120% of the area median income earning \$109,800 could qualify for a home on the open market selling at \$439,200. This condition does not warrant the continued requirement for inclusionary units to be provided at moderate income levels. Additionally, due to high land costs it is more challenging to create very low and low income housing in Marin County. Many of the new jobs created are very low and low income occupations. Therefore, staff is recommending that the inclusionary ordinance be modified to eliminate the provision of inclusionary ownership units for moderate income households and instead, to target the inclusionary units at those very low or low income households who earn no more than 60% of the area's median income.

- b. Secondly, because the development of more affordable attached family housing has lagged in production due to construction defect litigation, the County will not increase the percentage of required inclusionary units to create an incentive for the development of attached family housing, except for attached housing that targets the upper end of the market. This would support Housing Element Policy H3.21 by increasing the supply of multi-family housing developments. Staff is recommending that the percentage of required inclusionary housing for attached single-family residential developments be maintained at the current 15% for this reason. Attached market-rate housing that targets the upper end of the housing market would be subject to the 20% inclusionary requirement. These would entail units that are sold at more than 150% of the median price of a single-family residence in the County or which exceed a gross floor area (inclusive of garage space) of 2,000 square feet.

The inclusionary ordinance has also been modified to specify alternative means for compliance with the requirements. Priority shall be given to constructing the inclusionary units within the development. In instances where that is not reasonable or appropriate, such as where the on-site units would be undesirable because there is poor access to public transportation and proximity to retail and service establishments, the Community Development Director may allow for the units to be developed at one or more off-site locations provided the units will provide an equivalent or better means of furthering the County's affordable housing goals. The applicant may also dedicate suitable real property for construction of the housing units to the County or a designated entity for affordable housing provided the property is appropriately zoned, is consistent with the community character, and is accessible to public transportation and other services. Inclusionary units may also be constructed within 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 lowest priority option for compliance with the ordinance would entail payment of the in-lieu fee to the County for use towards new or rehabilitated affordable housing projects. The amount of fees charged will remain unchanged and will continue to reflect the gap between construction costs of housing and the ability of renters or owners to pay for housing. The fee is currently \$99,900 per inclusionary unit.

Finally, consistent with Housing Element Program H3.X(d), which requires application of inclusionary requirements to licensed senior facilities with independent and assisted living units, staff is recommending that the existing definitions for "Dwelling," "Dwelling Unit," and "Medical Services – Extended Care" be modified to include units housing independent seniors, such as assisted living facilities. Marin County is a "greying" community. The Housing Element places a very high priority on the need for affordable senior housing that addresses care needs of seniors as they age. Licensed care facilities have been treated as commercial entities and therefore exempt from the inclusionary ordinance. This policy would apply the inclusionary ordinance to licensed facilities that have multiple levels of care within a licensed facility.

2. Commercial and Industrial Development

The proposed inclusionary requirements for new commercial and industrial developments are based on the recommendations contained in the housing linkage study ("Study"). The Study found that: (1) there is a direct nexus between new commercial and industrial development and its contribution to the increase in the demand for affordable housing; and (2) a housing linkage fee is justified based on the number of new very low, low, and moderate income households that are created by new commercial and industrial development and the amount of gap financing necessary to develop housing for these affordable households.

The proposed Development Code Amendment includes the following new chapters to implement the non-residential inclusionary requirements: (1) Chapter 22.22.095 – General Requirements – Commercial and Industrial Development; and (2) Chapter 22.22.096 – In-lieu Participation Fees for Commercial and Industrial Development. Preference is given to development of the inclusionary housing within the commercial or industrial development. Inclusionary units are limited to a maximum size of 1,000 square feet of living space per unit and shall be compatible with the design of the development or the predominant residential character in the immediate neighborhood in appearance, materials, amenities, and finished quality.

The number of new very low, low, and moderate income households that are generated by different types of commercial and industrial developments is included in Table 2 below.

TABLE 2
NUMBER OF NEW VERY LOW, LOW AND MODERATE INCOME
HOUSEHOLDS GENERATED BY COMMERCIAL AND INDUSTRIAL DEVELOPMENT

DEVELOPMENT TYPE	Number of New Very Low, Low and Moderate Income Households (per 1,000 square feet of floor area¹)
Manufacturing/Light Industry/Assembly	0.18
Office ² /Research and Development	0.34
Warehouse	0.09
Hotel/Motel ³	0.08
Retail/Restaurant	0.23

¹ For purposes of this Chapter, the floor area excludes all garage areas permanently allocated for vehicle parking.

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.

Similar to the inclusionary requirements for residential developments, the proposed inclusionary requirements for commercial and industrial developments require provision of the affordable housing as part of the project. In the event on-site construction is not reasonable or appropriate, the Community Development Director may accept alternatives for compliance, including provision of the required units in an off-site location, dedication of suitable real property to the County or a designated entity for affordable housing construction, or construction of the units within the City or Town. Additionally, a housing mitigation plan may be accepted if it includes financial subsidies towards new affordable housing construction in the County and where it is found that this alternative would provide a better means of achieving the affordable housing goals and that all other alternatives are not feasible. The lowest priority option for compliance with the ordinance would entail payment of the in-lieu fee to the County for use towards new or rehabilitated affordable housing projects. In order to not unduly discourage commercial or industrial developments, the preference should be for compliance through construction of new affordable housing development rather than reliance on the linkage fees and that in those circumstances

where a fee is appropriate, 20% of the legally justifiable fee is recommended for consideration. The amount of in-lieu fees that is recommended for adoption is provided in Table 3 below.

TABLE 3
IN-LIEU PARTICIPATION FEES FOR COMMERCIAL AND INDUSTRIAL DEVELOPMENT
(per square feet of floor area¹ unless noted otherwise)

Development Type	Fee
Manufacturing/Light Industry/Assembly	\$2.99
Office ² /Research and Development	\$5.75
Warehouse	\$1.55
Hotel/Motel ³	\$1,396 per room
Retail/Restaurant	\$4.32

¹ For purposes of this Chapter, the floor area excludes all garage areas permanently allocated for vehicle parking.

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.

CONCLUSION:

The proposed Development Code Amendments would implement policies and programs identified in the Countywide Plan's Housing Element to increase the supply of affordable housing in the County through application of inclusionary requirements on residential, commercial, and industrial developments. The recommended modifications to the existing inclusionary ordinance meet sound legal nexus requirements based on supporting studies.

RECOMMENDATION:

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolution recommending approval of the proposed amendments to Marin County Code Title 22 (Development Code) by the Board of Supervisors.

- Attachments:
1. Proposed Resolution Recommending that the Board of Supervisors Adopt Amendments to Marin County Code Title 22 (Development Code) – Chapter 22.22 - Affordable Housing Regulations and Chapter 22.130 - Definitions
 2. CEQA Exemption
 3. Proposed Marin County Code – Title 22, Development Code (Chapters 22.22 and 22.130) – With Revisions
 4. Executive Summary, Facts and Key Issues (Housing Workbook and the No-Residential Development Housing Linkage Analysis

(The following documents have been included in the Planning Commission packets only. Copies of the documents are available for public review at the Community Development Agency from 8 a.m. to 4 p.m. daily.)

5. County of Marin Inclusionary Housing Study
6. Commercial Development Linkage for Affordable Housing

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT
AMENDMENTS TO MARIN COUNTY CODE TITLE 22 (DEVELOPMENT CODE)
CHAPTER 22.22 – AFFORDABLE HOUSING REGULATIONS
CHAPTER 22.130 - DEFINITIONS

SECTION I. FINDINGS

WHEREAS, the Marin County Planning Commission hereby find and declare the following:

- I. The Marin Countywide Plan’s Housing Element contains policies that encourage the development of new affordable housing. Objective 3.0 of the Housing Element contains programs that promote the use of land efficiently to meet housing needs and to implement smart and sustainable development principles. One means for accomplishing this objective consists of the adoption of zoning regulations that, “promote closer linkages between creating housing nearby to where people work and to establish commercial, office, industrial and other non-residential use contributions for affordable ‘workforce’ housing.”
- II. There is a shortage of affordable workforce housing in Marin County. Only 19% of the households living in the county are able to afford a median-priced home. Between 1990 and 2000, employment in Marin County increased by 15,550 jobs, while only 8,107 additional housing units, mostly targeting higher income earners, were constructed. As a result, many lower-wage workers must commute into the county to their jobs, resulting in increased traffic congestion, lost quality time for the employee, and a less diverse local workforce. If the increase in demand for affordable housing is not met, employers will have more difficulty attracting and retaining a work force.
- III. Construction of commercial and industrial space accommodates business expansion and results in the creation of new jobs, which increase the demand for housing. This demand is especially strong for service and support employees because most of the new jobs that are created in the county are support, service, or retail-related with below-average compensation. As part of a community-wide approach to providing workforce housing, contribution of solutions by the business community is equitable and reasonable.
- IV. The County of Marin completed an inclusionary housing study with the consulting firm of David Paul Rosen and Associates to provide economic research and analysis and to make findings supporting the nexus for changes to the inclusionary requirements. In addition, the County of Marin and all 12 cities and towns developed a Housing Workbook as a policy toolkit that could be tailored by each jurisdiction to advance affordable housing goals countywide. The workbook also contains strategies that are intended to address the shortage of affordable housing countywide. As part of the Housing Workbook, the County participated in the creation of a Housing Linkage Study which documented the need for affordable housing because of job creation and developed a nexus for the creation of affordable housing based on the number and types of new jobs that are and will be created.
- V. The County-initiated amendment to Title 22 (Development Code) of the Marin County Code would implement the Countywide Plan’s housing policies that encourage the development of new affordable housing and the recommendations contained in the Housing Linkage Study. The proposed amendments would: (1) expand the applicability of the inclusionary housing requirements for all new residential projects resulting in two or more housing units or lots where the current ordinance applies only to new projects resulting in 10 or more residential units or lots; (2) increase the percentage of required affordable housing units for most new residential projects from 15% to 20%; (3) require that inclusionary residential units be

restricted to low and very low income households and not moderate income households; and (4) require new commercial and industrial developments to provide housing for 20% of the number of employees at very low, low, and moderate incomes that would be generated by the development. In conjunction with this, the proposed amendments would also include expansion of the existing definitions contained in Chapter 22.130 for “Dwelling,” “Dwelling Unit,” and “Medical Services – Extended Care” to include units housing independent seniors, such as assisted living facilities, so that they would be subject to the inclusionary requirements.

- VI. The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act pursuant to Section 15162 of the CEQA Guidelines because the proposed Development Code Amendments would implement the Countywide Plan’s Housing Element and would not result in new information or new environmental impacts that were not previously evaluated in the Negative Declaration of Environmental Impact for the Housing Element.
- VII. On September 8, 2003, the Marin County Planning Commission conducted a public hearing on the proposed revisions to the Development Code related to affordable housing regulations.
- VIII. The proposed Development Code Amendment is consistent with the Marin Countywide Plan, including the following Housing Element Policies and Programs:
 - A. Inclusionary Housing Approach.** To increase affordable housing construction, the county will require residential developments involving one or more units to provide a percentage of units or an “in-lieu” fee for very low, low and moderate income housing. The units provided through this policy are intended for permanent occupancy and must be deed restricted, including but not limited to single-family housing, multi-family housing, condominiums, townhouses, locally approved licensed care facilities, stock cooperatives or land subdivisions. (Housing Element Policy H3.19)
 - B. Income Levels.** Inclusionary zoning requirements will target very low or low-income rental units and low or moderate-income ownership units. This includes 30-80% of the Area Median Income (AMI) for rental units and 50-120% AMI for ownership units. (Housing Element Policy H3.20)
 - C. Options for Meeting Inclusionary Requirements.** The primary intent of the inclusionary requirement is the construction of new units on-site, with the focus being multi-family housing developments with deed restrictions to support long periods of affordability. Second priority for meeting inclusionary requirements shall be the construction of units off-site or the transfer of land and sufficient cash to develop the number of affordable units required within the same community or planning area. If these options are not practical, then other alternatives of equal value such as in-lieu fees or rehabilitation of existing units may be considered. (Housing Element Policy H3.21)
 - D. Long-Term Affordability of Inclusionary Units.** Inclusionary units shall be deed-restricted to maintain affordability on resale to the maximum extent possible (typically in perpetuity or at least 55 years). (Housing Element Policy 3.22)
 - E. Payment of “In-Lieu” Fees.** Payment of in-lieu fees will only be accepted when it is determined that transfer of land and/or dedication of units would provide fewer affordable housing units than could be obtained by the expenditure of “in-lieu” fees on affordable housing development within the planning area. Fees will be calculated based on the cost for unit development and evaluated every other year (land and improvements). (Housing Element Policy 3.23)
 - F. Revise the Inclusionary Housing Regulations.** Update the existing Inclusionary Housing Ordinance to include requirements for residential projects, including development of specific income targets and “in-lieu” fee formula. Guidelines for development of an inclusionary program need to meet specific legal tests, but could include. (Housing Element Program H3.X)

- a. Establishment of an in-lieu fee for residential projects involving one to four units.
- b. All residential projects of 5 or greater will be required to provide units or fees at a rate of at least 20 percent affordable.
- c. Some flexibility is desirable in implementing this program, depending on the size of units (number of bedrooms), affordability, and consideration of very low, low and moderate-income housing need.
- d. Apply inclusionary requirements to licensed senior facilities with independent assisted living.
- e. Payment of in-lieu fees, or for fractional unit requirement, shall be at a rate adequate to create the affordable units off-site.

G. Contributions for Workforce Housing from Non-Residential Uses. Local housing needs for local workers is an important factor for the county when reviewing non-residential development proposals. The county will require specific non-residential uses to contribute to the provision of affordable workforce housing, such as the provision of housing on-site, or other alternatives of equal value. (Housing Element Policy H3.2)

H. Adopt a Job/Housing Linkage Ordinance. Adopt a Jobs/Housing Linkage Ordinance with consideration of the following exaction requirements:

- a. Set exaction requirements for dwelling units and/or in-lieu fees according to empirically based evidence and must comply with all other legal tests.
- b. Include affordable housing units within manufacturing/light industry/assembly, office/research and development, warehouse, hotel and retail with order of priority being: 1) include housing on-site, 2) provide housing off-site, 3) subsidize mortgages or rents, and 4) as a last resort, collect an in-lieu fee based on subsection c., below.
- c. Establish the payment of fees into a Housing Trust Fund of in-lieu fees based on a dollar amount per square foot of manufacturing/light industry/assembly, office/research and development, warehouse, hotel and retail. (Housing Element Program H3.B)

SECTION II. AMENDMENTS TO TITLE 22

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby recommends that the Board of Supervisors adopt amendments to the Marin County Title 22 (Development Code) contained in Exhibit "A" of this Resolution.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 8th day of September, 2003, by the following vote to wit:

AYES:

NOES:

ABSENT:

ROSS HERBERTSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Planning Commission Secretary

EXHIBIT “A”

CHAPTER 22.22 - AFFORDABLE HOUSING REGULATIONS

Sections:

- 22.22.010 - Purpose of Chapter
- 22.22.020 - General Requirements—Housing Projects
- 22.22.030 - Inclusionary Requirements for Rental Housing Developments
- 22.22.040 - Inclusionary Requirements for Ownership Housing Developments
- 22.22.050 - Inclusionary Requirements for Lot Subdivisions
- 22.22.060 - Eligibility Requirements for Ownership Housing Developments
- 22.22.070 - Control of Resale
- 22.22.080 - In-lieu Participation Fees for Residential Development
- 22.22.090 - Availability of Government Subsidies
- 22.22.095 – General Requirements – Commercial and Industrial Development
- 22.22.096 – In-lieu Participation Fees for Commercial and Industrial Development
- 22.22.100 - Fee Waiver for Inclusionary Units
- 22.22.110 - Technical Assistance
- 22.22.120 - Appeals to Affordable Housing Requirements

22.22.010 - Purpose of Chapter

This Chapter provides procedures which are intended to achieve the following goals:

- A. **Countywide Plan housing goals.** Enhance the public welfare and ensure that further residential, commercial, and industrial development contribute to the attainment of the housing goals of the Countywide Plan by increasing the production of housing affordable by households of very low, low and moderate income, and stimulating funds for development of low income housing.
- B. **Reduce affordable housing shortage.** Reduce the housing shortage for very low, low, and moderate income households.
- C. **Balanced community.** Achieve a balanced community with housing available for households with a range of income levels.
- D. **Inclusionary housing.** 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 by requiring 20 percent of the total number of housing units of all new residential developments containing 2 or more units to be affordable by households of very low or low income and by requiring that 20 percent of the total number of very low, low, and moderate income housing units generated by new commercial and industrial developments to be affordable by households of very low, low or moderate income.

22.22.020 - General Requirements—Housing Projects

Any proposed development of 2 or more residential parcels or housing units intended for permanent occupancy, including but not limited to single-family housing, multi-family housing, condominiums, townhouses, stock cooperatives, or subdivisions that create the potential for one or more additional housing units, shall comply with all the following requirements. The inclusionary housing requirements of this Section shall be imposed only once on a given development.

This Section does not apply to residential development projects that comply with the provisions of 22.24.030 (State-Mandated Density Bonus and Other Incentives) and to agricultural worker housing, second units, or any deed-restricted housing development that is affordable to very low or low income persons.

- A. Where allowed.** An affordable housing project in compliance with this Chapter may be allowed with Use Permit approval in any zoning district provided that the review authority first finds that residential uses are allowed by the applicable Countywide Plan land use designation.
- B. Number of Inclusionary Units Required.** Proposed residential development projects with 2 or more units shall:
 - 1. Provide 20 percent of the total number of housing units within the development as inclusionary units, affordable by low or very low income households; or
 - 2. Provide 20 percent of the total number of parcels in the case of land subdivisions, for the development of inclusionary units;
 - 3. Where the application of the above percentages results in any decimal fraction less than or equal to 0.50, the project applicant shall pay an in-lieu fee proportional to the decimal fraction in compliance with 22.22.080 (In-Lieu Participation Fees for Residential Development). Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit or lot, except that developments with less than 5 units shall comply with the provisions of this ordinance through payment of the in-lieu participation fees.
- C. Conditions of approval.** Any development permit for a residential development project that is subject to the requirements of this Chapter shall contain conditions of approval that will ensure compliance with the provisions of this Chapter. The conditions of approval shall:
 - 1. Specify the construction of the inclusionary units and/or the timing of payment of in-lieu fees;
 - 2. Specify the number of inclusionary units at appropriate price levels, to be determined by the review authority;

3. Specify provisions for a density bonus and/or other incentives in compliance with State law (Government Code Sections 65915 et seq.), and Chapter 22.24 (Affordable Housing Incentives) where applicable; and
4. Require a written agreement between the County and the applicant which indicates the number, type, location, approximate size, and construction scheduling of all 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 inclusionary units, and specify resale control mechanisms.

D. Location and type of inclusionary units.

1. All inclusionary residential units shall be provided within the development, except as provided for in Section 2 below. Inclusionary units shall be reasonably dispersed throughout the development, where feasible.
2. If the Director finds that the required inclusionary units cannot be provided on-site, one or more of the following alternative means may be approved for compliance with the requirements of this chapter:
 - a. The inclusionary residential units may be constructed on one or more sites not contiguous with the proposed development if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments. Additionally, the Director shall find that the off-site construction will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. The off-site property shall be located in an area with appropriate zoning, character and density, location, size, accessibility to public transportation, and other services, consistent with sound community planning principles.
 - b. The project applicant may dedicate suitable real property for the required housing to the County or its designee to be developed by the County, or a profit or nonprofit, private or public applicant if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments. Additionally, the Director shall find that the dedication of real property will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. The off-site property shall be located in an area with appropriate community character, residential density, location, and accessibility to public transportation, and other services, consistent with sound community planning principles. Additionally, the property shall be offered in a condition that is suitable for development and devoid of contaminants and other hazardous wastes and shall be appropriately sized and zoned for development equivalent to the residential units that are not created on-site.

- c. Inclusionary residential units not constructed within the larger development shall be constructed within the unincorporated area of the County. Inclusionary 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.
- d. The project applicant may pay an in-lieu participation fee in compliance with 22.22.080 (In-Lieu Participation Fees). The Director shall apply the lowest preference to the payment of an in-lieu fee for compliance with the requirements of this chapter.
- E. Design and character of inclusionary units.** Inclusionary units shall contain on average the same number of bedrooms as the non-inclusionary units in the development, and shall be compatible with the design and use of the remaining units in appearance, materials, amenities, and finished quality.
- F. Interior design.** The applicant may have the option of reducing the interior amenity level, as well as the square footage of the inclusionary units below that of large market-rate units, provided all of the units conform to the requirements of County Building and Housing Codes and the Director finds that the reduction in interior amenity level would still meet the purpose of this chapter and provide a quality living environment.
- G. Rental units within an ownership housing development.** The applicant shall have the option, in a homeownership development, of constructing rental units in a number sufficient to meet the inclusionary requirements of this Chapter. These rental units shall be subject to 22.22.030 (Inclusionary requirements for rental housing developments), below. The County shall assist the applicant in identifying available financing and/or subsidies for the rental housing development.
- H. Timing of construction.** All inclusionary housing units and other phases of a development shall be constructed prior to or concurrent with the construction of non-inclusionary units, unless the Director approves a different schedule.
- I. Eligible occupants.** All inclusionary units shall be sold or rented to low or very low income households as certified by the Housing Authority.

22.22.030 - Inclusionary Requirements for Rental Housing Developments

The following requirements apply to proposed residential development projects with housing units intended for rental, in addition to the provisions of Section 22.22.020 (General Requirements - Housing Projects), above. The provisions of this Section do not apply to housing developments that comply with the provisions of Section 22.24.030 (State-Mandated Density Bonus and Other Incentives) and to agricultural worker housing, second units, or any deed-restricted housing development that is affordable to very low or low income persons.

- A. Limitation on rental prices.** In rental developments of 2 or more units, 20 percent of the units shall be inclusionary rental units in perpetuity, unless the review authority reduces it to 40 years. The inclusionary rental units shall be offered at rent levels not exceeding 30 percent of the gross income of households earning 50 percent of area median income. Where housing financing is available for rental subsidy, units shall be made available to very low income households.

The housing unit rental prices shall be established by the County or its designee and shall be based on the number of bedrooms and location.

- B. Eligible tenants.** The County shall contract with the Housing Authority to screen applicants for the inclusionary rental units, and to refer eligible tenants to the applicant or owner of the rental units. 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 inclusionary units as are applied to all other tenants, with the exception of rent levels, household income, and any requirements of government subsidy programs.
- C. Designated administrator.** The Housing Authority shall be the agency designated to administer inclusionary housing programs on behalf of the County. The Housing Authority shall require guarantees, enter into recorded agreements with applicants, and take other appropriate steps necessary to ensure that the required inclusionary income rental dwelling units are provided, and that they are rented to low or very low income households. When these requirements have been met to the satisfaction of the Housing Authority, the Housing Director shall prepare a certification indicating that the applicant has complied with the requirements of this Section, and shall transmit it to the County.

22.22.040 - Inclusionary Requirements for Ownership Housing Developments

The following requirements apply to residential development projects with units intended for sale, in addition to the provisions of Section 22.22.020 (General Requirements). The provisions of this Section do not apply to housing developments that comply with the provisions of Section 22.24.030 (State-Mandated Density Bonus and Other Incentives) and to agricultural worker housing, second units, or any deed-restricted housing development that is affordable to very low or low income persons.

- A. Limitation on sales prices.** In ownership residential development projects of 2 or more units, 20 percent of the units shall be inclusionary units affordable by households earning 60 percent of the area median income in perpetuity, unless the review authority reduces it to 40 years. For attached single-family residential developments, such as ownership townhomes, that are sold at less than 150% of the median price for single-family residences in the County or that provide less than 2,000 square feet of gross floor area (inclusive of garage space) per unit, 15 percent of the units shall be inclusionary units under the provisions of this title. Low income units shall be sold to a range of families earning no more than 60 percent of the area median income. The housing unit sales prices shall be established by the County or its designee, and shall be based on the number of bedrooms and location.
- B. Duration of initial inclusionary requirement.** The applicant shall be required to offer to the Housing Authority, or a County designated party, all the inclusionary units required by this Chapter for sale to eligible purchasers for a period of not less than 90 days from the date of the County's issuance of a Certificate of Occupancy.

Sale and resale restrictions are removed in the event the Housing Authority or County designee does not complete the sale of a unit to an eligible purchaser or public entity or non-profit organization responsible for providing affordable housing.

- C. Notice of resale restrictions.** The Housing Authority shall advise all prospective purchasers of the resale restriction applicable to ownership inclusionary units contained in Section 22.22.070 (Control of Resale).
- D. Screening of eligible purchasers.** The Housing Authority shall review the assets and income of prospective purchasers of the ownership inclusionary units on a project-by-project basis. The Housing Authority shall advertise the inclusionary units to the general public. Upon notification of the availability of ownership units by the applicant, the Housing Authority shall seek and screen qualified purchasers through a process involving applications and interviews. Where necessary, the Housing Authority shall hold a lottery to select purchasers.

The applicant/owner shall select buyers from the list of qualified purchasers provided by the Housing Authority; provided, that the same terms and conditions (except income) are applied to purchasers of inclusionary units as are applied to all other purchasers. Preference will be given to residents of the County and/or to people employed in the County.

22.22.050 - Inclusionary Requirements for Lot Subdivisions

In subdivisions of 2 or more parcels, where one or more additional housing units would be developed, 20 percent of the developable parcels or their equivalent shall be set aside for immediate or future development of low or very low income units. The land may be developed by the applicant or another profit or nonprofit applicant, private or public, or deeded to the County or its designee. The units built on the parcels may be rental or owner occupied, and shall be in compliance with the requirements of this Chapter. The method of providing inclusionary units from lot subdivisions shall be specified in the conditions of approval of each applicable subdivision.

22.22.060 - Eligibility Requirements for Ownership Housing Developments

- A.** In establishing moderate household income, the County or its designee shall consider, among other things, the median household income data provided periodically by the Department of Housing and Urban Development (HUD), household size and number of dependents, and all sources of family income and assets.
- B.** Every purchaser of an inclusionary housing unit shall certify, by a form acceptable to the County, that the unit is being purchased for the purchaser's primary place of residence. The Housing Authority 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.

22.22.070 - Control of Resale

- A. Limitation on resale price.** In order to maintain the availability 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:
- 1. 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;
 - 2. 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
 - 3. Fair market value.** The fair market value of the resale unit as determined by an appraiser selected and paid for by the seller.
- B. Eligible purchasers.** Homeownership inclusionary units shall be sold and resold from the date of the original sale only to very low or low income households, as determined to be eligible for inclusionary units by the Housing Authority, in compliance with the requirements of this Chapter.

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. Deed restrictions.** The owners of any inclusionary unit shall attach and legally reference in the grant deed conveying title of any inclusionary ownership unit a declaration of restrictions provided by the Housing Authority, stating the restrictions imposed in compliance with this Chapter. The grant deed shall afford the grantor and the County the right to enforce the attached declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Chapter.
- D. Monitoring of resales.** The Housing Authority shall be given the responsibility of monitoring the resale of ownership inclusionary units. The Housing Authority or its assignee shall have a 90-day option to commence purchase of ownership inclusionary units after the owner gives notification of intent to sell. Any abuse in the resale provisions shall be referred to the County for appropriate action.

22.22.080 - In-Lieu Participation Fees for Residential Development

- A. Purpose.** The purpose of this Section is to provide the means to levy fees for construction of affordable housing, when the inclusion of affordable housing is impractical or unreasonable within a proposed residential development or in cases where the inclusionary requirement includes a decimal fraction of a unit, and a combination of both inclusionary units and in-lieu fees is required.

- B. Use of in-lieu participation fees.** In-lieu fees shall be used by the County, or its designee (e.g., a non-profit housing development corporation) for the purpose of developing affordable housing for very low and low income households, with preference for use in the unincorporated areas of the County.
- C. Calculation of in-lieu fees.** The in-lieu participation fees for all residential development, including lot subdivisions, shall be calculated as the difference between the ability of low income families (earning 60 percent of median income for ownership units and 50 percent of median income for rental units) to pay for housing, and the estimated cost of a market rate unit of appropriate size, to be determined by the County. This differential shall be multiplied by the required number of inclusionary units to determine the total required fee to be paid in-lieu of constructing below market rate units. For the purposes of applying percentages to in-lieu fees on developments of 2 or more units, decimal fractions of a unit shall be used.
- Estimates of the price of a market rate unit and the corresponding in-lieu participation fee are to be determined periodically by the Director.
- D. Timing of in-lieu fee payment.** At the option of the applicant, in-lieu participation fees may be paid as proceeds from sales are received, or at the time of sale of the last unit or parcel. The in-lieu fees shall constitute a lien on the property, which shall be recorded as a separate document at the recordation of the subdivision map. The in-lieu fee shall be due within 24 months from the date of approval of the development, regardless of whether or not the individual parcels have been sold. The lien shall include a provision for foreclosure under power of sale if the in-lieu payment is not made within 24 months from the recordation of the lien, regardless of whether or not the individual parcels have been sold. If payment of the in-lieu fee is not made in full at the end of the 24-month period, any unpaid balance shall accrue interest at the rate of 1% per month.

22.22.090 - Availability of Government Subsidies

It is the intent of this Chapter that the requirements for inclusionary units affordable by very low and low income families shall not be determined by the availability of government subsidies. This is not to preclude the use of these programs or subsidies. This Chapter is also not intended to be an undue burden on the applicants of residential developments. Therefore, as detailed in Chapter 22.24 (Affordable Housing Incentives), incentives are given to provide inclusionary units.

22.22.095 – Inclusionary Requirements for Commercial and Industrial Development

Any proposed commercial or industrial development, including light industrial, office/research and development, warehouse, hotel, and retail uses, shall provide the amount of affordable inclusionary residential units in compliance with the following requirements. The inclusionary units may be developed by the applicant or another profit or nonprofit applicant, private, or public. In order to provide a jobs/housing balance and address traffic congestion concerns, the review authority may condition the project to include market rate housing in excess of the inclusionary units required in this chapter on a case-by-case basis through the discretionary permit review process.

- A. Where Allowed.** Required inclusionary residential units are allowed in any zoning district where residential uses are permitted as a principal use and with Use Permit approval in any other zoning district. Inclusionary units that are required to be built on-site shall comply with all other provisions of this title.
- B. Number of Inclusionary Units Required.** Proposed commercial and industrial development projects shall comply with the following requirements:
1. Twenty (20) percent of the total number of housing units for very low, low, and moderate income households that are generated by the development shall be provided within the development;
 2. Where the application of the above percentages results in any decimal fraction less than or equal to 0.50, the project applicant shall pay an in-lieu fee proportional to the decimal fraction in compliance with 22.22.096 (In-Lieu Participation Fees for Commercial and Industrial Development). Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit.
- C. Conditions of approval.** Any development permit for a commercial or industrial development project that is subject to the requirements of this Chapter shall contain conditions of approval that will ensure compliance with the provisions of this Chapter. The conditions of approval shall:
1. Specify the construction of the inclusionary units and/or the timing of payment of in-lieu fees;
 2. Specify the number of inclusionary units at appropriate price levels to be determined by the review authority; and
 3. Require a written agreement between the County and the applicant which indicates the number, type, location, approximate size, and construction scheduling of all 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 inclusionary units, and specify resale control mechanisms. All rental units developed in compliance with this Chapter shall be affordable to very low, low, or moderate income renters in perpetuity, unless the review authority reduces it to 55 years. The requirements of 22.22.030 and 22.22.040 shall apply where applicable.
- D. Location and type of inclusionary units.**
1. All inclusionary residential units shall be provided within the development, except as provided for in Section 2 below.
 2. If the Director finds that the required inclusionary units cannot be provided on-site, one or more of the following alternative means may be approved for compliance with the requirements of this chapter:
 - a. The inclusionary residential units may be constructed on one or more sites not contiguous with the proposed development if the Director finds that placement of

the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments or where the nature of the commercial or industrial use or its surroundings is incompatible with residential uses in terms of noise or other nuisance, health, or safety hazards. Additionally, the Director shall find that the off-site construction will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. In allowing compliance through off-site construction, the Director may consider commercial lending requirements which render construction of the housing on-site infeasible. The off-site property shall be located in an area with appropriate zoning, character and density, location, size, accessibility to public transportation, and other services, consistent with sound community planning principles.

- b. The project applicant may dedicate suitable real property for the required housing to the County or its designee to be developed by the County, or a profit or nonprofit, private or public applicant if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments or where the nature of the commercial or industrial use or its surroundings is incompatible with residential uses in terms of noise or other nuisance, health or safety hazards. Additionally, the Director shall find that the dedication of real property will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. In allowing compliance through off-site dedication, the Director may also consider commercial lending requirements which render construction of the housing on-site infeasible. The off-site property shall be located in an area with appropriate community character, residential density, location, and accessibility to public transportation, and other services, consistent with sound community planning principles. Additionally, the property shall be offered in a condition that is suitable for development and devoid of contaminants and other hazardous wastes and shall be appropriately sized and zoned for development equivalent to the residential units that are not created on-site.
- c. Inclusionary residential units not constructed within the larger development shall be constructed within the unincorporated area of the County. Inclusionary 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.
- d. The project applicant may submit a housing mitigation plan which includes financial subsidies towards new affordable housing development in the County. This alternative may be acceptable if the Director finds that it would provide a better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units, that there are sufficient

County resources to monitor and implement the plan, and that compliance with the alternative means described in Sections a, b, and c is not feasible.

- e. The project applicant may pay an in-lieu participation fee in compliance with Section 22.22.096 (In-Lieu Participation Fees for Commercial and Industrial Development). The Director shall apply the lowest preference to the payment of an in-lieu fee for compliance with the requirements of this chapter.

- E. Number of Very Low, Low and Moderate Income Households Generated.** The number of new very low, low and moderate income households that are generated by new non-residential development shall comply with Table 3-3.1.

TABLE 3-3.1

**NUMBER OF NEW VERY LOW, LOW AND MODERATE INCOME
HOUSEHOLDS GENERATED BY
COMMERCIAL AND INDUSTRIAL DEVELOPMENT**

DEVELOPMENT TYPE	Number of New Very Low, Low and Moderate Income Households (per 1,000 square feet of floor area¹)
Manufacturing/Light Industry/Assembly	0.18
Office ² /Research and Development	0.34
Warehouse	0.09
Hotel/Motel ³	0.08
Retail/Restaurant	0.23

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 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.

- F. Maximum size, design and character of inclusionary units.** Inclusionary units shall be limited to a maximum size of 1,000 square feet of living space per unit and shall be compatible with the design of the commercial or industrial development or the predominant residential character in the immediate neighborhood in appearance, materials, amenities, and finished quality.

- G. Timing of construction.** All inclusionary housing units and other phases of a development shall be constructed prior to or concurrent with the construction of the commercial or industrial development, unless the Director approves a different schedule.

- H. Eligible occupants.** All inclusionary units shall be rented or sold to very low, low, or moderate income households as certified by the Housing Authority.

- I. Encouragement for On-site Housing.** As an inducement for the development of on-site housing, the Director may grant a reduction in the site development standards of this Development Code or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission in compliance

with State law (Health and Safety Code Sections 18901 et seq.), including, but not limited to setback, coverage, and/or parking requirements.

22.22.096 – In-Lieu Participation Fees for Commercial and Industrial Development

- A. Purpose.** The purpose of this Section is to provide the means to levy fees for construction of affordable housing, when the inclusion of affordable housing is impractical or unreasonable within a proposed commercial or industrial development or in cases where the inclusionary requirement includes a decimal fraction of a unit, and a combination of both inclusionary units and in-lieu fees is required.
- B. Use of in-lieu participation fees.** In-lieu fees shall be used by the county, or its designee (e.g. a non-profit housing development corporation) for the purpose of developing affordable housing for very low and low income households, with preference for use in the unincorporated areas of the County.
- C. Calculation of in-lieu fees.** The in-lieu participation fees for all commercial and industrial development shall be determined based on Table 3.3-2. The fees represent 20% of the fees that are necessary to subsidize housing for new very low, low, and moderate income households that would be created from the commercial or industrial development.

TABLE 3.3-2

**IN-LIEU PARTICIPATION FEES FOR
COMMERCIAL AND INDUSTRIAL DEVELOPMENT
(per square feet of floor area¹ unless noted otherwise)**

Development Type	Fee
MANUFACTURING/LIGHT INDUSTRY/ASSEMBLY	\$2.99
OFFICE²/RESEARCH AND DEVELOPMENT	\$5.75
Warehouse	\$1.55
Hotel/Motel ³	\$1,396 per room
Retail/Restaurant	\$4.32

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 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.

22.22.100 - Fee Waiver for Inclusionary Units

In order to facilitate the construction of affordable housing units, the County may waive any County fees applicable to the inclusionary units of a proposed residential, commercial, or industrial development.

22.22.110 - Technical Assistance

In order to emphasize the importance of securing housing as a part of this program, the County shall provide assistance in obtaining financial subsidy programs to applicants.

22.22.120 - Appeals of Affordable Housing Requirements

- A. Any person aggrieved by any action involving disapproval, suspension or revocation of a Building or Occupancy Permit or disapproval, suspension or revocation of any development approval may appeal the action or determination to the Commission, with further appeal possible to the Board, in compliance with Chapter 22.114 (Appeals).
- B. Any applicant or other persons who contend that their interests are adversely affected by any determination or requirement of the Housing Authority staff in compliance with this Chapter may appeal the determination to the Housing Director. Further appeal recourse is open to the Board of Commissioners of the Housing Authority.
- C. The appeal shall clearly specify how the action of the Housing Authority staff fails to conform to the provisions of this Chapter, thereby adversely affecting the appellant's interests. The appeal shall be filed in duplicate in the public office of the Housing Authority. Subsequent appeal may be made to the Board of Supervisors, in compliance with Chapter 22.114 (Appeals). The Board, by resolution, may reverse or modify any determination or requirement of the Housing Authority if it can make the finding that the action under appeal does not conform with the provisions of this Chapter or to the contract between the Housing Authority and the County.

CHAPTER 22.130 - DEFINITIONS

The following definitions are proposed to be modified or added to Development Code Article VIII:

Dwelling, or Dwelling Unit. A room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis. Types of dwellings include single-family dwellings, two-family dwellings, multi-family dwellings, mobile homes, condominiums and townhouses, floating homes, and independent living units for the elderly.

Medical Services – Extended Care (land use). This land use consists of the provision of nursing and health-related care as a principal use, with in-patient beds. This land use includes: board and care homes; convalescent and rest homes; extended care facilities; skilled nursing facilities, and assisted living facilities that are licensed or supervised by any Federal, State, or local health/welfare agency. Long-term personal care facilities that do not emphasize medical treatment are included under “Residential Care Facilities,” and “Group Homes.”