

ORDINANCE NO. 04185

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTER 18.40 OF THE MONTEREY COUNTY CODE RELATING TO
THE PROVISION OF INCLUSIONARY HOUSING**

County Counsel Summary

This ordinance revises the existing County Inclusionary Housing Ordinance which requires certain new residential development projects to contribute to the provision of housing for very low, low, and moderate income households. This ordinance changes the inclusionary requirement from 15 percent to 20 percent of certain residential development projects, changes the compliance procedures and affordability period, establishes specific procedures for selection of inclusionary housing occupants, and adds procedures to facilitate better monitoring of the program. This ordinance also provides for the Board of Supervisors to adopt an administrative manual which establishes guidelines for interpreting and implementing the Inclusionary Housing Ordinance. This ordinance also includes provisions for the establishment of the Housing Advisory Committee and for the use of in-lieu fees collected under the Inclusionary Housing Ordinance.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Section 18.40.020 of the Monterey County Code is amended as follows:

18.40.020 FINDINGS.

A. MONTEREY COUNTY GOALS AND GENERAL PLAN.

The Board of Supervisors finds that a decent home and suitable living environment for all is a priority of the highest order; this priority conforms with State and Federal policies. The goal of the County is to achieve a balanced community with housing available for persons of all economic levels, with priority given to those persons currently residing or working within the County.

The Board of Supervisors finds there is an inadequate supply of housing in Monterey County which is affordable to very low, low and moderate income households. Federal and State housing finance and subsidy programs are not sufficient in themselves to meet that need.

The Board of Supervisors finds that the cost of housing in new developments has increased and will continue to perpetuate this housing shortage. Further, land for residential development in the County is limited, and the amount of land which can be used for development of housing for very low, low, and moderate income households is being depleted by development of high cost housing.

The Board of Supervisors finds that the provision of housing affordable to very low, low, and moderate income households is a countywide responsibility, and the provision of such housing is a goal of the Housing Element of the County General Plan.

B. PROVIDE FOR WORKFORCE.

The Board of Supervisors finds that the housing shortage for persons of very low, low, and moderate income is detrimental to the public health, safety and welfare, and particularly finds that provision of very low, low, and moderate income housing is fundamental to the maintenance of an adequate, growing workforce and market place for the local economy, as well as to provide housing for additional employees whose jobs serve the increasing population living in new market-rate housing.

The Board of Supervisors acknowledges that if very low, low, and moderate income workers cannot find housing in the County, then employers will have difficulty in securing a labor force, and employees will be forced to commute. Employee commutes use limited gasoline resources and increase air pollution.

C. BENEFIT TO THE COUNTY.

The Board of Supervisors finds that a Countywide Inclusionary Housing Program will benefit the County as a whole. Each property which contributes to inclusionary housing augments the housing mix, increases the supply of housing for all economic segments of the community, and thereby provides for a balanced community which is deemed to be in the public interest.

D. RESALE RESTRICTIONS.

The Board of Supervisors finds that the effect of an Inclusionary Housing Program is severely diminished if it benefits only the first occupants of very low, low, and moderate income housing, and inclusionary units are resold at market prices. Therefore, the Board of Supervisors recognizes that resale control, to ensure the continuing availability of inclusionary units to very low, low, and moderate income households, is a necessary consideration in order to prevent undermining of the credibility of the whole program, particularly because of the loss of the unit itself as an affordable unit.

E. PUBLIC PURPOSE.

The Board of Supervisors finds that public housing programs and housing subsidy programs can meet only a small portion of the need for very low, low, and moderate income housing. The vast majority of housing units has been and will continue to be produced by the private housing industry. This industry has the knowledge and ability to produce housing affordable to very low, low, and moderate income households given supportive government policies, including incentives and public investment as appropriate. Therefore, the Board of Supervisors finds it is a public purpose of the County to seek assistance and cooperation from the private sector and non-profit agencies in making available an adequate supply of housing for persons of all economic segments of the community.

F. BENEFITS OF THE APPLICATION OF THIS CHAPTER.

Application of this Chapter may benefit the public through increased housing opportunities in all areas of the County, an increased supply of very low, low, and moderate income housing, and an increased availability of funds for very low, low, and moderate income housing projects.

G. COLLECTION OF FEES.

The Board of Supervisors finds that the fees required or permitted by this Chapter are appropriate and permissible. The fees permitted by this Chapter will be fair and effective because:

1. The fee amount will be based on the amount necessary to make possible construction of an affordable unit or affordable units as called for by this Chapter, so that when a developer elects to pay an in-lieu fee, funds will be available to reach the County's overall affordability target, without excessive payments and without setting varying fee standards on a case-by-case basis;
2. The fee amount necessary to construct units at the affordability levels specified by this Chapter will be based on land, construction and other costs of units in the County;
3. Payment of in-lieu fees will be within a specific period of time, thereby allowing a predictable and stable flow of in-lieu fees; and
4. The fees collected will be used in a specific time frame for the provision of very low, low, and/or moderate income housing.

H. OTHER OBJECTIVES.

The Board of Supervisors finds that an objective of this Chapter is to meet the housing needs of all types of very low, low, and moderate income groups in a manner that is economically feasible and consistent with their needs.

The Board of Supervisors further finds that an objective of this Chapter is to provide housing opportunities in all planning areas of the County for very low, low, and moderate income households.

The Board of Supervisors further finds that an objective of this Chapter is to provide housing opportunities for very low, low, and moderate income household members currently residing or working in Monterey County, on a priority basis.

This Chapter, as amended, continues a successful program which the County began in 1980.

SECTION 2. Section 18.40.030 of the Monterey County Code is amended as follows:

18.40.030 PURPOSE.

The purposes of this Chapter are to enhance the public welfare, benefit the property being developed, assure compatibility between future housing development and the housing units affordable to persons of very low, low, and moderate income, and ensure that remaining developable land in the County is utilized in a manner consistent with state and local housing policies and needs.

SECTION 3. Section 18.40.040 of the Monterey County Code is amended as follows:

18.40.040 DEFINITIONS.

For the purposes of this Chapter the following definitions shall apply:

A. “Administrative manual” shall mean the manual prepared pursuant to subsection 18.40.050(G)(7).

B. “Affordable” means:

In the case of rent, a monthly amount which, together with utility allowance, does not exceed: (i) for very low income inclusionary units, one-twelfth of 30% of the maximum income for a very low income household, adjusted by household size based on the number of bedrooms in the unit; (ii) for low income inclusionary units, one-twelfth of 30% of 60% of median income, adjusted for household size based on the number of bedrooms in the unit; and (iii) for moderate income inclusionary units, one-twelfth of 30% of 110% of median income, adjusted for household size based on the number of bedrooms in the unit.

In the case of a sales price, average monthly housing payments, including mortgage loan principal and interest, any associated loan insurance fees, property taxes and assessments, an allowance for property maintenance and repairs established by the County based on the initial cost and size of the home, homeowners insurance, a reasonable allowance for utilities, land rent (if the home is on rented land) and homeowners association dues, if any, which during the first calendar year of a household's occupancy, do not exceed: (i) for very low income inclusionary units, one-twelfth of 30% of the maximum income for a very low income household, adjusted by household size based on the number of bedrooms in the unit; (ii) for low income inclusionary units, one-twelfth of 30% of 70% of median income, adjusted for household size based on the number of bedrooms in the unit; and (iii) for moderate income inclusionary units, one-twelfth of 35% of 110% of median income, adjusted for household size based on the number of bedrooms in the unit.

Adjustments for household size based on the number of bedrooms in the unit and amounts utilized for utility allowances and other monthly housing cost factors, including assumed mortgage interest rates, loan insurance fees, maintenance and repair allowances, homeowners insurance, property tax and assessment costs, and homeowners association dues,

shall be as provided by the County in the administrative manual.

C. “Inclusionary housing agreement” shall mean an agreement between the County and an applicant, governing how the applicant shall comply with this Chapter.

D. “Applicant” means a person or entity who applies for a residential development and, if the applicant does not own the property on which development is proposed, also means the owner or owners of the property

E. “Appropriate Authority” means that person, official, or body designated by County regulations to hear, grant, deny, modify, condition, revoke or otherwise act on permits required by the County’s regulations.

F. “Approval” means any approval by the Appropriate Authority of a discretionary permit for residential development, including but not limited to planned unit development or planned community development approval, subdivision approval, use permit, building permit or combined development permit, and if no discretionary approval is required, also means a building permit for residential development.

G. “Building permit” means a permit issued by the Monterey County Department of Planning and Building Inspection authorizing the construction of new dwellings.

H. “Director” means the Assistant County Administrative Officer for Environmental Resource Policy (or a county officer with similar responsibilities designated by the County Administrative Officer should that office no longer exist), or his or her designee.

I. “Dwelling” or “Unit” means any structure or portion thereof designed or used as the residence or sleeping quarters of a household, including a live/work unit.

J. “First approval” means the first approval, as the term “approval” is defined in this Chapter, to occur with respect to a residential project.

K. “For sale inclusionary unit” means an inclusionary unit which is designated in an inclusionary housing agreement to be sold to a household eligible under this Chapter.

L. “Household” means one or more individuals who occupy one dwelling unit as a single housekeeping unit, whether or not related by blood or marriage.

M. “Housing Authority” means the Housing Authority of the County of Monterey.

N. “HUD” means the United States Department of Housing and Urban Development.

O. “Inclusionary unit” means a housing unit which is required by an approval to meet affordability and occupancy limits under this Chapter.

P. “Low income inclusionary unit” means an inclusionary unit reserved for occupancy by low income households at an affordable rent or sales price.

Q. “Low income household” or “Lower income household” means a household, including a very low income household, with an annual income which does not exceed HUD's

annual determination for low income households with incomes of 80% of the median income, adjusted for household size.

R. “Median income” means the median household income as determined periodically by HUD for the Salinas Metropolitan Statistical Area and updated on an annual basis.

S. “Moderate income inclusionary unit” means an inclusionary unit reserved for occupancy by moderate income households at an affordable rent or sales price.

T. “Moderate income household” means a household, including a low income household and a very low income household, with an annual income which does not exceed 120% of the median income, adjusted for household size.

U. “Owner occupied development” means a residential development in which the same person or persons are sole or majority owner(s) of the property at the time of first approval of the development and at the time the development receives its building permit, and those persons make and record a legally binding agreement, acceptable to the Director and approved as to form by County Counsel, to reside in the residential development for not less than one year from the recordation of the notice of completion, and where the proposed owner-occupant has not previously been an owner-occupant under this Chapter during a period of ten years prior to application for a first approval.

V. “Pending development” means a residential development for which an application for a first approval was deemed complete by the County on or before the effective date of Ordinance # 04185 amending this Chapter, so long as the number of dwellings does not increase after the first approval.

W. “Planning Area” means one of eight geographic sub-areas of Monterey County established for the General Plan. They are the Toro, North County, Greater Monterey Peninsula, Central Salinas Valley, South County, Greater Salinas, Coast, and Cachagua Planning Areas.

X. “Rental inclusionary unit” means an inclusionary unit which is designated in an inclusionary housing agreement to be rented to a household eligible under this Chapter.

Y. “Residential development” means any project requiring any subdivision of land, use permit, discretionary permit or building permit, or combination thereof, for which an application or applications are submitted to the County and which would by construction or alteration of structures create three or more new or additional dwelling units and/or lots.

Z. “Subdivision” means a “subdivision” as that term is defined by the California Subdivision Map Act.

AA. “Very low income inclusionary unit” means an inclusionary unit reserved for occupancy by very low income households at an affordable rent or housing cost.

BB. “Very low income household” means a household with an annual income which does not exceed HUD's annual determination for very low income households earning 50% of

median income, adjusted for household size.

SECTION 4. Section 18.40.050 of the Monterey County Code is amended as follows:

18.40.050 DEVELOPMENT REQUIRING INCLUSIONARY CONTRIBUTION

A. The requirements of this chapter are minimum requirements and shall not preclude a residential development from providing additional affordable units and/or affordable units with lower rents or sales prices. Except as expressly provided in paragraphs B and C of this subsection, all residential developments shall contribute to the provision of housing for very low, low, and moderate income households in the County of Monterey as provided in this Chapter. “Residential Development,” as that term is defined by this Chapter, means any project requiring any subdivision of land, use permit, discretionary permit or building permit, or combination thereof, for which an application or applications are submitted to the County and which would by construction or alteration of structures create three or more new or additional dwelling units and/or lots.

B. Residential developments which meet one of the following criteria shall not be required to comply with this Chapter:

1. Residential developments which form part of a larger residential development as to which the requirements of this Chapter have previously been fully satisfied and as to which there is no default in continuing obligations under this Chapter, where the new residential development results in no increase in the number of previously approved lots or units.

2. Development as to which the applicant demonstrates during consideration of a first approval that there is no reasonable relationship between the development and the requirements imposed by this Chapter, that the requirements of this Chapter would take property in violation of the federal or California Constitution, or that as a result of unusual or unforeseen circumstances, it would not be appropriate to apply, or would be appropriate to modify, the requirements of this Chapter, provided that the Appropriate Authority who makes the determination to approve or disapprove an exemption or modification makes written findings, based on substantial evidence, supporting that determination.

3. Development for farm workers;

4. Mobile home park development.

C. Pending developments, as that term is defined by this Chapter, shall not be required to meet the requirements of this Chapter as amended by Ordinance No. 04185, but shall be subject to the requirements of the Inclusionary Housing Ordinance in effect when the application for the development's first approval was deemed complete, unless the developer elects in writing to be subject to this Chapter as amended.

SECTION 5. Section 18.40.060 is added to the Monterey County Code as follows:

18.40.060 INCLUSIONARY REQUIREMENTS

All residential development consisting of five (5) or more units or lots in Monterey County shall provide inclusionary units on-site or off-site, except that a fee may be paid in-lieu of providing fractional units and in other circumstances specified in Section 18.40.090. All new residential development consisting of three (3) or four (4) additional units or lots in Monterey County shall provide inclusionary units on-site or off-site, or pay a fee in-lieu pursuant to Section 18.40.090. The size, design, and location of inclusionary units shall be consistent with the County General Plan, Local Coastal Plan as applicable, Zoning Ordinances, and other County ordinances and building standards. Compliance may be accomplished by the developer alone or in combination with others, including without limitation the Housing Authority or a non-profit housing corporation. The owner-occupied unit in an owner-occupied development of four units or less shall not be counted in applying the requirements of this Chapter.

SECTION 6: Section 18.40.070 is added to the Monterey County Code as follows:

18.40.070 ON-SITE UNITS

A. To satisfy its inclusionary requirement on-site, a residential development must construct inclusionary units in an amount equal to or greater than twenty percent (20%) of the total number of units approved for the residential development (except to the extent a fraction of a unit would be required, for which the applicant may elect to substitute a fractional unit fee). Initial and subsequent affordability levels and eligible occupants of the inclusionary units shall conform to the requirements of Section 18.40.110., as applicable.

B. On-site units must:

1. Receive building permits and certificates of occupancy either prior to or concurrently with the remainder of the residential development, as set forth in and except as otherwise provided by the inclusionary housing agreement;
2. Be compatible in exterior appearance with the other units in the residential development (though interiors may differ to the extent authorized in the inclusionary housing agreement) and be dispersed throughout the residential development to the extent feasible or as otherwise provided by the inclusionary housing agreement;

3. Contain similar numbers of bedrooms overall as other units in the residential development, with total square footages suitable for the number of bedrooms, all consistent with the inclusionary housing agreement.

SECTION 7: Section 18.40.080 is added to the Monterey County Code as follows:

18.40.080 OFF-SITE UNITS

A. Off-site inclusionary units, in place of or combined with on-site units, may be approved upon a showing by the applicant for the residential development, approved by the Appropriate Authority, that off-site units will provide a greater contribution to the County's affordable housing needs. Off-site units must be newly constructed. Off-site units will not be considered to provide a greater contribution unless the number of units exceeds the number which would have been required on-site, and the off-site inclusionary units, for the required term of affordability, are affordable to and occupied by: (i) for rental units, very low income households; (ii) for for-sale units, low income households. In addition the applicant must assure that the number of bedrooms in the off-site units will reflect community need and on average will not be less than in the on-site market rate units.

B. Off-site units must be located within the same Planning Area as the market rate project.

C. Off-site units may be allowed only if their location is identified and is owned, or site control is demonstrated by the applicant, at the time of first approval.

D. As set forth, and except as otherwise provided, in the inclusionary housing agreement for the residential development, building permits for corresponding market-rate units will not be issued until building permits have been issued for off-site units, and final inspections for occupancy will not occur for corresponding market-rate units until final inspections for occupancy have occurred for off-site units.

SECTION 8: Section 18.40.090 is added to the Monterey County Code as follows:

18.040.090 IN-LIEU FEES

A. Projects of Three or Four Units:

All developers of new residential development projects of three (3) or four (4) units or lots may elect to contribute to the provision of housing for low and moderate income households by payment of a fee calculated pursuant to this section, in lieu of constructing units on-or off-site.

B. Fractions of Units:

Residential developments required to construct fractions of a unit under this Chapter may pay an in-lieu fee in an amount corresponding to the fractional unit, computed by multiplying the in-lieu fee amount determined under subsection D below by the fraction.

C. Qualification for In-Lieu Fee:

The developer of a residential development containing five (5) or more units may elect to pay a fee in-lieu of providing some or all of the required inclusionary units if the developer demonstrates, in connection with the first approval for the residential development, that specific characteristics of the development site, such as lack of access to services, zoning which requires large lot development, or potentially high site maintenance costs, make the site unsuitable for households at the required income levels.

D. Fee Amount:

For residential developments which are permitted to satisfy the requirements of this Chapter in whole or part by payment of in-lieu fees, the fee amount shall be determined and approved by the Appropriate Authority as follows:

For each market-rate unit in the residential development, the fee shall be one-fifth of the difference between the affordable sales price for a four-person household at 100% of median income and the cost of developing an average market-rate three-bedroom home. The Director shall prepare an annual table which identifies in-lieu fee amounts based on criteria stated in the administrative manual. The Annual In-Lieu Fee Table shall be adopted by the Board of Supervisors. In the event that the Director does not prepare a revised annual table, or the Board of Supervisors does not approve one, the previous year's table shall remain in effect.

E. Time of Payment:

Payment of in-lieu fees shall be made in full to the County prior to recordation of parcel or final maps or, where the residential development is not subject to subdivision approval, prior to issuance of the first building permit for the development, unless an inclusionary housing agreement otherwise provides.

SECTION 9: Section 18.40.100 is added to the Monterey County Code as follows:

18.40.100 DEVELOPMENT PROJECT APPROVAL

A. A residential development application will not be deemed complete until the applicant has submitted plans and proposals which demonstrate the manner in which the applicant proposes to meet the requirements of this Chapter, including any plans for the construction of on-site units, commitment of off-site units, and/or intent to pay in-lieu fees.

B. Conditions to carry out this Chapter shall be imposed on the first approval of a residential development. When granting the first approval, the Appropriate Authority shall determine and include as a condition of approval: (i) the method of compliance with this Chapter, including whether the residential development will comply with this Chapter through provision of on-site units or off-site units or payment of an in-lieu fee or combination thereof; (ii) if inclusionary units are to be provided, the number of units required and fractional amount of units for which an in-lieu fee may be paid; and (iii) such other matters as the Appropriate Authority deems proper. The condition of approval shall further provide that prior to the recordation of the parcel map or final map in the case of subdivisions and or prior to the issuance of building permits in the case of all other land use permits to which this Chapter applies, the applicant shall enter into an inclusionary housing agreement acceptable to the Director that contains specific requirements implementing the condition of approval including, but not limited to, as applicable, the number of inclusionary units, the level(s) of affordability, location and type of inclusionary units, timing of construction of inclusionary units in relation to the construction of the market rate units contained in the development, preferences given in selecting occupants, and amount of the in-lieu fee, if any. The inclusionary housing agreement may be amended by the parties, provided the amendment is consistent with the condition of approval imposed as part of the first approval and the then existing County approvals. If said proposed amendment is minor or technical in nature, the Director shall have authority to approve or disapprove the amendment on behalf of the County. If said proposed amendment makes a substantive or material change to the inclusionary housing agreement, said amendment shall be effective only if, following notice and hearing and such other procedures as may be required by law, approved by the Appropriate Authority who gave the first approval on the project.

C. Where a residential development receives a subdivision approval, the final subdivision map or parcel map which is to be filed and recorded shall include a notation, in a form acceptable under the Subdivision Map Act, describing the condition of approval to comply with this Chapter.

D. Where the party subject to a fully executed inclusionary housing agreement, or other document regulating or limiting the operation, price or rent of an inclusionary unit, entered into under this Chapter or any previous version of this Chapter believes that the document requires modification as a result of unusual circumstances which could not have been foreseen at the time the document was entered into, the affected party may apply to the County Board of Supervisors for modification of the document.

E. Any determination made by the Appropriate Authority to implement this Chapter in connection with granting a first approval may be appealed pursuant to the appeal provisions of Monterey County Code, Titles 19, 20, or 21 or other applicable appeal provisions by which the first approval may be appealed.

SECTION 10: Section 18.40.110 is added to the Monterey County Code as follows:

18.40.110 OCCUPANCY AND CONTINUING AVAILABILITY OF UNITS

The occupancy and continuing availability of inclusionary units shall be provided for in the following manner:

A. Rental Inclusionary Units:

For rental inclusionary units, eight percent (8%) of the total units in the residential development shall be set aside for moderate income households, six percent (6%) of the total units in the development shall be set aside for low income households and an additional six percent (6%) of the total units in the development shall be set aside for very low income households. On-site rental inclusionary units shall be rented only to eligible households, and off-site inclusionary units only to very low income households, at affordable rents for the relevant income category, and pursuant to further requirements set forth in any applicable inclusionary housing agreement, regulatory agreement and/or other documents in effect pursuant to this Chapter. Where the number of required very low income units is not a whole number, the fractional units required shall be added to the number of low income inclusionary units required. If the resultant number of low income units is not a whole number, the fractional units required shall be added to the number of moderate units required. Where (after any addition of fractional units under the preceding sentences) the number of moderate income inclusionary units required is not a whole number, the applicant shall include the next higher whole number of moderate inclusionary units, or may elect to pay a fractional unit in-lieu fee for the fractional unit in the amount provided in Section 18.040.090 of this Chapter. All leases or rental agreements for rental inclusionary units shall require annual certification by the Director of tenant household income and shall contain a provision prohibiting subletting or assignment of the inclusionary unit to an unqualified tenant.

B. For Sale Inclusionary Units:

1. For for-sale inclusionary units, eight percent (8%) of the total units in the development shall be set aside for moderate income households, six percent (6%) of the total units in the development shall be set aside for low income households and an additional six percent (6%) of the total units in the development, shall be set aside for very low income households. On-site for-sale inclusionary units shall be sold only to eligible households and off-site inclusionary units only to low income households, at prices affordable to such households, and pursuant to further requirements of resale restrictions, a promissory note, second deed of trust naming the County of Monterey as beneficiary, deed restrictions, and/or other documents pursuant to this Chapter. Where the number of required very low income units is not a whole number, the fractional units required shall be added to the number of low income inclusionary units required. If the resultant number of low income units is not a whole number, the fractional units required shall be added to the number of moderate income inclusionary units required. Where (after any addition of fractional units under the preceding sentences) the number of moderate income inclusionary units required is not a whole number, the applicant shall include the next higher whole number of moderate income inclusionary units, or may elect to pay a

fractional unit in-lieu fee in the amount provided in section 18.040.090 of this Chapter. The initial maximum sale price of the inclusionary unit to the first purchaser shall be determined by the Director, pursuant to a method set forth in the administrative manual. Similar restrictions shall be required of subsequent owners at the time they acquire the unit.

2. The maximum resale price shall be determined under the approved documents, consistent with the administrative manual and the following:

a. The maximum permitted resale price shall be the initial sale price of the inclusionary unit, increased at the same rate as the median income has increased, with the following modifications.

b. The otherwise allowable maximum resale price shall be increased by ten percent (10%) of the initial sale price of the unit as an allowance for improvements made by the selling owners during their ownership. This allowance shall not be increased or decreased based on the value of improvements actually made to a particular home, provided that the allowance shall be reduced to the extent the unit has been adversely affected in value by deficient or deferred maintenance. To facilitate a determination by the Director concerning maintenance prior to sale, the seller shall comply with any applicable requirements in the administrative manual.

c. Where an owner has lawfully added a bedroom to a for-sale inclusionary unit, the maximum resale price of the unit shall be calculated based on an assumed household size corresponding to the total number of bedrooms, including the added bedroom.

d. The administrative manual and/or approved documents may provide for a ceiling which limits the resale price increases resulting from the modifications in subsections b. and c.

3. Transfer of a for-sale inclusionary unit to a child or step-child upon the death of one or more of the prior owners shall be permitted without payment of any amount otherwise due to the County based on the sales price or appreciation of the unit, and without regard to any otherwise applicable preferences or waiting list priority for successor owners, if, but only if, the household of the child or step-child would be eligible based on income to purchase the unit and will occupy the unit. A child or step-child, whether or not his or her household is income eligible or will occupy the unit and regardless of any otherwise applicable preferences or waiting list priority, shall be entitled to own and/or occupy a for-sale inclusionary unit after the death of the prior parent owner, for a period not to exceed one year, without regard to otherwise applicable resale requirements of this Chapter, but subject to any applicable provisions of the administrative manual or county documents regulating the project. Not later than the expiration of said one-year period, the unit shall be transferred to the child or step-child (if the household is eligible and wishes to keep the unit) or shall be offered for sale in conformance with this Chapter, with appropriate documents recorded against the unit under this Chapter for the County's benefit.

4. All resale restrictions shall authorize the County or its designee to purchase any affordable for-sale inclusionary unit at the maximum resale price which could be

charged to a purchaser household (less an allowance for the real estate commission avoided by the County's purchase), at any time the owner proposes sale, prior to any sale to another party.

5. For sale inclusionary units may be refinanced or used as security for additional financing, to the extent provided in the administrative manual.

6. Resale restriction documents may prohibit or limit leasing of inclusionary units.

C. Terms of Affordability; New and Existing Inclusionary Units:

For both for sale and rental inclusionary units, affordability and occupancy restrictions shall remain in effect in perpetuity and shall apply to any replacement structure or structures constructed if a structure containing an inclusionary unit or units is demolished or destroyed, provided that if demolition or destruction of a structure containing inclusionary units occurs 55 years or more after recording of the restrictions and said demolition or destruction was unintentional, restrictions on the units in the structure shall terminate on demolition or destruction. For-sale and rental inclusionary units approved before an amendment to this Chapter shall remain subject to the terms of this Chapter at the time the units were approved, and for-sale and rental inclusionary units in pending developments shall remain subject to the terms of this Chapter at the time the pending development application was deemed complete, subject in all cases to section 18.40.100.D. of this Chapter and further provided that, where a for-sale inclusionary unit is transferred and the new owner is required to enter into new regulatory documents under this Chapter, the new regulatory documents will provide for affordability in perpetuity.

D. Maintenance:

Regulatory agreements and resale restriction documents shall include maintenance and insurance requirements for affordable units.

E. Approval and Recording of Documents:

The Director, in consultation with County Counsel, shall establish the form and content of documents required or authorized under this section, 18.40.110. Regulatory agreements and resale restriction documents may provide for specific affordability and/or occupancy requirements for particular affordable units, consistent with this Chapter and with the terms of the project's inclusionary housing agreement. These documents shall be executed by the record owners of affected property, approved as to form by County Counsel, and recorded in the official records of the County.

F. Occupancy:

Initial and subsequent occupancy of inclusionary units shall be in accord with conditions and requirements stated in the administrative manual.

G. Marketing; Selection of Participants:

The administrative manual shall set forth marketing and selection policies and/or procedures for inclusionary units and identify County staff responsible for supervising marketing. The manual shall contain policies favoring making inclusionary units available to households with members who live or work in Monterey County or those with household members who work near the units. The Housing Authority may be designated to review the income qualifications of potential applicants. If the County maintains a list or lists of eligible households, it may require that households newly occupying affordable units shall be selected first from one or more of those lists.

H. Administrative Manual:

The Board of Supervisors shall adopt and may from time to time amend an administrative manual, approved as to form by County Counsel, to establish guidelines to interpret and implement this Chapter, including without limitation income and maximum asset guidelines for inclusionary units and units assisted by in-lieu fee proceeds. All mandatory provisions of such manual, when adopted, shall bind applicants and other private parties subject to this Chapter. Maximum permitted sales prices shall be governed by the administrative manual. The Board of Supervisors shall conduct a duly noticed public hearing prior to the adoption or any amendment of the administrative manual.

SECTION 11: Section 18.40.120 is added to the Monterey County Code as follows:

18.40.120 HOUSING ADVISORY COMMITTEE

A. Purpose, Powers, and Duties

A Housing Advisory Committee was created pursuant to Ordinance Number 3093 for the purpose of advising the Board of Supervisors and Planning Commission on matters relating to the Housing Element of the General Plan and the Inclusionary Housing Ordinance. The Housing Advisory Committee shall continue in existence, and its purpose shall continue to be to advise the Board of Supervisors and Planning Commission on matters related to the Housing Element of the General Plan, the Inclusionary Housing Ordinance, and such other matters as the Board of Supervisors, Planning Commission, or County staff shall direct. The Housing Advisory Committee shall also evaluate proposals for disbursal of in-lieu fees in accordance with the procedures set forth in this Chapter.

B. Appointment

The Housing Advisory Committee shall be appointed by the Board of Supervisors and shall consist of ten members, comprised of two members from each supervisorial district. Members shall reside or work within the supervisorial district from which they are appointed. Each member shall serve for a term of two years from the date of appointment and shall continue to serve thereafter until a successor is appointed.

C. Adoption of By-Laws

The Board of Supervisors shall adopt by-laws containing rules and procedures for the transaction of business of the Housing Advisory Committee. The Board of Supervisors may amend said by-laws from time to time.

SECTION 12: Section 18.40.130 is added to the Monterey County Code as follows:

18.40.130 COLLECTION AND USE OF IN-LIEU FEES

A. Use of Fees:

Any monies received by the County pursuant to this Chapter shall be used to provide very low, low and/or moderate income housing except to the extent allocated to monitoring, enforcement and administrative costs. Any monies collected pursuant to this Chapter, and the interest accrued thereon, shall be committed within five (5) years after the payment of such fees or the approval of the residential development, whichever occurs later. All such monies on deposit with the County shall be separately accounted for and shall not be used for purposes not authorized by this section 18.40.130. Any monies generated as a result of this Chapter shall be used by the County for assistance in the development of affordable housing within the County.

B. Funding Proposals:

At least once a year, the County shall advertise by notice in newspapers of local circulation, and other such written notice as deemed necessary by the Housing Advisory Committee, availability of funds for the provision of very low, low and/or moderate income housing in the County. Included in such notice shall be an invitation to submit proposals and requests for funds to provide such housing in the County. Proposals submitted for funding shall be in accordance with the Board of Supervisors' housing priorities set for the year. Availability and use of funds for projects in an amount of less than \$25,000 shall be in accordance with Over the Counter Grant and Loan Program Guidelines and Procedures approved by the Board of Supervisors. Proposals involving funding in excess of \$25,000, shall be reviewed by the Housing Advisory Committee to be submitted with its recommendations to the Board of Supervisors for final approval.

The requests may be for grants, low interest loans, and other funding mechanisms deemed appropriate to secure the purpose of this Chapter. The proposals may be for pre-development projects and services, projects to promote very low, low, or moderate income housing unit(s), rehabilitation, land acquisition, unit purchase, development of infrastructure, or other projects deemed appropriate to secure the purpose of this Chapter.

C. Director's Authority:

All proposals and requests for funding shall be referred initially to the Director. For requests less than \$25,000, the Director shall review the proposals and submit them with a recommendation on funding to the Housing Advisory Committee, which shall have funding authority in accordance with the procedures in this section and the Over the Counter Grant and Loan Program Guidelines and Procedures, subject to appeal to the Board of Supervisors. An appeal of the decision may be filed with the Clerk to the Board of Supervisors by any interested person within 10 days after notice of the decision is given. For requests in excess of \$25,000, the Director shall make recommendations for funding to the Housing Advisory Committee, who shall make a funding recommendation to the Board of Supervisors in accordance with the procedures in this section. For proposals which have received final approval in accordance with the procedures set forth in this section, the Director shall have the authority to execute all documents necessary to implement the approval on behalf of the County.

D. Grant Contract:

Upon authorization for funding, the Director on behalf of the County and the grantee shall enter into a contract to assure to the greatest extent possible that the approved proposals and requests are satisfactorily completed. No warrant shall be issued until such contract is completed and signed by the appropriate parties.

E. Household Eligibility:

The Director and the Housing Authority, or their authorized designees, shall establish standards for eligibility of very low, low and/or moderate income households in units assisted with the proceeds of in-lieu fees. Priority for occupancy shall be granted to residents of Monterey County and those employed in Monterey County.

SECTION 13: Section 18.40.140 is added to the Monterey County Code as follows:

18.40.140 ENFORCEMENT

A. No permit, license, subdivision approval or map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection for occupancy or certificate of occupancy, until all applicable requirements of this Chapter have been satisfied.

B. In the event of a violation of any provision of this Chapter, or any requirement imposed pursuant to this Chapter, the County may in its discretion, in addition to all other remedies, take such enforcement action as is authorized under the Monterey County Code and/or any other action authorized by law or by any regulatory document, restriction or agreement executed under this Chapter:

SECTION 14: Section 18.40.150 is added to the Monterey County Code as follows:

18.40.150 MONITORING

A. Owners and occupants of property subject to restrictions pursuant to this Chapter shall permit County employees or others designated by the County to inspect the property upon two business days' advance written notice. Owners of property subject to restrictions pursuant to this Chapter shall retain all records related to compliance with obligations under this Chapter for a period not less than five years, and make such records available to County employees or others designated by the County for inspection and copying upon five business days' advance written notice. The County shall be further entitled to monitor compliance with this Chapter as provided in the administrative manual and documents executed with respect to any residential development and/or inclusionary unit.

B. Periodic Evaluation.

Unless funding or staff are not available, the Director shall at five-year intervals, or more often at the Director's discretion, prepare and submit to the Board of Supervisors an evaluation of this Chapter and its effects.

SECTION 15: Section 18.40.160 is added to the Monterey County Code as follows:

18.40.160 SEVERABILITY

The provisions of this Chapter are intended to be severable, and in the event any provision, requirement or priority provided for under this Chapter is determined to be invalid or unenforceable, the remainder of the Chapter shall remain in effect.

SECTION 16: This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this 22nd day of April, 2003, by the following vote:

AYES: Supervisors Armenta, Calcagno, Lindley, Johnsen and Potter.

NOES: None.

ABSENT: None.

/S/ Fernando
Chair, Monterey County Board of Supervisors

ATTEST:

/S/ Nancy Lukenbill
Nancy Lukenbill, Clerk to the Board