

BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SAN BENITO

AN ORDINANCE OF THE COUNTY OF SAN BENITO ) Ordinance No. \_\_\_\_\_  
AMENDING CHAPTER 21.03 OF TITLE 21 OF THE SAN BENITO )  
COUNTY CODE (“AFFORDABLE HOUSING REGULATIONS”) )  
\_\_\_\_\_ )

The Board of Supervisors ordains as follows:

Section 1. Chapter 21.03 of Title 21 of the San Benito County Code shall be amended to read as follows:

**CHAPTER 21.03: AFFORDABLE HOUSING REGULATIONS**

- 21.03.001 Findings
- 21.03.002 Purpose
- 21.03.003 Definitions
- 21.03.004 Development requiring inclusionary contribution
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**§ 21.03.001 FINDINGS.**

(a) San Benito 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 to state and federal policies. A key 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 San Benito County that 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 County-wide responsibility, and the provision of such housing is a goal of the housing element of the County general plan.

A County-wide inclusionary housing program will assist in alleviating the use of available residential land solely for the benefit of households that are able to afford market rate housing because such market rate development will be required to contribute to the provision of affordable housing for the entire San Benito community.

(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 County-wide affordable housing program will benefit the County as a whole. Each property that 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 affordable housing program is severely diminished if it benefits only the first occupants of very low, low, and moderate-income housing, and affordable units are resold at market prices. Therefore, the Board of Supervisors recognizes that resale control, to ensure the continuing availability of affordable 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. To the extent that fees will be imposed at a later date after a nexus study is performed, the Board of Supervisors finds that the fees required or permitted by this chapter will be 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 construct or subsidize 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 or subsidize 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 very low, low, and moderate income housing best achieves the broader community goal of integrating households of all economic levels into the community when such housing is provided throughout the community and that a specific objective of this chapter is to provide housing opportunities throughout the community, 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 San Benito County, on a priority basis.

### **§ 21.03.002 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.

**§ 21.03.003 DEFINITIONS.**

For the purposes of this chapter, the following definitions shall apply:

(a) "Administrative manual" means the manual prepared pursuant to subsection 21.03.010 (g).

(b) "Affordable" means a cost for housing, whether for an owner-occupied or rental unit, that does not exceed "affordable housing cost" as set forth in California Health and Safety Code Section 50052.5. Adjustments for household size based on the number of bedrooms in the unit and other monthly housing cost factors, including assumed mortgage interest rates, loan insurance fees, maintenance and repair allowances, utility allowances, homeowners insurance, property tax and assessment costs, and homeowners association dues, shall be as provided by the County in the administrative manual.

(c) "Affordable housing plan" means a plan demonstrating how a specific development project will meet the requirements of this chapter.

(d) "Affordable Housing Agreement" means an inclusionary housing agreement between the County and an applicant, governing how the applicant shall comply with this chapter.

(d) "Applicant" means a person or entity that 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) "Approved Documents" means Affordable Housing Agreement or Development Agreement.

(h) "Building permit" means a permit issued by the San Benito County department of planning and building authorizing the construction of new dwellings.

(i) "Director" means the Director of the Resource Management Agency (or a County officer with similar responsibilities designated by the County administrative officer), or his or her designee.

- (j) " Dwelling " or " Unit " means any structure or portion thereof designed or used as the residence.
- (k) " First approval " means the first approval, as the term " Approval " is defined in this chapter, to occur with respect to a residential project.
- (l) " 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.
- (m) " Household " means one or more individuals who occupy one dwelling unit as a single housekeeping unit, whether or not related by blood or marriage.
- (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 State of California Department of Finance annual determination for low-income households with incomes of eighty percent of the median income, adjusted for household size.
- (r) " Median income " means the median household income as determined by the State of California Department of Finance 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 one hundred twenty percent 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 has been approved by the County on or before the effective date of this chapter, so long as the number of dwellings does not increase after the first approval.

(w) "Planning area" means the unincorporated area of the County of San Benito.

(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 approval, for which an application or applications are submitted to the County and which would by construction or alteration of structures create five 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 designated in an 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 the state of California Department of Finance annual determination for very low-income households earning fifty percent of median income, adjusted for household size

#### **§ 21.03.004 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 section, all residential developments shall contribute to the provision of housing for very low, low, and moderate-income households in the County of San Benito as provided in this chapter.

(b) Residential developments which meet one of the following criteria shall not be required to comply with this chapter:

(1) Residential developments that 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 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 United States or California Constitutions, 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 Board of Supervisors makes the determination to approve or disapprove an exemption or modification, and makes written findings, based on substantial evidence, supporting that determination;

(3) Development for farm workers;

(4) Mobile-home park development.

(5) Notwithstanding any other provision of this chapter, an applicant may propose an alternative means of compliance with this chapter by submitting an Affordable Housing Plan that achieves the purpose and intent of this chapter. The Board of Supervisors may approve such alternative method of meeting the County's inclusionary housing requirement by means of a Development Agreement or an Affordable Housing Agreement or other appropriate means if the Board of Supervisors finds and determine that, based on substantial evidence in the record, the proposed new residential development is consistent with the general plan, will assist in the attainment of the County's identified housing needs and regional fair share responsibilities for very low, low, and moderate income households, and the number of affordable housing units will provide an acceptable level of affordable housing while providing public benefits consistent with compliance with the express requirements of this chapter.

(a) Developers may reserve or set-aside land to be transferred to an affordable housing developer to satisfy an affordable housing requirement. Land may be part of the market-rate development being constructed, or may be provided off-site in a high-density residential zone. Priority will be given to development projects that satisfy affordable requirements through land set-aside and dedicated to high-density affordable housing.

(c) Pending developments, as that term is defined by this chapter, shall be subject to the requirements of the inclusionary housing ordinance in effect when the application for the development is first approved by the appropriate authority, with the exception that vesting tentative maps shall be subject to the requirements of the inclusionary housing ordinance in effect when the application for the vesting tentative map was deemed complete.

#### **§ 21.03.005 INCLUSIONARY REQUIREMENTS.**

All residential development consisting of 5 or more lots, inclusive, in San Benito 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 21.03.008. The size, design, and location of inclusionary units shall be consistent with a project-specific affordable housing plan, the County general plan, zoning ordinance, and other County ordinances and building standards. Compliance may be accomplished by the developer alone or in combination with others, including a non-profit housing corporation.

#### **§ 21.03.006 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 15 percent 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 21.03.010, as applicable.

(b) On-site affordable units must:

(1) Receive building permits and certificates of occupancy concurrently with the remainder of the residential development, as set forth in and except as otherwise provided by the affordable housing agreement;

(2) Will be compatible in exterior appearance with the other units in the residential development (though interiors may differ to the extent authorized in the affordable housing agreement) and be dispersed throughout the residential development to the extent feasible or as otherwise provided by the inclusionary housing agreement;

(3) Have a similar number of bedrooms as the market rate homes in which the affordable units are located.

(4) Have the following minimum square footages:

2 Bedroom – 900 sq. ft.

3 Bedroom – 1150 sq. ft.

4 Bedroom – 1360 sq. ft.

(5) A minimum of 50% of the required affordable housing shall be 3 bedroom.

(c) The inclusionary housing requirements of this chapter are summarized in the following table. Should there be any discrepancy between this table and the text of this ordinance, the text shall control

<b>Size of Development</b>	<b>Inclusionary Requirement</b>	<b>Moderate Income</b>	<b>Low Income</b>	<b>Very Low Income</b>
<b>1-4</b>	<b>None</b>			
<b>5-6</b>	<b>Payment of in-lieu fee</b>			
<b>7-13</b>	<b>Provide 15% inclusionary units</b>	<b>1 unit + payment of in-lieu fee for fractional difference</b>		
<b>14-19</b>	<b>Provide 15% inclusionary units</b>	<b>1 unit + payment of in-lieu fee for fractional difference</b>	<b>1 unit</b>	
<b>20</b>	<b>Provide 15% inclusionary units</b>	<b>1 unit</b>	<b>1 unit</b>	<b>1 unit</b>
<b>21 to 26</b>	<b>Provide 15% inclusionary units</b>	<b>1 unit + payment of in-lieu fee for fractional difference</b>	<b>1 unit</b>	<b>1 unit</b>

<b>27 to 33</b>	<b>Provide 15% inclusionary units</b>	<b>2 unit + payment of in-lieu fee for fractional difference</b>	<b>1 unit</b>	<b>1 unit</b>
<b>34-39</b>	<b>Provide 15% inclusionary units</b>	<b>2 unit + payment of in-lieu fee for fractional difference</b>	<b>2 unit</b>	<b>1 unit</b>
<b>40</b>	<b>Provide 15% inclusionary units</b>	<b>2 units</b>	<b>2 units</b>	<b>2 units</b>
<b>41 or more</b>	<b>Provide 15% inclusionary units</b>	<b>5% of all units</b> <b>2 units minimum</b>	<b>5% of all units</b> <b>2 units minimum</b>	<b>5% of all units</b> <b>2 units minimum</b>

**§ 21.03.007 OFF-SITE AFFORDABLE 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. If a developer chooses off-site affordable housing, the inclusionary requirement shall be 20%.

(b) Off-site affordable units, to the greatest extent possible, should 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) Except as otherwise provided in the affordable 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.

(e) The inclusionary housing requirements of this chapter are summarized in the following table. Should there be any discrepancy between this table and the text of this ordinance, the text shall control

<b>Development Size</b>	<b>Inclusionary Requirement</b>	<b>Moderate Income</b>	<b>Low Income</b>	<b>Very Low Income</b>
<b>1-4</b>	<b>None</b>			
<b>5</b>	<b>Provide 20% Inclusionary Units</b>	<b>1 unit</b>		
<b>6-9</b>		<b>1 unit + payment of in-lieu fee for</b>		

		<b>fractional difference</b>		
<b>10</b>		<b>1 unit</b>	<b>1 unit</b>	
<b>11-14</b>		<b>1 unit + payment of in-lieu fee for fractional difference</b>	<b>1 unit</b>	
<b>15</b>		<b>1 unit</b>	<b>1 unit</b>	<b>1 unit</b>
<b>16-19</b>		<b>1 unit + payment of in-lieu fee for fractional difference</b>	<b>1 unit</b>	<b>1 unit</b>
<b>20 lots or more</b>		<b>8% of all units (1 unit minimum) + payment of in-lieu fee for fractional difference</b>	<b>6% of all units (1 unit minimum)</b>	<b>6% of all units (1 unit minimum)</b>

**§ 21.03.008 IN-LIEU FEES.**

(a) 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 (c) below by the fraction.

(b) Qualification for in-lieu fee. The developer of a residential development containing twenty-one 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, based on evidence in the record, 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.

(c) Fee amount. Inclusionary fees shall be set forth by Resolution of the Board of Supervisors and shall reflect the findings found in Section 21.03.001(g).

(d) Time of payment. Payment of in-lieu fees shall be made in full to the County prior to issuance of a certificate of occupancy and final inspection, unless an affordable housing agreement otherwise provides.

**§ 21.03.009 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: (1) 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; (2) 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 (3) 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 affordable 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 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, and amount of the in-lieu fee, if any. The affordable 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 existing County approvals. If the 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 the proposed amendment makes a substantive or material change to the affordable housing agreement, the 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 affordable 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. Such modification shall be considered at a public hearing during a regularly scheduled meeting.

(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 San Benito County Code, Title 25, Chapter 47.

### **§ 21.03.010 OCCUPANCY AND CONTINUING AVAILABILITY OF UNITS.**

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

(a) For-Sale Inclusionary Units.

(1) The number and type of rental inclusionary units and for-sale inclusionary units shall be determined for each application or approval under the standards of this chapter and set forth in the Affordable Housing or Development Agreement as approved by the Board. On-site and off-site for-sale inclusionary units shall be sold only to eligible households and only to very low, low, or moderate income households, as applicable, 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 San Benito 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 and inclusionary units, or may elect to pay a fractional unit in-lieu fee in the amount provided in Section 21.03.008. 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 of an inclusionary unit shall not be increased above the purchase price within one year of purchase.

(B) 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.

(C) The otherwise allowable maximum resale price may be increased by a maximum of 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 owner caused damage or deficient 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.

(D) 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.

(E) The administrative manual and/or approved documents may provide for a ceiling which limits the resale price increases resulting from the modifications in subsections (C) and (D).

(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 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 the 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 restrictions recorded against the unit under this chapter for the County's benefit.

(4) For sale inclusionary units may be refinanced or used as security for additional financing, to the extent provided in the administrative manual. Inclusionary homeowners may only incur debt with respect to the restricted sales price, not the open market price. A separate notice to of that restriction shall be recorded to prevent lenders from by-passing this requirement.

(5) Restrictions on resale are required and shall be recorded against title to the affordable units and shall prohibit or limit leasing of inclusionary units.

(b) Terms of Affordability. New and Existing Inclusionary Units. For-sale inclusionary units, affordability and occupancy restrictions shall remain in effect for thirty years and shall apply to any replacement structure or structures constructed if a structure containing an inclusionary unit or units is demolished or destroyed. If demolition or destruction of a structure containing inclusionary units occurs thirty 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. 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 an affordability period of thirty years.

(c) Maintenance. Regulatory agreements and recorded restrictions on resale shall include maintenance and insurance requirements for affordable units.

(d) Approval and Recording of Documents. The director, in consultation with County counsel, shall establish the form and content of agreements and restrictions authorized under this chapter. 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 affordable 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.

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

(f) 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.. A housing advisory committee 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.

(g) 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 the 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.

#### **§ 21.03.011 HOUSING ADVISORY COMMITTEE.**

(a) Creation. The Housing Advisory Committee, comprised of two members of the Board of Supervisors, two members of the Planning Commission, and two members appointed by the Chair of the Board from the affordable housing development community, is created pursuant to this chapter for the purpose of advising the Board of Supervisors on matters relating to the housing element of the general plan and the inclusionary housing ordinance, and such other matters as the Board of Supervisors or County staff shall direct. The housing advisory committee shall also evaluate proposals for disbursement of in-lieu fees in accordance with the procedures set forth in this chapter.

(b) Adoption of Bylaws. The Board of Supervisors shall adopt bylaws containing rules and procedures for the transaction of business of the housing advisory committee. The Board of Supervisors may amend the bylaws from time to time.

#### **§ 21.03.012 COLLECTION AND USE OF IN-LIEU FEES.**

(a) Use of Fees. To the maximum extent possible, any monies received by the County pursuant to this Chapter shall be used to increase, improve and preserve the supply of affordable housing and services to provide very low, low, and/or moderate income housing. Any monies received pursuant to this Chapter may be used for appropriate monitoring, enforcement and administrative costs. Monies received may also be used to assist the County with all costs associated for construction, acquisition, unit purchase, development and rehabilitation of property for rental or homeownership purposes as long as the property is offered for very low, low, and moderate income housing. Monies received may also be used to provide subsidies for equity participation loans, low interest loans, rent subsidies, grants or down payment assistance to eligible

participants of very low, low, or moderate income housing. Monies received may also be used for related activities that promote affordable housing such as homebuyer education, grant writing workshops, credit management workshops, financial literacy workshops and foreclosure prevention education. Any monies received by the County pursuant to this Chapter shall be used to provide reasonable reimbursement to approved governmental agencies or non profit organizations for related expenses associated with preserving an affordable “At-risk” unit for very low, low, or moderate income in order to prevent foreclosure. All such monies on deposit with the County including in-lieu fees, fees, promissory note repayments, shared appreciation payments, penalties, interest generated or other funds collected shall be separately accounted for and shall not be used for purposes not authorized by Section 21.03.002.

(b) Funding Proposals. At least once a year when the County holds unappropriated in lieu fees, 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 the 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. Proposals 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, and 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. 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. The Board of Supervisors, at its discretion, may elect to fund none, any, or all of proposals received and may attach conditions of approval, performance standards, or mitigation measures to any such approval. 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 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 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 San Benito County and those employed in San Benito County.

(f) Fee Approval. Until a fee for fractional units is approved by the Board of Supervisors, the requirement for payment of a fractional fee, as stated in sections 21.03.001 - 21.03.018 is not in effect, and the inclusionary housing requirement shall be rounded down to the nearest whole unit.

(g) Impact Fees. Developments that provide 100% affordable housing shall have a pro rata reduction of Impact Fees as follows:

Moderate income units shall require payment of 50% of the Impact Fees

Low income units shall require payment of 25% of the Impact Fees.

Very low income units shall be exempt from the Impact Fees.

### **§ 21.03.013 DENSITY BONUS AND INCENTIVES.**

(a) The County of San Benito shall provide density bonuses, incentives or concessions for the production of housing units and/or child care facilities in accordance with Cal. Govt. Code §65915 through §65916. The County may, in its discretion, grant a density bonus greater than required by Cal. Govt. Code §65915 for a development that meets the requirements of Cal. Govt. Code §65915 or grant a proportionately lower density bonus than what is required by Cal. Govt. Code §65915 for developments that do not meet the requirements of Cal. Govt. Code §65915.

(1) Twenty percent of the total units of a housing development for lower-income households, as defined in section 50079.5 of the Health and Safety Code;

(2) Ten percent of the total units of a housing development for very low-income households, as defined in section 50105 of the Health and Safety Code;

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in section 51.3 of the Civil Code; or

(4) Twenty percent of the total dwelling units in a condominium project as defined in subdivision (f) of section 1351 of the Civil Code, for persons or families of moderate income, as defined in section 50093 of the Health and Safety Code.

(b) The County shall grant the additional concession or incentive required by this section unless the County makes a written finding, based upon substantial evidence, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in section 50052.5 of the Health and Safety Code.

(c) The applicant/developer shall agree to, and the County shall ensure, continued affordability of the moderate-income units that are directly related to the receipt of the density bonus for ten years if the housing is in a condominium project as defined in subdivision (f) of section 1351 of the Civil Code.

(d) An applicant/developer may submit to the County a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the County. The County shall grant the concession or incentive requested by the applicant developer unless the County makes a written finding, based upon substantial evidence, of either of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in section 50052.5 of the Health and Safety Code.

(2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of section 65589.5 of the Government Code, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate-income households.

(e) Nothing in this section shall be interpreted to require the County to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of section 65589.5 of the Government Code, upon health, safety, or the physical environmental, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this section shall be interpreted to require the County to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) In no case shall the County apply any development standard that will have the effect of precluding the construction of a development at the densities or with the concessions or incentives permitted by this section. An applicant/developer may submit to the County a proposal for the waiver or reduction of development standards and may request a meeting with the County.

(g) It shall be the responsibility of the applicant/developer to show that the waiver or modification is necessary to make the housing units economically feasible.

(h) For the purposes of this chapter, except as provided in subsection (i), "density bonus" means a density increase of at least twenty-five percent, unless a lesser percentage is elected by the applicant/developer, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant/developer to the County. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, zone change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to ten, twenty or fifty percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(i) For the purposes of this chapter, if a development does not meet the requirements of subsections (a)(1), (a)(2) or (a)(3) of this section, but the applicant/developer agrees or proposes

to construct a condominium project as defined in subdivision (f) of section 1351 of the Civil Code, in which at least twenty percent of the total dwelling units are reserved for persons and families of moderate income, as defined in section 50093 of the Health and Safety Code, a "density bonus" of at least ten percent shall be granted, unless a lesser percentage is elected by the applicant/developer, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant/developer to the County. All density calculations resulting in fractional units shall be rounded up to the next whole number.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the County. For the purposes of this section, "housing development" also includes either (1) a project to substantially rehabilitate and convert an existing non-residential building to residential use, or (2) the substantial rehabilitation of an existing multi-family dwelling, as defined in subdivision (d) of section 65863.4 of the Government Code, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. Density bonus units need not be constructed in the same project area as affordable units.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in part 2.5 (commencing with section 18901) of division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial or other land uses will reduce the cost of the housing development and if the commercial, office, industrial or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the applicant/developer or the County that result in identifiable and actual cost reductions. This section does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the County, or the waiver of fees or dedication requirements.

(m) If an applicant/developer agrees to construct both twenty percent of the total units for lower-income households and ten percent of the total units for very low-income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in section 65913.4 of the Government Code, although the County may, at its discretion, grant more than one density bonus.

(n) For the purposes of this section, the following definitions shall apply:

(1) "Development standard" means any ordinance, general plan element, specific plan or other local condition, law, policy, resolution or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, excluding bonus units permitted under this section.

**§ 21.03.014 AFFORDABLE BY DESIGN**

(a) Applicants may propose development that is considered “affordable by design” as an alternative to providing all income restricted units pursuant to Section 21.03.004 (b)(5) and Section 21.03.010 through an Affordable Housing or Development Agreement. Examples of affordable by design include but are not limited to:

- 1 and 2 bedroom SFD
- Duets
- Townhomes
- Courtyard Homes
- Duplexes
- Condominiums
- Other configurations may be proposed

(b) The provisions of section 21.03.010 shall apply to all units proposed under this subsection.

**§ 21.03.015 DEVELOPMENT STANDARDS**

The following standards apply to the development of units pursuant to section 21.03.014 (Affordable by Design)

	SFD	Duets	Townhomes	Courtyard	Duplex	Condo
Lot area (square feet)	5,000	3,000	1,500	2,000	6,000	6,000
Lot Depth (min)	80	85	60	60	85	85
Lot Width (min)	40	30	24	24	60	60
Lot Coverage	50%	45	55	45	50	60
Height	See base zone	See base zone	See base zone district	See base zone	See base zone	See base zone

	district	district		district	district	district
Front Setback	20 feet	15 feet	N/A	N/A	20 feet	N/A
Side Setback	5	3	3	3	3	3
Side/Street setback	8	6	5	5	8	5
Rear Setback	15	10	N/A	N/A	15	N/A

**§ 21.03.016 ADDITIONAL STANDARDS**

RESERVED

**§ 21.03.017 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 San Benito County Code and/or any other action authorized by law or by any regulatory document, restriction or agreement executed under this chapter.

**§ 21.03.018 MONITORING.**

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 in order to ensure compliance with restrictions on 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.

(a) Periodic Evaluation. Unless funding or staff is not available, the director shall at five-year intervals, or more often at the director's discretion, at Board request, and any time the County Housing Element is updated as required by State law, prepare and submit to the Board of Supervisors an evaluation of this chapter and its effects.

**Section 2. General Provisions**

A. Severability: If any sentence, subsection, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance. The Board of Supervisors hereby declares that it would have enacted this ordinance and each section, subsection, sentences, clauses or phrases thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

B. Captions: The titles and headings to sections of this ordinance are not part of this ordinance and shall have no effect upon the construction or interpretation of any part hereof.

C. Effective Date and Codification: This ordinance shall be effective thirty (30) days after adoption. Section 1 shall be codified, and the remaining sections shall not be codified.

D. Publication: Within ten (10) days after its adoption, this ordinance shall be published pursuant to California Government Code 6061 in its entirety in a newspaper of general circulation which is printed, published and circulated within San Benito County, or a summary or display ad may be published as allowed by the Government Code.

The foregoing ordinance was introduced at a regular meeting of the Board of Supervisors on July 26, 2016, and passed and adopted by the Board of Supervisors of the County of San Benito at the regular meeting of said Board held on the 23rd day of August 2016, by the following vote:

AYES: Supervisors:  
NOES: Supervisors  
ABSENT: Supervisors  
ABSTAIN: Supervisors

By: \_\_\_\_\_  
Robert Rivas, Chair

ATTEST:  
Louis Valdez

APPROVED AS TO LEGAL FORM  
Matthew Granger, County Counsel

By: \_\_\_\_\_

By: \_\_\_\_\_  
Barbara Thompson, Assistant County Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_