



# Inclusionary Requirement & In-Lieu Fee

Ch. 21.03 Affordable Housing Regulations  
May 24, 2022

Prepared By: Stephanie Reck, Assistant Planner

# Agenda

- ▶ Overview of Alternative Methods of Compliance with the Inclusionary Requirement
- ▶ Ordinance Discussion
- ▶ Discussion of Trigger Number for Inclusionary Requirement
- ▶ Discussion of In-Lieu Fee & Staff Recommendation
- ▶ In-Lieu Fee Examples From other Jurisdictions



# Overview of Alternative Methods of Compliance

- ▶ The primary goal of the inclusionary requirement is to make affordable on-site units available in all housing developments.
- ▶ California state law requires that alternative methods of compliance be provided to developers.
- ▶ Common alternatives include:
  - in-lieu fees
  - off-site construction
  - land donation
  - acquisition and rehabilitation of existing units.

Best Practices for Inclusionary Housing Needs: [https://wclp.org/wp-content/uploads/2018/12/inclusionary-factsheet\\_v2.pdf](https://wclp.org/wp-content/uploads/2018/12/inclusionary-factsheet_v2.pdf)



# § 21.03.004 DEVELOPMENT REQUIRING INCLUSIONARY CONTRIBUTION.

(D) 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. Such alternative means of compliance may include:

- (1) Payment of in-lieu fees;
- (2) Developers may reserve or set aside the right to 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;
- (3) Build affordable multi-family rental units within the development rather than affordable for-sale, single-family homes;
- (4) Inclusionary requirement can be met through a combination of providing inclusionary units and in-lieu fees;
- (5) Townhomes can meet for-sale housing requirements;
- (6) *Off-site construction.* Require a higher percentage of inclusionary units if the developer selects this option;
- (7) *Land donation.* Value of the land should not be lower than the total fees that would have been paid.

(Ord. 951, § 1(part), 2016; Ord. 1,014, § 5, 2020)

Affordable Housing Regulations:

[https://codelibrary.amlegal.com/codes/sanbenitocounty/latest/sanbenito\\_ca/0-0-0-8514](https://codelibrary.amlegal.com/codes/sanbenitocounty/latest/sanbenito_ca/0-0-0-8514)

# Ordinance Discussion



# Remove the Option to Pay an In-Lieu Fee

**Option:** If we remove the option to pay an in-lieu fee. Developers can elect to either round their fractional unit up if it's over 0.5 or down if 0.5 or below.

**Rental and For-Sale Units:** As state law requires alternative methods of compliance, in-lieu fees are the most common method across jurisdictions. In-lieu fees provide flexibility to produce very-low-income units, otherwise not met by the inclusionary requirement.

**Rental Units:** Based on the Inclusionary Housing Study, rental units are infeasible to build in unincorporated county. Rental housing shows a negative return in profit for developers and adding an in-lieu fee will result in a larger negative return. This is why an in-lieu fee for rental units was not included in the study. In-lieu fees for fractional units may be calculated as the county receives plans for rental units.

\*Lack of examples of market rate rentals in the county made calculating the in-lieu fee for rental units difficult. At the time of the study, development costs for rental units were solely based on the Buena Vista Apartments.

Best Practices for Inclusionary Housing Needs: [https://wclp.org/wp-content/uploads/2018/12/inclusionary-factsheet\\_v2.pdf](https://wclp.org/wp-content/uploads/2018/12/inclusionary-factsheet_v2.pdf)



# Option to Require an In-Lieu Fee for the Fractional Unit Only

**Option:** To offer an in-lieu fee for the fractional unit only. This will remove the option for developers to pay a fee in-lieu of building whole inclusionary units. This benefits the primary goal of the inclusionary ordinance to develop affordable units.

**For-Sale Units:** Having an in-lieu fee for the fractional unit only is more reflective of what other jurisdictions are doing. In Santa Cruz County, if the fractional unit is 0.7 or less the developer can choose to pay the in-lieu fee applicable to the fractional unit only or build an additional unit. An additional inclusionary unit is provided for all fractional requirements greater than 0.7.

**Rental Units:** Staff and Board of Supervisors to revisit the in-lieu fee for rental units as rental projects are proposed to the county.

Santa Cruz County CH 24.16 Affordable Housing Provisions:

<https://www.cityofsantacruz.com/home/showpublisheddocument/73381/636742398585230000#:~:text=units%20as%20follows%3A-.a.,at%20an%20affordable%20ownership%20cost>



# Option to Further Define “Services” for In-Lieu Payment of Inclusionary Units

## § 21.03.008 IN-LIEU PAYMENT AND OTHER ALTERNATIVE COMPLIANCE MECHANISMS.

Subsection (C) *Qualification for in-lieu payment.* The developer of a residential development containing 11 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. The evidence must be reviewed by the Planning Commission for first approval and the qualification for an in-lieu payment must be approved by the Board of Supervisors.

**Option:** Further define “services” by going beyond definitions of basic services that need to be met to subdivide. Lack of clarity on the term “services” could allow developers to elect an in-lieu fee over building affordable units. This will impact unincorporated County as basic services to subdivide are not always available.

**For-Sale Units:** Take this item to the Housing Advisory Committee to better clarify what qualifying “services” will allow developers to opt for an in-lieu payment as opposed to building the inclusionary unit. In addition, the Board of Supervisors can mitigate challenges with this definition through a development agreement or an affordable housing agreement.

**Rental Units:** Staff and Board of Supervisors to revisit the in-lieu fee for rental units as rental projects are proposed to the county.

Affordable Housing Regulations:

[https://codelibrary.amlegal.com/codes/sanbenitocounty/latest/sanbenito\\_ca/0-0-0-8514](https://codelibrary.amlegal.com/codes/sanbenitocounty/latest/sanbenito_ca/0-0-0-8514)



# **Discussion of Trigger Number for Inclusionary Requirement**



# Inclusionary Tables On-Site, For-Sale

On-Site For Sale Inclusionary Requirements (15%)			
Size of Development	Inclusionary Requirement	Moderate-Income (81%-120%AMI)	Low-Income (51%-80%AMI)
1-10	None		
11-13	Provide 15% inclusionary units + fractional fee	1 unit	
14-19*	Provide 15% inclusionary units + fractional fee	1 unit	1 unit
20	Provide 15% inclusionary units	2 units	1 unit
21-26*	Provide 15% inclusionary units + fractional fee	2 units	1 unit
27-33	Provide 15% inclusionary units + fractional fee	2 units	2 units
34-39*	Provide 15% inclusionary units + fractional fee	3 units	2 units
40	Provide 15% inclusionary units	3 units	3 units
41 lots or more*	Provide 15% inclusionary units + fractional fees	10% of all units	5% of all units

**Note:**  
\* Fractional units, regardless of project size or on-site or off site, still pay in-lieu fees.

Reducing the trigger number will allow for more of an impact from the inclusionary requirement but will also increase the cost to local developers.

San Benito County Affordable Housing Regulations:

[https://codelibrary.amlegal.com/codes/sanbenitocounty/latest/sanbenito\\_ca/0-0-0-8514](https://codelibrary.amlegal.com/codes/sanbenitocounty/latest/sanbenito_ca/0-0-0-8514)



# **In-Lieu Fee Discussion & Staff Recommendation**



# In-Lieu Fee

A large lot single family home is defined as any single-family house, whether freestanding or attached, including but not limited to homes, condos, townhomes, etc., (but specifically excluding an apartment building), on a lot size greater or equal to 3,000 square feet.

	<b>Large Lot Single Family Homes</b>	<b>Small Lot Single Family Homes</b>
<b>In-Lieu Fee Per Square Foot Based on the 15% Inclusionary Ordinance Requirement</b>	<b>\$30</b>	<b>\$23</b>

**Recommendation:** To adopt both in-lieu fees for large lot and small lot homes.

**OR**

**Recommendation:** Close this item and re-notice to adopt the \$30 fee applicable to “For-Sale” units rather than 2 fees dedicated to large lot and small lot homes, because generally all lots in unincorporated county are larger than 3,000 sq ft.



# **In-Lieu Fee Examples from Other Jurisdictions**



# City of San Jose

## Trigger Number:

DIRECTED BY CITY COUNCIL					
Current		Amended			
<b>Base Requirement &amp; Small Projects:</b> Study how to incentivize density where appropriate for small projects between 1 -4 units' and between 5-20 units. Return to Council after outreach to small-project builders about the viability of those projects, and offer recommendations to incentivize densifying these projects including, but not limited to, considering bonuses to small projects that are substantially densifying infill sites.					
Rental & For-Sale	Applicability: 20 or more units	➤	10 or more units		
	Base Requirement: Minimum 15% IHO On Site Obligation	➤	No Change		
	Small Projects: Small rental developments pay an impact fee only & Small for-sale are not subject to AHIF or IHO	➤	10 to 19 unit developments are now under IHO but may pay half the in lieu fee rate if providing at least 90% of maximum density allowed by the General Plan		
<b>Serve a Wider Income Range:</b> Accept staff recommendation to serve a wider range of target income levels as listed (5% at 100% AMI, 5% at 60% AMI, 5% at 50% AMI)					
Rental	Target income levels On-Site: <ul style="list-style-type: none"> <li>9% at 80% AMI</li> <li>6% at 50% AMI</li> </ul>	Target income levels Off-Site: <ul style="list-style-type: none"> <li>12% at 60% AMI</li> <li>8% at 50% AMI</li> </ul>	➤	Income levels On-Site: <ul style="list-style-type: none"> <li>5% at 100% AMI</li> <li>5% at 60% AMI</li> <li>5% at 50% AMI</li> </ul> OR <ul style="list-style-type: none"> <li>10% at 30% AMI</li> </ul>	Income levels Off-Site: <ul style="list-style-type: none"> <li>5% at 80% AMI</li> <li>5% at 60% AMI</li> <li>10% at 50% AMI</li> </ul>

City of San Jose Inclusionary Housing Briefing Sheet:

<https://www.sanjoseca.gov/home/showpublisheddocument/72167/637556456553030000>



# City of San Jose

## In-Lieu Fee:

<b>In-lieu Fee Option &amp; Geographic Market Areas:</b> Accept staff recommendation to restructure the in-lieu fee option to apply the fee on a square foot basis and change the amount to \$43 per square foot for rental development and \$25 per square foot for for-sale development; Direct staff to develop geographic market areas to phase in the in-lieu fee adjustments over time.				
<b>Rental</b>	Applied to 20% of the units at \$125,000 (\$28/ ft <sup>2</sup> ) set by Council resolution in 2018	Applied to all units based on square footage based on 20% in lieu requirement – applied to rentable square footage		
		<table border="1"> <thead> <tr> <th>Strong Market</th> <th>Moderate Market</th> </tr> </thead> <tbody> <tr> <td>\$43/ft<sup>2</sup></td> <td>\$18.70/ft<sup>2</sup></td> </tr> </tbody> </table>	Strong Market	Moderate Market
Strong Market	Moderate Market			
\$43/ft <sup>2</sup>	\$18.70/ft <sup>2</sup>			
<b>Rental</b>	In-Lieu Fees are set at the same rate across the City	<ul style="list-style-type: none"> <li>Strong Market Areas are Central and West Valley</li> <li>All other Market Areas are moderate</li> </ul>		
<b>For-Sale</b>	Per unit applied to 20% of the units \$157,858 (~\$27.45/ ft <sup>2</sup> )	Per square footage applied to all units \$25/ ft <sup>2</sup>		

City of San Jose Inclusionary Housing Briefing Sheet:

<https://www.sanjoseca.gov/home/showpublisheddocument/72167/637556456553030000>



# City of Santa Clara

## Trigger Number:

*"Residential ownership projects of ten (10) or more units must provide at least fifteen percent (15%) of the units at affordable housing costs for extremely low, very low, low and, moderate income households, or some combination of those income categories. Residential ownership projects of fewer than ten (10) units may either provide one dwelling at an affordable housing cost for a household earning up to 100 percent of AMI, or pay an in-lieu fee identified for residential ownership projects in the Affordable Housing Master Fee Schedule"*

City of Santa Clara Affordable Housing Ordinance:

<https://www.santaclaraca.gov/home/showpublisheddocument/70523/637393004007130000>



# City of Santa Clara

## In-Lieu Fee:

### A. For-Sale Residential Projects that received planning approval after January 18, 2018:

Tenure Type	January 18, 2018- July 17, 2018 (\$ per square foot)	July 18, 2018- January 17, 2019 (\$ per square foot)	January 18, 2019 and beyond (\$ per square foot)
Single-Family Home	Exempt	\$10.00	\$30.00
Townhome	Exempt	\$8.33	\$25.00
Condominium	Exempt	\$6.67	\$20.00

### B. Rental Residential Projects that received planning approval after January 18, 2018:

Tenure Type	January 18, 2018- July 17, 2018 (\$ per square foot)	July 18, 2018- January 17, 2019 (\$ per square foot)	January 18, 2019 and beyond (\$ per square foot)
Rental Residential (any tenure type)	Exempt	\$6.67	\$20.00

City of Santa Clara Affordable Housing Fees Resolution:

<https://www.santaclaraca.gov/home/showpublisheddocument/56672/636560111650870000>



# City of Walnut Creek

## Trigger Number:

*"The City of Walnut Creek has adopted an inclusionary housing ordinance that requires applicants for ownership or rental residential projects of more than 1 unit to contribute toward the City's affordable housing need. **Projects of 2 to 9 units may pay an in-lieu fee** to meet their requirement or provide 1 affordable unit. **Projects of 10 or more units must include affordable units within the project.**"*

Walnut Creek Housing Ordinance Handout: <https://www.walnut-creek.org/home/showdocument?id=4024>



# City of Walnut Creek

## In-Lieu Fee:

In-Lieu Fee Schedule			
Year	Unit Count	Fee Rate/Square Foot (SF)	
		Rental Fee/SF	Ownership Fee/SF
Before 2018	2	\$1.60	\$2.00
	3	\$2.40	\$3.00
	4	\$3.20	\$4.00
	5	\$4.00	\$5.00
	6	\$4.80	\$6.00
	7	\$5.60	\$7.00
	8	\$6.40	\$8.00
	9	\$7.20	\$9.00
	10 and Up	\$15.00	\$15.00
2018			\$18
2019			\$18.22
2020			\$18.68
2021			\$19.27
2022			\$21.86

Walnut Creek Commercial Linkage and In-Lieu Fees: <https://www.walnut-creek.org/departments/community-and-economic-development/housing-programs/housing-policies/commercial-linkage-fee>





# Thank You

Questions