

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. Sections 21.03.001 through 21.03.012 of Chapter 21.03 of Title 21 of the San Benito County Code shall be amended to read as follows:

§ 21.03.001 FINDINGS.

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 extremely-low, 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 extremely-low, 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 extremely-low, 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.

Provide for Workforce. The Board of Supervisors finds that the housing shortage for persons of extremely-low, very-low, low, and moderate-income is detrimental to the public health, safety and welfare, and particularly finds that provision of extremely-low, 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 extremely-low, 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.

- (a) 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.
- (b) 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 extremely-low, 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 extremely-low, very-low, low, and moderate-income households, is a necessary consideration in order to prevent undermining of the credibility of the whole program and to avoid the loss of any unit as an affordable unit.
- (c) 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 extremely-low, 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 extremely-low, 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.
- (d) 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 extremely-low, very-low, low, and moderate-income housing, and an increased availability of funds for extremely-low, very-low, low, and moderate-income housing projects.
- (e) Collection of Payments. The Board of Supervisors finds that the In-lieu Payments required or permitted by this chapter will be appropriate and permissible. The payments required by this chapter, as set forth in §21.03.008(c), will be fair and effective because:
 - (1) The payment amount will be based on the amount necessary to construct an affordable unit or affordable units as called for by this chapter, so that when an applicant is allowed and elects to pay an In-lieu Payment, funds will be available to reach the County's overall affordability target, without excessive payments and without setting varying payment standards on a case-by-case basis;
 - (2) The payment amount necessary to construct units at the affordability levels specified by this chapter will be based on land, construction and other costs of building units in the County;
- (f) Objective. The Board of Supervisors finds that an objective of this chapter is to meet the housing needs of all types of extremely-low, 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 extremely-low, 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 extremely-low, 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 extremely-low, 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 extremely-low, 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.
- e. "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.
- f. "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.

- g. "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, or combined development permit,.
- h. "Approved Documents" means Affordable Housing Agreement or Development Agreement.
- i. "Area Median Income" means the annual income for San Benito County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the County of San Benito
- j. "Building Permit" means a permit issued by the San Benito County department of planning and building authorizing the construction of new dwellings.
- k. "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.
- l. "Density Bonus" means an increase in the number of units permitted in a proposed residential project provided pursuant to the State Density Bonus Law as set forth in Section 65915 *et seq.* of the California Government Code, as amended
- m. "Dwelling" or "Unit" means any structure or portion thereof designed or used as the residence.
- n. "Eligible Household" means a household whose Gross Annual Household Income does not exceed the applicable maximum for a given Inclusionary Unit.
- o. "Extremely-Low 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 thirty percent of median income, adjusted for household size.
- p. "First Approval" means the first approval, as the term "Approval" is defined in this chapter, to occur with respect to a residential project.
- q. "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.
- r. "Gross Annual Household Income" means the combined adjusted gross income (pre-tax) income of all adult persons in a household, who is an Applicant for an Inclusionary Unit, or who are residing in an Inclusionary Unit, as calculated pursuant to the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor.
- s. "Household" means one or more individuals who occupy one dwelling unit as a single housekeeping unit, whether or not related by blood or marriage.
- t. "HUD" means the United States Department of Housing and Urban Development.
- u. "Inclusionary Unit" means a housing unit, which is required by an approval to meet

affordability and occupancy limits under this chapter.

- v. "Inclusionary Unit Cost" shall have the monetary value set forth in § 21.03.008 herein.
- w. "In-lieu Payment" means the amount payable pursuant to this Chapter as an alternative to the construction of fractional on-site or off-site Inclusionary Units.
- x. "Low-Income Inclusionary Unit" means an inclusionary unit reserved for occupancy by low-income households at an affordable rent or sales price.
- y. "Low-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 that do not exceed eighty percent of the median income, adjusted for household size.
- z. "Market Rate Unit" means a Dwelling Unit offered on the open market at the prevailing market rate purchase or rental.
- aa. "Median Income" means the median household income as determined by the State of California Department of Finance and updated on an annual basis.
- bb. "Moderate-Income Inclusionary Unit" means an inclusionary unit reserved for occupancy by moderate-income households at an affordable rent or sales price.
- cc. "Moderate-Income Household" means a household with an annual income which does not exceed one hundred twenty percent of the median income, adjusted for household size.
- dd. "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.
- ee. "Subdivision" means a "Subdivision" as that term is defined by the California Subdivision Map Act.
- ff. "Very-Low Income Inclusionary Unit" means an inclusionary unit designated in and reserved for occupancy by very low-income households at an affordable rent or housing cost.
- gg. "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, which currently means those not earning more than 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 extremely-low, 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, subject to the approval of the County and recorded restrictions on such development in a form approved by County;
 - (4) 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 extremely-low, 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) An applicant 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.
 - (b) 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 be subject to the inclusionary housing policy. A residential development of 5 or 6 units may provide an affordable unit or pay an In-lieu Payment based on the payment amount set forth in §21.03.008(b) for one on-site unit. All residential development consisting of 7 or more units shall provide inclusionary units on-site, or off-site if permitted by this Chapter. 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 applicant alone or in combination with others, including a non-profit housing corporation, as specified in Section 21.03.006 and 21.03.007.

§ 21.03.006 ON-SITE UNITS.

To satisfy its inclusionary requirement on-site, an applicant for a residential development must construct inclusionary units in an amount equal to or greater than fifteen percent (15%) of the total number of units approved for the residential development (except to the extent that a fraction of a unit would be required as determined pursuant to Section 21.03.008(b), for which the applicant may elect to make a fractional unit payment pursuant to Section 21.03.008(c)). Initial and subsequent affordability levels and eligible occupants of the inclusionary units shall conform to the requirements of Section 21.03.010, as applicable.

On-Site Affordable Units Must:

- (a) 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;
- (b) 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;
- (c) Have a similar number of bedrooms as the market rate homes in which the affordable units are located.
- (d) Have the following minimum square footages:
 - i) 2 Bedrooms – 900 sq. ft.
 - ii) 3 Bedrooms – 1150 sq. ft.
 - iii) 4 Bedrooms – 1360 sq. ft.

- (e) A minimum of 50% of the required affordable housing shall be 3 bedroom units.
- (f) Except as otherwise provided in the Affordable Housing Plan for the residential development, building permits for accompanying market-rate units will not be issued until building permits have been issued for on-site and/or off-site Inclusionary Units, and final inspections for occupancy will not occur for accompanying market-rate units until final inspections for occupancy have occurred for said Inclusionary Units.

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.

On-site Requirements

Size of Development	Inclusionary Requirement	Moderate Income	Low Income	Very Low Income
1-4	None			
5-6	Payment of in-lieu			
7-13	Provide 15% inclusionary units	1 unit + prorated In-lieu Payment for fractional difference		
14-19	Provide 15% inclusionary units	1 unit + prorated In-lieu Payment for fractional difference	1 unit	
20	Provide 15% inclusionary	1 unit	1 unit	1 unit
21 to 26	Provide 15% inclusionary units	1 unit + prorated In-lieu Payment for fractional difference	1 unit	1 unit
27 to 33	Provide 15% inclusionary units	2 units + prorated In-lieu Payment for fractional difference	1 unit	1 unit
34-39	Provide 15% inclusionary units	2 units + prorated In-lieu Payment for fractional difference	2 unit	1 unit

40	Provide 15% inclusionary units	2 units	2 units	2 units
41 or more	Provide 15% inclusionary units	5% of all units + prorated In-lieu Payment for fractional difference	5% of all units 2 units minimum	5% of all units 2 units minimum

§ 21.03.007 OFF-SITE AFFORDABLE UNITS.

- (a) Off-site inclusionary units, in place of or combined with on-site units, may be approved by the Board of Supervisors upon a showing by the applicant for the residential development that off-site units will provide a greater contribution to the County's affordable housing needs. If an applicant is permitted to construct off-site affordable housing, the inclusionary requirement shall be twenty percent (20%) which shall be used to determine the required number of off-site units that must be constructed by the applicant (except to the extent that a fraction of a unit would be required as determined pursuant to Section 21.03.008(b), for which the applicant may elect to make a fractional unit payment pursuant to Section 21.03.008(c)). 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) 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.

Off-Site Requirements

Development Size	Inclusionary Requirement	Moderate Income	Low Income	Very Low Income
1-4	None			
5	Provide 20% Inclusionary	1 unit		
6-9		1 unit + prorated In-lieu Payment for fractional difference		
10		1 unit	1 unit	
11-14		1 unit + prorated In-lieu Payment for fractional difference	1 unit	
15		1 unit	1 unit	1 unit
16-19		1 unit + prorated In-lieu Payment for fractional difference	1 unit	1 unit
20 lots or more		8% of all units (1 unit minimum) + payment of prorated in-lieu fee for fractional difference	6% of all units (1 unit minimum)	6% of all units (1 unit minimum)

§ 21.03.008 IN-LIEU PAYMENT

(a) General.

For both on-site and off-site construction, unless an exemption is approved by the Board of Supervisors pursuant to subparagraph (c) below, the applicant shall be required to build the whole number of inclusionary units as determined in subparagraph (b) below.

Applicants whose residential development's on-site or off-site inclusionary housing requirements include building a fractional unit may pay an In-lieu Payment for the fractional unit instead of

constructing the next whole number of units. The Applicant may build the next whole number of units at its option, rather than pay the in-lieu payment for the fractional unit.

The amount of the payment for the fractional unit shall be based on the cost of constructing an inclusionary affordable unit as set forth in subparagraph (c) below.

(b) Fractions of units.

When, in determining the number of inclusionary on-site or off-site units required to be built by an applicant pursuant to this Chapter, the number of 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 build the next higher whole number of moderate-income inclusionary units, or the applicant may elect to pay a fractional unit In-lieu Payment for the fractional unit determined in this paragraph, with such In-lieu Payment calculated in the manner provided in subparagraph (c) below.

(c) Payment amount.

For the purposes of calculating the inclusionary housing In-lieu Payment required by this Chapter, the cost to construct one on-site or off-site inclusionary affordable unit is hereby established as Four Hundred Thirteen Thousand Dollars (\$413,000) ("Inclusionary Unit Cost").¹ For any fractional on-site or off-site unit, if the applicant elects not to build the next higher whole number of units, the amount of the payment for the fractional unit to be paid by the applicant shall be the product of the required fractional unit as determined in subsection (b) above times the Inclusionary Unit Cost.

(d) Qualification for solely paying In-lieu Payment. If the an applicant seeks to pay an In-lieu Payment, instead of providing some or all of the non-fractional (*i.e.*, whole number) inclusionary units required by this Chapter, the applicant must demonstrate, based on evidence in the record, in connection with the first approval for the residential development, that specific

¹ It should be noted that the Inclusionary Unit Cost of \$413,000 is used in the calculation of the fractional in-lieu payment for *both* the on-site and off-site calculations. The **15%** on-site requirement mathematically requires that an 'on-site in-lieu payment' would need to be collected per unit every **6 2/3** units in the proposed development to generate enough funds to provide for the cost of constructing one inclusionary unit. Such a per unit *on-site* in-lieu payment (if assessed on all of the units in the development) would need to equal \$61,950 (such that \$61,950 times 6 2/3 = \$413,000). Likewise, the **20%** on-site requirement mathematically requires that an 'off-site in-lieu payment' would need to be collected per unit every **5** units in the proposed development to generate enough funds to provide for the cost of constructing one inclusionary unit. Such a per unit *off-site* in-lieu payment (if assessed on all of the units in the development) would need to equal \$82,600 (such that \$82,600 times 5 = \$413,000).

It should be noted that because applicants are required to construct whole number of units of inclusionary affordable units, any in-lieu payment for fractional units are calculated on the basis of the full cost to construct an inclusionary affordable unit, *i.e.*, the Inclusionary Unit Cost (\$413,000).

If the Board allows an applicant to only pay in-lieu payments pursuant to subparagraph (d), then the entire number of inclusionary affordable units will be built *off-site* and the and the \$82,600 *off-site* in-lieu payment will be assessed against each unit in the applicant's proposed project.

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 and the qualification for an In-lieu Payment must be approved by the Board of Supervisors.

For the purposes of this subparagraph (d), using the twenty percent (20%) inclusionary requirement for off-site construction set forth in § 21.03.007, the per unit In-lieu Payment for an on-site building permit for *each* of the units in the applicants proposed project is Eighty-Two Thousand Six Hundred Dollars (\$82,600).

- (e) Time of payment. Payment of In-lieu Payments shall be made in full to the County prior to issuance of the first building permit for the market-rate units, 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 to construct off-site units and/or intent to pay In-lieu Payments, conditioned upon approval by the Board of Supervisors, for all or part of the inclusionary housing requirements as set forth in § 21.03.008(d).
- (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 Payment 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 Payment 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 Payment, 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, subject to the approval of County Counsel. 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, and 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 25.47.

§ 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) Inclusionary Units. 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 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 extremely-low, 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. 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, or as established by ordinance from time to time, at the discretion of County Counsel. Similar restrictions shall be required of subsequent owners at the time they acquire the unit.
- (b) Resale Value. The maximum resale price shall be determined under the approved documents, consistent with the administrative manual and the following:
 - (1) The maximum permitted resale price of an inclusionary unit shall not be increased above the purchase price within one year of purchase.
 - (2) 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:
 - (a) 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.

- (b) 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.
- (3) The administrative manual and/or approved documents may provide for a ceiling, which limits the resale price increases resulting from the modification of subsection (a) & (b).
- (c) Transfer. 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.
- (1) For sale inclusionary units may be refinanced for the same amount plus applicable closing costs (to achieve more favorable interests rates), to the extent provided in the administrative manual and with the specific approval of Director, but may not be used as security for additional financing. A separate notice to of that restriction shall be recorded to prevent lenders from by-passing this requirement.
 - (2) Restrictions on resale are required and shall be recorded against title to the affordable units and shall prohibit or limit leasing of inclusionary units.
- (d) 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.

- (e) Maintenance. Regulatory agreements and recorded restrictions on resale shall include maintenance and insurance requirements for affordable units.
- (f) 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.
- (g) Occupancy. Initial and subsequent occupancy of inclusionary units shall be in accord with conditions and requirements stated in the administrative manual. The homeowner must occupy the home as the primary residence.
- (h) 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.
- (i) 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 Payment 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, three members of the public appointed by the Chair of the Board. Of the three members appointed by the Board of Supervisors Chair, it is recommended, but not required, to have one member from the affordable housing development community, one member from the builder development community, and one of the members with a financial or accounting background. This 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 disbursal of In-lieu Payments 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 PAYMENTS.

- (a) Proposal. 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 staff administrative services to provide extremely-low, 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 and other County Agencies 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 extremely-low, 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 extremely-low, 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. Monies may also be expended for staff time, and professional services (such as legal, engineering, architectural, auditing, accounting, and other similar services) for the Affordable Housing Program. 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 extremely-low, very-low, low, or moderate income in order to prevent foreclosure. All such monies on deposit with the County including In-lieu Payments, 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 Payments, 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 extremely-low, very-low, low, and/or moderate-income housing in the County.
- (c) Submit Proposal. 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 extremely-low, 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.

- (d) Director's Authority. All proposals and requests for funding shall be referred initially to the director or designee. The director or designee 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 or designee shall have the authority to execute all documents necessary to implement the approval on behalf of the County, subject to the approval of County Counsel.
- (e) 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.
- (f) Household Eligibility. The director shall establish standards for eligibility of Extremely-Low, Very-Low, Low, and/or Moderate-Income Households in connection with units assisted with the proceeds of In-lieu Payments. Priority for occupancy shall be granted to residents of San Benito County and those employed in San Benito County.
- (g) Impact Fees. If approved by the Board of Supervisors, developments projects which provide affordable housing shall have a pro rata reduction of Impact Fees (as established from time to time in the San Benito County Code) as follows:
 - i) Moderate income units shall require payment of 25% of the Impact Fees.
 - ii) Low income units shall require payment of 15% of the Impact Fees.
 - iii) Very-Low & Extremely-Low income units shall be exempt from the Impact Fees.

Section 2. Sections 21.03.014 Affordable by Design, 21.03.015 Developments Standards, and 21.03.016 Additional Standards are hereby deleted in their entirety and Sections 21.03.017 and 21.03.018 of Chapter 21.03 of Title 21 of the San Benito County Code shall be renumbered to Sections 21.03.014 and 21.03.15, respectively, and shall be amended to read as follows:

§ 21.03.014 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.

§ 21.03.015 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 their ownership of the property, and after it is sold, for no more 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 3. 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. Sections 1 and 2 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 _____, 2019, 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 ____ day of _____, 2019, by the following vote:

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

By: _____
Mark Medina, Chair

ATTEST:
Janet Slibsager

APPROVED AS TO LEGAL FORM:
Barbara Thompson, County Counsel

By: _____

By: _____
Barbara Thompson

Date: _____ Date: _____